FOREWORD

This volume contains the Acts of the Second Regular session of the 62nd Legislature, Extraordinary Session (1975) and the First Extraordinary Session (1976) of the 62nd Legislature.

Regular Session, 1976

The second regular session of the 62nd Legislature convened on January 14, 1976, for the sixty-day annual session, expiring at midnight, March 13, 1976. However, for the sixth time in the history of the State, the session was extended by concurrent resolution as provided by Section 22, Article VI of the Constitution through the 30th day of June, 1976. On March 17, the Legislature took an adjournment until 6:00 P.M., Friday, May 14, 1976, and adjourned sine die on May 15, 1976.

Bills totaling 1,744 were introduced in the two houses during the session—1,091 House and 653 Senate.

The Legislature passed 139 bills during the session—73 House and 66 Senate. The Governor approved 129 bills and vetoed eleven. Vetoes of six bills were overridden. One bill vetoed by the Governor was amended by the Legislature and subsequently approved by the Governor.

There were 96 concurrent resolutions introduced during the session, 65 House and 31 Senate, of which six House and six Senate were adopted. Thirty-three House and 21 Senate Joint Resolutions were introduced, none of which were adopted. The House had 29 House Resolutions and the Senate had 18 Senate Resolutions, of which 14 House and 14 Senate were adopted.

Upon final adjournment, there were 64 House bills passed by the House pending in the Senate and 78 Senate bills passed by the Senate pending in the House.

Two House bills and three Senate bills died in conference. They were H. B. 1525, delegation of power by the State Board of Education to operate multi-county vocational centers to an administrative council; H. B. 1643, dealing with the Public Service Commission—appointment, term, salaries, etc., of members; employees and hearings; opinions supporting orders; procedure for changing public utility rates; creating office of public counsel; annual report; powers generally, etc.; S. B. 263, medical liability insurance; S. B. 297, inspection fees for motor vehicles; and S. B. 364, authority of county boards of education to govern sale of foods, soft drinks, confections, etc., on school property, other than elementary school property.

Extraordinary Session, 1975

There were 167 bills introduced in the two houses—94 House and 73 Senate, dealing with the 19 items of business proclaimed by the Governor for consideration. The Legislature passed 12 bills—six House and six Senate. The Governor approved 11 and vetoed one of the bills passed. One House bill, passed by the House, was not passed by the Senate.

There were 16 Concurrent Resolutions introduced—12 House and four Senate, of which three House and three Senate were adopted. One Joint Resolution, proposing an amendment to the State Constitution, was introduced in the Senate, but was not adopted. The House had eight House Resolutions and the Senate had 11 Senate Resolutions, of which five House and all 11 Senate were adopted by the respective houses.

First Extraordinary Session, 1976

This session convened on June 21, 1976, and concluded its business on June 24, 1976.

During the session, 91 bills were introduced in the two houses—46 House and 45 Senate—dealing with the 37 items set forth in the proclamation of the Governor convening the session. The Legislature passed eight bills—seven House and one Senate. All eight bills were approved by the Governor. Two House bills, passed by the House, were not passed by the Senate, and one Senate bill sent to the House was not passed. Two Concurrent Resolutions were introduced in the House, but were not adopted. The Senate did not have any Concurrent Resolutions. There were four House Resolutions, all adopted, and nine Senate Resolutions, all adopted.

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

C. A. Blankenship, Clerk
House of Delegates
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MEMBERS OF THE SENATE

REGULAR SESSION, 1976

OFFICERS
President—W. T. Brotherton, Jr., Charleston
Clerk—J. C. Dillon, Jr., Hinton
Sergeant at Arms—John E. Howell, Charleston
Doorkeeper—E. L. Bevins, Williamson

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1 Appointed June 17, 1975, to fill the vacancy created by the resignation of the Honorable J. C. Dillon, Jr.

(D) Democrats .................................................. 26
(R) Republicans .................................................. 8

Total .......................................................... 34

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1976

OFFICERS

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

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(D) Democrats  86  
(R) Republicans  14  
Total 100
STANDING COMMITTEES OF THE SENATE
1976

AGRICULTURE
Oates (Chairman), Beall (Vice Chairman), Benson, Darby, Hamilton, Hellem, Steptoe, Susman, Williams, Jones and Rogerson.

BANKING AND INSURANCE
Neeley (Chairman), Williams (Vice Chairman), Hamilton, Hatfield, Huffman, Moreland, Oates, Rogers, Susman, Ward, Deem, Herndon and Kusic.

CONFIRMATIONS
Benson (Chairman), Galperin (Vice Chairman), Darby, Davis, Hamilton, Hellem, McGraw, Rogers, Savilla, Willis, Gilligan, Harman and Herndon.

EDUCATION
Nelson (Chairman), Willis (Vice Chairman), Beall, Benson, Galperin, Hellem, McGraw, Oates, Savilla, Sharpe, Steptoe, Deem, Gilligan, Herndon, and Jones.

ELECTIONS
Williams (Chairman), McGraw (Vice Chairman), Galperin, Hamilton, Huffman, Moreland, Nelson, Palumbo, Steptoe, Deem and Jones.

FINANCE
Fanning (Chairman), Susman (Vice Chairman), Beall, Darby, Gainer, Galperin, Hatfield, McGraw, Neeley, Savilla, Sharpe, Steptoe, Williams, Willis, Gilligan, Harman, Hinkle and Rogerson.

HEALTH
Darby (Chairman), Hatfield (Vice Chairman), Davis, Galperin, Hamilton, Moreland, Sharpe, Harman and Jones.

INTERSTATE COOPERATION
Gainer (Chairman), Moreland (Vice Chairman), Neeley, Nelson, Susman, Gilligan and Herndon.

JUDICIARY
Palumbo (Chairman), Oates (Vice Chairman), Benson, Davis, Gainer, Hamilton, Hellem, Huffman, Moreland, Neeley, Nelson, Rogers, Steptoe, Ward, Deem, Herndon, Jones and Kusic.

LABOR
Hatfield (Chairman), Davis (Vice Chairman), Darby, Huffman, Sharpe, Steptoe, Ward, Harman and Kusic.

LOCAL GOVERNMENT
Galperin (Chairman), Huffman (Vice Chairman), Beall, Benson, Hellem, Moreland, Steptoe, Herndon and Hinkle.
SENATE COMMITTEES

MILITARY
Moreland (Chairman), Savilla (Vice Chairman), Darby, Hatfield, McGraw, Neeley, Williams, Harman and Hinkle.

MINES AND MINING
Susman (Chairman), Fanning (Vice Chairman), Beall, Benson, Gainer, Hamilton, Williams, Willis, Deem and Kusic.

NATURAL RESOURCES
Gainer (Chairman), Benson (Vice Chairman), Beall, Galperin, Hellems, McGraw, Neeley, Oates, Palumbo, Rogers, Susman, Willis, Herndon, Kusic and Rogerson.

PUBLIC INSTITUTIONS
Sharpe (Chairman), Hatfield (Vice Chairman), Darby, Davis, Nelson, Rogers, Savilla, Steptoe, Gilligan, Harman and Hinkle.

RULES
Brotherton (ex officio Chairman), Fanning, Gainer, Nelson, Palumbo, Sharpe, Susman, Ward, Kusic and Rogerson.

TRANSPORTATION
Willis (Chairman), Hamilton (Vice Chairman), Beall, Davis, Gainer, Hatfield, Huffman, Neeley, Nelson, Palumbo, Savilla, Sharpe, Williams, Deem, Hinkle, Gilligan and Rogerson.

JOINT COMMITTEES

ENROLLED BILLS
Davis (Chairman), Beall, Rogers, Hinkle and Jones.

GOVERNMENT AND FINANCE
Brotherton (ex officio Chairman), Fanning, Palumbo, Sharpe, Ward, Deem and Rogerson.

JOINT RULES
Brotherton (ex officio Chairman), Ward and Rogerson.

SPECIAL COMMITTEE

FUNDED HEALTH PROGRAM--
CITIZENS CONFERENCE ON STATE LEGISLATURES
Darby (Chairman), Davis, Hatfield, Jones and Sharpe.

PURCHASING PRACTICES AND PROCEDURES
COMMISSION
Brotherton (Chairman), McGraw, Nelson, Gilligan and Harman.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1976

AGRICULTURE AND NATURAL RESOURCES
Ballouz (Chairman), Neal (Vice Chairman), Arnold, Artrip, Brenda, Brown, Bryan, Burleson, Chafin, Childers, Damron (13th Dist.), Erdie, Goodwin, Holliday, McLaughlin, Miller, Milleson, See, Smith, Wells, Wiedebusch, Worden, McCuskey, Swann and Terry.

BANKING AND INSURANCE
Moler (Chairman of Banking), Morasco (Chairman of Insurance), Allen (Vice Chairman of Banking), Stacy (Vice Chairman of Insurance), Canfield, Crabtree, Farley, Holmes, Johnson, Milleson, Mowery, Peak, Pitsenberger, Scott, See, Shingleton, Tomblin, Tompkins, Toney, Tonkovitch, Tucker, Wright, Goldstrom, Jones and Otte.

CONSTITUTIONAL REVISION
Copeland (Chairman), Bumgarner (Vice Chairman), Albright, Artrip, Bell, Colombo, Dalton, Dinsmore, Donley, Farley, McLaughlin, Mowery, Peak, Prestera, Sattes, Shuman, Sonis, Spears, Underwood, Wells, Wright, Goldstrom, McCuskey, Moats and Terry.

EDUCATION
Lohr (Chairman), Wehrle (Vice Chairman), Ballouz, Bird, Brown, Burleson, Dalton, Damron (10th Dist.) Donley, Erdie, Goodwin, Hagedorn, Lewis, McNeely, Payne, Sonis, Spears, Underwood, Wiedebusch, Worden, Wright, Esposito, Harman, Shaffer and Swann.

FINANCE
Burke (Chairman), Fantasia (Vice Chairman), Allen, Bell, Boettner, Brenda, Bryan, Crabtree, Farley, Fitzgerald, Given, Johnson, Kincaid, Long, Mathis, Moler, Morasco, Neal, Peak, Polan, Wanstree, Withrow, Altmeyer, Jones and Teets.

HEALTH AND WELFARE
Withrow (Chairman), Tonkovitch (Vice Chairman), Arnold, Artrip, Bird, Bumgarner, Caudle, Chafin, Childers, Colombo, Fitzgerald, Gvoyich, Hagedorn, Holliday, Lewis, Miller, Smith, Spears, Tomblin, Wehrle, Wells, Worden, Esposito, Otte and Shaffer.

INDUSTRY AND LABOR
Kopp (Chairman), Moore (Vice Chairman), Allen, Artrip, Bumgarner, Burleson, Copeland, Damron (10th Dist.), Damron (13th Dist.), Fantasia, Gilliam, Given, Gvoyich, Hagedorn, Holmes, McLaughlin, Morasco, Polan, Rollins, Sonis, Tompkins, Wiedebusch, Altmeyer, Harman and Shaffer.
HOUSE COMMITTEES

INTERSTATE COOPERATION
Kopp (Chairman), Christian, Given, Rollins, Withrow, Harman and Terry. (The Speaker is a nonvoting member.)

JUDICIARY
Sommerville (Chairman), See (Vice Chairman), Albright, Caudle, Christian, Colombo, Copeland, Dinsmore, Gilliam, Kopp, Moore, Pitsenberger, Prestera, Sattes, Scott, Shepherd, Shingleton, Shuman, Stacy, Tompkins, Tucker, McCuskey, Moats, Moyle and Terry.

POLITICAL SUBDIVISIONS
Given (Chairman), Wanstreet (Vice Chairman), Albright, Bell, Brown, Canfield, Chafin, Damron (13th Dist.), Dinsmore, Gvoyich, Kincaid, Lewis, Mathis, McLaughlin, McNeely, Mowery, Shepherd, Shuman, Sonis, Toney, Tonkovich, Wells, Esposito, Moyle and Otte.

ROADS AND TRANSPORTATION
Donley (Chairman), Mowery (Vice Chairman), Arnold, Boettner, Bumgarner, Childers, Christian, Damron (13th Dist.), Erdie, Fitzgerald, Holliday, Long, Milesen, Payne, Prestera, Sattes, Smith, Tomblin, Toney, Underwood, Wanstreet, Wehrle, Jones, Moats and Swann.

RULES
McManus (ex officio Chairman), Brenda, Burke, Fantasia, Goodwin, Kopp, Lohr, Moler, Rollins, Shiflet, Sommerville and Seibert.

STATE AND FEDERAL AFFAIRS
Scott (Chairman), Payne (Vice Chairman), Bird, Bryan, Canfield, Caudle, Childers, Crabtree, Dalton, Damron (10th Dist.), Gilliam, Holmes, Johnson, Kincaid, Long, McNeely, Miller, Neal, Shepherd, Smith, Tomblin, Goldstrom, Harman, Moyle and Teets.

JOINT COMMITTEES

ENROLLED BILLS
Christian (Chairman), Holmes, Spears, Goldstrom and Swann.

GOVERNMENT AND FINANCE
McManus (ex officio Chairman), Burke, Lohr, Shiflet, Sommerville, Seibert and Teets.

JOIN RULES
McManus (ex officio Chairman), Shiflet and Seibert.

SELECT COMMITTEE ON REDISTRICTING
Dinsmore (Chairman), Peak (Vice Chairman), Albright, Ballouz, Boettner, Brenda, Canfield, Chafin, Holmes, Lohr, Mathis, Moler, Moore, Pitsenberger, Polan, Rollins, See, Shingleton, Stacy, Toney, Tonkovich, Tucker, Altmeyer, Moats and Teets.
SPECIAL COMMITTEES

Majority Caucus
Shiflet (Chairman), Canfield and Chafin (Associate Chairmen).

Funded Health Program—Citizens Conference on State Legislatures
Withrow (Chairman), Artrip, Esposito, Wehrle and Wells.

PURCHASING PRACTICES AND PROCEDURES COMMISSION
McManus (Chairman), Polan, Shingleton, Moats and Seibert.

MINORITY ORGANIZATION

Minority Leader—George H. Seibert, Jr.
Caucus Chairman—Harry E. Moats
Minority Whip—Terry T. Jones

Minority chairmen on Standing Committees:
Agriculture and Natural Resources—Larry D. Swann
Education—Robert D. Harman
Finance—James W. Teets
Health and Welfare—Charles R. Shaffer
Judiciary—Harry E. Moats
Political Subdivisions—Luke E. Terry
AN ACT to amend and reenact section six, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to actions for wrongful death and damages recoverable for wrongful death; distribution of damages; and period of limitation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

1 Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory, or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another
state, territory, or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of one hundred dollars, conditioned that such personal representative shall pay all costs adjudged against him and that he shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.

In any such action for wrongful death the jury may award such damages as to it may seem fair and just, and may direct in what proportion they shall be distributed to the surviving spouse and children, including adopted children and stepchildren, and grandchildren of the deceased, or if there be none such, then to the parents, brothers and sisters of the deceased, if there be none such, only then to such person or persons who were dependent upon the decedent for support.

The verdict of the jury shall include, but may not be limited to damages for the following: (a) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (b) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (c) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (d) reasonable funeral expenses.

In its verdict the jury shall set forth separately the amount of damages, if any, awarded by it for reasonable funeral, hospital, medical and said other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death, and any such amount recovered for such expenses shall be so expended by the personal representative.

Every such action shall be commenced within two years after the death of such deceased person. The provisions of this section shall not apply to actions brought for the
AN ACT to amend article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a, relating to actions for injuries; providing that a settlement or release of or statement with respect to a personal injury which is entered into, obtained or made within twenty days of such personal injury may be disavowed, in writing; relating to statement of disavowal and disposition of a copy thereof; and specifying circumstances under which such settlement, release or statement shall not be admissible in evidence.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal.

1 If a person sustains a personal injury, no person shall
2 within twenty days from the date of such personal injury
3 while the injured person is either (a) an inpatient in any
4 hospital or (b) partially or totally unable to engage in his
5 or her usual trade, profession or occupation:
6
7 (1) Negotiate or attempt to negotiate a settlement of
8 any claim for such personal injury with or for and on behalf
(2) Obtain or attempt to obtain from such injured person a partial or general release of liability for such injury; or

(3) Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to such personal injury: Provided, That nothing herein shall prohibit a person acting or intending to act for and on behalf of such injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

Nothing herein shall prevent a person who may be liable for damages on account of such personal injury from making an advance payment of all or any part of his liability for such damages; any sum paid during such twenty days by a person liable for damages on account of such personal injury shall be allowed as full credit against any damages which may be finally determined to be due an injured person.

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event such settlement, release or statement shall not be admissible in evidence for any purpose in any court or other proceeding relating to such personal injury, if any consideration paid for the settlement of or the general release of liability for such personal injury, at the time of the forwarding of the copy of such written statement of disavowal, is repaid or returned to the person who paid such consideration.

CHAPTER 3

(S. B. 452—By Mr. Neeley, Mr. Davis and Mr. Sharpe)

[Passed March 9, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fourteen, chapter twenty-nine of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to state commission on aging; use of funds, including state revenue sharing funds, for construction, acquisition and renovation of senior centers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. STATE COMMISSION ON AGING.

§29-14-9. Programs of services for the aging.

1 The commission may establish, under the administration of the director, in selected areas and local communities of the state, programs of services for the aging. Particular emphasis shall be given to services designed to foster continued participation of older people in family and community life and to prevent, insofar as possible, the onset of dependency and the need for long-term institutional care. Any allocations by the commission of appropriations for such programs may be made contingent upon local appropriations or gifts in money or in kind for the support of such programs. The county commission of any county or governing body of any municipality in this state may appropriate and expend money for establishing and maintaining such programs. Funds so appropriated by the county commission or by the governing body of any municipality in this state may be contributed from time to time to any committee or organization approved by the commission on aging for the purposes authorized by this section.

20 The commission on aging as provided hereunder may receive and expend appropriate funding, including the state's share of federal revenue sharing funds, for the construction, acquisition and renovation of senior centers.

24 From time to time the Legislature may appropriate funds on a matching basis for funds from any other source to be used for the purposes stated above.
CHAPTER 4

(S. B. 143—By Mr. Benson, Mr. Beall and Mr. Gilligan)

[Passed February 6, 1976; in effect from passage.
Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section two, article two, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter nineteen of said code by adding thereto a new article, designated article twelve-a, all relating to abolishing certain special revenue farm accounts in the state treasury; the creation of a farm management commission; providing a legislative purpose; establishing certain definitions; designating the chairman of the commission; quorum and requiring meetings of the commission; providing for the transfer of certain institutional farms to the commission; providing for the uninterrupted operation of the farms; prescribing powers, duties and responsibilities of the commission; providing for the appointment of a farm management director; qualification of the director; listing the powers and duties of the director; establishing the priority of distribution of farm products; providing a procedure for establishing the division lines between farms and institutions; providing for appeals to the commission; providing a remedy; employment of persons affected by the transfer of institutional farms; and establishing a penalty for violations.

Be it enacted by the Legislature of West Virginia:

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

Chapter
19. Agriculture.
CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.

§12-2-2. Itemized record of moneys received for deposit; credit to state fund; exceptions.

All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit promptly with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the state, and shall not be used for any purpose whatsoever unless and until authorized and directed by the Legislature, except the following funds:

(a) All moneys received out of appropriations made by the Congress of the United States;

(b) All funds derived from the sale of farm and dairy products from farms operated by any agency of state government other than the farm management commission;

(c) All endowment funds, bequests, donations, executive emergency funds, and death and disability funds;

(d) All fees and funds collected at state educational institutions for student activities;

(e) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(f) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(g) All insurance collected on account of losses by fire and refunds;

(h) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;
(i) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking funds, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking fund, state compensation funds, the fund maintained by the public service commission for the investigation and supervision of applications and licenses under article nine, chapter thirty-one of this code, and all funds and moneys payable to or received by the natural resources commission of West Virginia;

(j) All moneys collected or received under any act of the Legislature providing that funds collected or received thereunder shall be used for specific purposes.

All moneys, excepted as aforesaid, shall be paid into the state treasury in the same manner as collections not so excepted, and shall be carried in separate accounts to be used and expended only for the purposes for which the same are authorized to be collected by law. The gross amount collected in all cases shall be paid into the state treasury, and commissions, costs and expenses of collection authorized by general law to be paid out of the gross collection are hereby authorized to be paid out of the moneys collected and paid into the state treasury in the same manner as other payments are made from the state treasury.

The official or employee making such deposits in the state treasury shall prepare such deposit lists in triplicate in such manner and upon such report forms as may be prescribed by the commissioner of finance and administration. The original of this report shall accompany the deposit to the treasurer's office. Certified or receipted copies shall be immediately forwarded by the official or employee making such deposit to the state auditor and to the commissioner of finance and administration, and a copy shall be kept by the official or employee making the report and shall become a part of his permanent record.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-1. Legislative findings and declarations.
§19-12A-3. Farm management commission created; composition; chairman; quorum; meetings; vacancies.

§19-12A-4. Transfer of institutional farms, farm equipment, farm facilities, inventories and agricultural products to commission; utility continuance; provisions for uninterrupted operation; transfer of funds.


§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

§19-12A-7. Farm division lines to be established; appeal to commission; remedy.

§19-12A-8. Effect of farm transfer on employees; disposition.


§19-12A-1. Legislative findings and declarations.

1 The Legislature hereby finds and declares that in order to ensure economic and efficient land use, increase and improve agricultural production and provide food for residents of state operated institutions, state-owned farms should be transferred to the state farm management commission as is provided by this article. The Legislature also finds and declares that the operation of all institutional farms under one management system with a single integrated farm plan is the most efficient method of providing the food needs of residents of state operated institutions and will promote the health and welfare of all citizens of this state.


1 For the purpose of this article:

2 "Agricultural products" means livestock and livestock products, poultry and poultry products, fruits and fruit products, vegetables and vegetable products, grains and hays and the products derived therefrom, tobacco, syrups, honey, and other products derived from the business of farming; including such other products as may be manufactured, derived, or prepared from agricultural products, raw or processed, which are used as food for man or animals.

11 "Commission" means the farm management commission as established by this article.
"Farm equipment" means any equipment used for agricultural production, owned by an institution and transferred to the commission as provided in this article.

"Farm facility" means any processing plant, milking parlor, farm equipment storage building, barn, silo, grain storage building, swinery or any other building owned by an institution, used in its farming operations and transferred to the commission as provided in this article.

"Institution" means any facility operated by the department of mental health or the state commissioner of public institutions for care, treatment, confinement or rehabilitation of residents.

"Institutional farm" means any land owned by the department of mental health or the state commissioner of public institutions which was formerly operated as a farm, is now being operated as a farm or could be converted to agricultural production, and is transferred to the commission as provided in this article.

§19-12A-3. Farm management commission created; composition; chairman; quorum; meetings; vacancies.

There is hereby created within state government a farm management commission composed of three members who are the commissioner of agriculture, who shall be chairman, the commissioner of finance and administration and the dean of the West Virginia University college of agriculture and forestry. No business may be transacted by the commission in the absence of a quorum which consists of two members including the chairman. The farm management commission shall hold meetings at least once every two months, and on call of the chairman.

If a vacancy occurs on the commission, the farm management director, as provided in this article, shall act as a member of the commission until the vacancy is filled.

If a vacancy occurs in the office of the commissioner of agriculture, the members of the commission and the farm management director shall select, from among them, a chairman to serve until a commissioner of agriculture is appointed or elected and qualified.
§19-12A-4. Transfer of institutional farms, farm equipment, farm facilities, inventories and agricultural products to commission; utility continuance; provisions for uninterrupted operation; transfer of funds.

(a) On the first day of July, one thousand nine hundred seventy-six, the department of mental health shall transfer all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities thereon, or attached thereto, to the commission as set forth below:

(1) The Colin Anderson institutional farm, located at St. Marys, Pleasants County, which shall include not less than six hundred fifty acres;

(2) The Huntington state hospital institutional farm, located at Barboursville, Cabell County, which shall include not less than six hundred ninety-seven acres;

(3) The Lakin state hospital institutional farm, located at Lakin, Mason County, which shall include not less than nine hundred fifty acres;

(4) The Spencer state hospital institutional farm, located at Spencer, Roane County, which shall include not less than one hundred nine acres;

(5) The Weston state hospital institutional farm, located at Weston, Lewis County, which shall include not less than five hundred seventy acres; and

(6) The Roney's Point branch hospital institutional farm located at Triadelphia, Ohio County, which shall include not less than one hundred thirty acres.

(b) On the first day of July, one thousand nine hundred seventy-six, the state commissioner of public institutions shall transfer all institutional farms and all easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories and farm facilities thereon or attached thereto to the commission as set forth below:

(1) The Huttonsville correctional center institutional farm, located at Huttonsville, Randolph County, which
(2) The Hopemont state hospital institutional farm, located at Terra Alta, Preston County, which shall include not less than five hundred acres;

(3) The West Virginia industrial school for boys institutional farm, located at Pruntytown, Taylor County, which shall include not less than one thousand five hundred eighty-seven acres;

(4) The West Virginia prison for women institutional farm, located at Pence Springs, Summers County, which shall include not less than one hundred eighty acres;

(5) The Pinecrest state hospital institutional farm, located at Beckley, Raleigh County, which shall include not less than two hundred twenty acres;

(6) The West Virginia penitentiary institutional farm, located at Moundsville, Marshall County, which shall contain not less than one hundred forty-one acres;

(7) The Denmar state hospital institutional farm, located at Beard, Pocahontas County, which shall include not less than one hundred twelve acres;

(8) The Andrew S. Rowan memorial home institutional farm, located at Sweet Springs, Monroe County, which shall include not less than six hundred fifty acres;

(9) The West Virginia children's home institutional farm, located at Elkins, Randolph County, which shall include not less than one hundred fifty acres; and

(10) The West Virginia industrial home for girls institutional farm, located at Industrial, Harrison County, which shall include not less than twenty acres.

(c) In the event a water supply system, a sewage disposal system or any other utility or service facility involved in the operation of an institution is hereby transferred to the commission, an easement is hereby
70 granted to the institution affected to enable the institu-
71 tion to continue, uninterrupted, the water supply system,
72 the sewage disposal system or the utility or service facility
73 so transferred.

74 If an institutional farm is dependent upon a water
75 supply system, a sewage disposal system or any other
76 utility or service facility located on the property of an
77 institution, an easement is hereby granted to the com-
78 mission to enable the commission to continue, uninter-
79 rupted, the water supply system, the sewage disposal
80 system or the utility or service facility involved.

81 In all cases where an institution and a farm under the
82 control of the commission are jointly dependent on the
83 same water supply system, sewage disposal system, util-
84 ity or service facility, the cost shall be prorated on the
85 basis of the amount used by the institution and the in-
86 stitutional farm.

87 (d) In order to provide for the uninterrupted oper-
88 ation of institutional farms, the commission shall, before
89 the twenty-fifth day of June, one thousand nine hundred
90 seventy-six, meet and establish a farm management plan.
91 Before the twenty-fifth day of June, one thousand nine
92 hundred seventy-six, the commission shall employ a farm
93 management director and establish an employee system.
94 The commission and the farm management director shall
95 meet and confer with the commissioner of public institu-
96 tions and the director of the department of mental health
97 prior to the first day of July, one thousand nine hundred
98 seventy-six, to facilitate the orderly transfer of the insti-
99 tutional farms. The state commissioner of public institu-
100 tions and the director of the department of mental health
101 shall cooperate fully with the commission to ensure that
102 farming operations are not discontinued prior to their
103 transfer to the commission.

104 (e) After the thirtieth day of June but no later than
105 the fifteenth day of July, one thousand nine hundred
106 seventy-six, all funds remaining in all institutional farms' 
107 special revenue accounts shall be transferred to the gen-
108 eral revenue account of the state and all institutional
109 farms' special revenue accounts shall be abolished.

1 The purpose of the commission is to manage institutional farms for the most efficient production of food products for residents of state institutions. The commission has full power and authority over the institutional farms, farm management, farm employees and farm production. It is the responsibility of the commission to implement the intent of the Legislature. The commission shall confer with the West Virginia University college of agriculture and forestry in implementing and adjusting its farm management plan. The commission may promulgate rules and regulations relating to farm management. When and if requested by the commissioner of public institutions, the farm management commission may use inmates from adult correctional institutions for farm labor. The commissioner of public institutions shall be responsible for the selection, direction and supervision of the inmates and the farm management director shall assign the work to be performed by inmates.

§19-12A-6. Appointment of farm management director; qualifications; powers and duties.

1 The commission shall appoint a farm management director who, in addition to qualifications established by the commission, shall have owned, operated or managed a farm for at least five years within ten years immediately prior to his appointment. The farm management director is the chief executive officer of the commission and is responsible for conducting the operations of the farms. He shall prepare an annual report of the farming operations, including a listing of all receipts and expenditures and shall present it to the commission and the Legislature at the end of each fiscal year.

12 As authorized or directed by the commission, he shall also:

1  (1) Prepare the annual budget request for the operation of the institutional farms and submit it to the commission for approval and submission to the commissioner of finance and administration.
(2) Receive and approve all requisitions for farm supplies and equipment.

(3) Supervise the operation of all canneries and determine what foods are to be canned.

(4) Recruit and approve assistant farm managers to supervise each institutional farm.

(5) Implement all orders of the commission.

(6) Supervise all other employees of the commission.

(7) Transfer farm supplies, farm equipment, farm facilities, food stuffs and produce from one institutional farm to another to promote efficiency and improve farm management.

With the approval of the commission, the farm management director may rent or lease additional land for farm use.

From the total amount of food, milk and other commodities produced on institutional farms, the farm management director shall provide each of the institutions under the control of the department of mental health and the state commissioner of public institutions, at no cost, a proportionate amount of these products based on the population and dietary needs of each institution and each of these institutions shall use the food, milk and commodities provided by the farm management director for their annual food requirements. By the thirtieth day of September each year, each institution shall present to the farm management director a requisition request for the food, milk and other commodities the institution will need during the next fiscal year.

If, during the year, an institution finds that it needs other or additional food, milk or commodities not included in the requisition request for the year, the institutional superintendent shall forward a supplemental request for the additional or other food, milk or commodities to the farm management director at least thirty days before the farm management director is to deliver such other or additional food, milk or commodities to the institution. An institution may purchase food, milk or commodities from other sources if the farm management director certifies...
In writing that he will be unable to supply the needed food, milk or commodities at the time such food, milk or commodities will be needed by the institution. If institutional farms produce more food, milk and other commodities than can be consumed by the institutions, the farm management director first shall sell this surplus to other state agencies which request it at the wholesale fair market price for the products. If any surplus remains after sales to other state agencies, he may sell the surplus on the open market. All revenues derived from the sale of any farm product shall be deposited by the farm management director in the general revenue fund of the state.

§19-12A-7. Farm division lines to be established; appeal to commission; remedy.

1 The farm management director shall, immediately after being appointed, employ a surveyor to establish the division line between the farms being transferred to the commission and the property remaining under the control and authority of the department of mental health and the state commissioner of public institutions. In establishing the division line, the director of the department of mental health, the state commissioner of public institutions and the farm management director shall cooperate fully to ensure that property, essential to institutions, is not transferred to the commission. In the event of a disagreement over the placement of a division line, the disposition of farm equipment or the disposition of farm facilities, the farm management director and all agencies involved shall, within sixty days, appear before the commission for a hearing on the matter. The commission shall decide the matter to the best interest of the agencies involved, including the best interest of the residents of any institution affected. Any person or agency aggrieved by the decision of the commission may appeal the decision to the circuit court in the county in which the institution is located. After the division lines have been finally established, all property transferred to the commission shall be deeded by the department of mental health and the commissioner of public institutions to the commission.
26 unless reversionary interests prevent such deed transfer
27 in which case the land shall be assigned or leased, for
28 nominal charge, to the commission.

§19-12A-8. Effect of farm transfer on employees; disposition.
1 Farm employees of the department of mental health
2 and the state commissioner of public institutions, who are
3 affected by the provisions of this article, may apply for
4 employment with the institution in another job classi-
5 fication or they may apply for employment with the
6 commission if they meet the qualifications established by
7 the commission for its employees.

1 Any person who violates any of the provisions of this
2 article shall be guilty of a misdemeanor, and, upon con-
3 viction thereof, shall be fined not less than five hundred
4 nor more than one thousand dollars.

CHAPTER 5
(H. B. 1279—By Mr. Moler and Mr. Milleson)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twelve-d, relating to the suppression and control of noxious weeds; title; declaration of purpose; legislative findings; definitions; administration of article; promulgation of regulations; surveys for noxious weeds; quarantines; prohibited acts; permits; authority to stop sale or delivery; cooperation; right of entry; legal recourse; violations and penalties.

Be it enacted by the Legislature of West Virginia:
That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twelve-d, to read as follows:
ARTICLE 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-1. Title.

§19-12D-2. Declaration of purpose; legislative findings.

§19-12D-3. Definitions.

§19-12D-4. Administration of article; promulgation of regulations.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

§19-12D-6. Quarantines.

§19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.

§19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious.

§19-12D-9. Right of entry.

§19-12D-10. Review of actions of commissioner.


§19-12D-1. Title.

This article shall be known by the short title of “The West Virginia Noxious Weed Act of 1976.”

§19-12D-2. Declaration of purpose; legislative findings.

The purpose of this article is to provide for the suppression or control of noxious weeds which have proven to be or which scientific evidence indicates may become detrimental factors affecting the public health or economy of the state. The Legislature finds that certain plant species may spread to the extent they become detrimental to agricultural crops, other desirable plants, livestock, waterways, land, public health and/or the general economy and that certain noxious weeds, not yet known to occur in West Virginia, may be inadvertently introduced and that procedures for locating and eliminating such infestations need to be established. Therefore, it is deemed necessary, in the public interest, to provide authority for the surveillance of, suppression and control of noxious weeds.

§19-12D-3. Definitions.

As used in this article:

(a) “Certificate” means a document issued by the commissioner indicating a regulated article is free of noxious weeds.

(b) “Commissioner” means the commissioner of agriculture of the state of West Virginia and his duly authorized representatives.

(c) “Infested” means the establishment of a noxious weed
or exposure to such weed in a way creating reasonable cer-
tainty that establishment will occur.

(d) "Move" means to ship, offer for shipment, receive for
transportation, carry, or otherwise transport, move or allow to
be moved.

(e) "Noxious weed" means any living plant, or part there-
of, declared by the commissioner, after public hearing, to be
detrimental to crops, other desirable plants, waterways, live-
stock, land or other property, or to be injurious to public
health or the economy.

(f) "Permit" means a document issued by the commissioner
to provide for movement of regulated articles to restricted des-
tinations for limited handling, utilization, processing, or for
scientific purposes.

(g) "Person" means any individual or combination of in-
dividuals, partnership, corporation, company, society, asso-
ciation, firm, or other business entity and each officer, agent
or employee thereof; the state and federal government and
any department, agency, or subdivision thereof; or any other
entity.

(h) "Quarantine" means a legal declaration by the com-
missioner specifying:

(1) The common and scientific name of the noxious weed.

(2) The articles to be regulated.

(3) The conditions governing movement.

(4) Exemptions.

(i) "Regulated article" means any article of any character
which is transporting or which is capable of transporting any
noxious weed.

(j) "Reasonable notification" means at least forty-eight
hours.

§19-12D-4. Administration of article; promulgation of regulations.

(a) The commissioner shall administer and enforce the
provisions of this article and shall have authority to issue
regulations after a public hearing following due notice to all interested persons in conformance with the provisions of the state administrative procedures set forth in chapter twenty-nine-a of this code.

(b) In issuing such regulations, the commissioner shall give consideration to pertinent research findings and recommendations of other agencies of the state, the federal government, and other reliable sources.

§19-12D-5. Surveys for noxious weeds; multiflora rose.

(a) The commissioner shall make surveys for noxious weeds and when it is determined that an infestation exists within the state he may, by regulation after public hearing held in accordance with procedures set forth in chapter twenty-nine-a of this code, declare the weed to be noxious.

(b) Multiflora rose, Rosa multiflora, is a detriment to agriculture in West Virginia and is hereby declared to be a noxious weed.

§19-12D-6. Quarantines.

When a plant is declared to be noxious under section five of this article, the commissioner shall, subsequent to the declaration of a quarantine, limit the application of rules and regulations pertinent to such quarantine to the infested portion of the state and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the state upon publication of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to those concerned.

§19-12D-7. Prohibited acts; permits; authority to stop sale or delivery.

(a) No person shall violate any provision of this law or any rule promulgated thereunder.

(b) No person shall move, transport, deliver, ship or offer for shipment into or within this state any noxious weed without first obtaining a permit from the commissioner and such permit shall be issued only after it has been determined that
the noxious weed is generally present throughout the state or
is for scientific purposes subject to prescribed safeguards.

(c) The commissioner, in order to prevent the introduction
or dissemination of noxious weeds, is hereby authorized to
stop delivery, stop sale, seize, destroy, treat, or order returned
to the point of origin, at the owner's expense, any noxious
weed, article or substance, whatsoever, if it is being transported
or moved within this state, or if it exists on any premises with-
in the state, or if it is being brought into this state from any
place outside thereof, if such is found by him to be infested
with any noxious weed subject to this article.

§19-12D-8. Cooperation with federal and state agencies; drug pro-
ducing plants declared noxious.

(a) The commissioner is authorized to cooperate in any
way with any person in order to prevent the establishment of
noxious weeds in this state.

(b) The commissioner is authorized to cooperate in any
way with any person in programs designed to suppress or con-
trol noxious weeds already widely distributed in the state
without first declaring a quarantine.

(c) The commissioner may, upon request, cooperate with
federal and state agencies and political subdivisions in the
enforcement of the narcotic laws to the extent of preventing
the spread of and destroying marihuana or hemp, Cannabis
spp., or other plants which produce drugs which have been
condemned for destruction under the narcotics laws: Pro-
vided, That nothing herein shall authorize the commissioner
to participate in a criminal investigation or prosecution under
the controlled substances act or federal narcotic laws. Such
drug producing plants are hereby declared noxious.

§19-12D-9. Right of entry.

To effectuate the purpose of this article, the commissioner
is hereby invested with authority to enter upon any public or
private premises, except private residences, and the curtilage
thereof, at reasonable times, after reasonable notification to the
owner and tenant or agent in order to examine and sample all
plants and trees, soil, articles, and substances which are sus-
§19-12D-10. Review of actions of commissioner.

Any person aggrieved by any action of the commissioner may obtain a review thereof by filing in a court of competent jurisdiction, within thirty days of notice of the action, a writen petition praying that the action of the commissioner be enjoined or set aside. A copy of such petition shall forthwith be delivered to the commissioner and within thirty days thereafter the commissioner shall certify and file in the court a transcript of any record pertaining thereto, including a transcript of evidence received, whereupon the court shall have jurisdiction to affirm, set aside, or modify the action of the commissioner, except that the findings of the commissioner as to the facts, if supported by substantial evidence, shall be conclusive.


Any person violating any of the provisions of this article, or the rules and regulations adopted thereunder, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars.

It shall be the duty of the prosecuting attorney of the county in which the violation occurred to represent the commissioner, to institute proceedings and to prosecute the person charged with such violation. In the event a county or prosecuting attorney refuses to act on behalf of the commissioner, the attorney general shall so act.

CHAPTER 6

(H. B. 936—By Mr. Shiflet and Mrs. Pitsenberger)

[Passed March 2, 1976; in effect from passage. Approved by the Governor.]
thirty-one, as amended, relating to providing that the alcohol beverage control commissioner compensate each state agency an amount of one hundred dollars a month for upkeep, utilities and operating expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-7. Agencies classified; compensation and bond of agent.

1 The commissioner shall classify state agencies into not more than five groups with respect to volume of business. An agent shall be compensated in a fixed sum, uniform within each group, and in an amount to be fixed by the commissioner, but not more than six thousand dollars in any one year: Provided,

2 That the commissioner shall compensate each agent an additional one hundred dollars a month for the specific purposes of paying for utilities, renovations and operating expenses of the agency.

3 Each agent shall give bond in an amount fixed by the commissioner conditioned upon the faithful observance of the provisions of this chapter, compliance with the rules and regulations of the commissioner, and the accounting for and paying over of all moneys coming into his custody by virtue of his agency. An agent shall not, at any time, have on hand a stock of alcoholic liquors greater in value than the amount of his bond.

CHAPTER 7

(Com. Sub. for H. B. 701—By Mr. Speaker, Mr. McManus)

[Passed March 17, 1976; in effect from passage. Approved by the Governor.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the constitution.
Be it enacted by the Legislature of West Virginia:

Title

2. Appropriations.
3. Administration.

TITLE 1. GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.

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

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

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:
“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 act. That part of an appropriation which relates to personal services payments (whether so itemized “personal services” or included within other itemization) has been funded in sufficient amount to provide for the $1,000 cost-of-living salary increase for eligible employees mandated by Enrolled House Bill No. 1590, Acts of the Legislature, regular session, 1976.

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

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

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

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

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

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

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

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

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§2. Appropriations from other funds.

**PAYABLE FROM SPECIAL REVENUE FUND**

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Department of agriculture—Acct. No. 818

Department of finance and administration (division of purchases—revolving fund)—Acct. No. 814

Department of finance and administration (information system services division fund)—Acct. No. 8151

Department of natural resources—Acct. No. 830

Department of public safety (inspection fees)—Acct. No. 835

Public service commission—Acct. No. 828

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Public service commission (motor carrier division)—Acct. No. 829

Real estate commission—Acct. No. 801

State committee of barbers and beauticians—Acct. No. 822

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West Virginia alcohol beverage control—Acct. No. 927

West Virginia board of regents (special capital improvement fund)—Acct. No. 884

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West Virginia board of regents—West Virginia University (special capital improvement fund)—Acct. No. 883

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**PAYABLE FROM STATE ROAD FUND**

Department of motor vehicles—Acct. No. 671

State department of highways—Acct. No. 670

State tax department (gasoline tax division)—Acct. No. 672

**PAYABLE FROM GENERAL SCHOOL FUND**

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

**PAYABLE FROM MEDICAL SCHOOL FUND**

West Virginia University (medical school)—Acct. No. 928

**PAYABLE FROM WORKMEN'S COMPENSATION FUND**

Workmen’s compensation commission—Acct. No. 900

§3. Supplementary and deficiency appropriations.

**GENERAL REVENUE FUND**

Adjutant General—Acct. No. 580

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

Colin Anderson Center—Acct. No. 419

Commissioner of Public Institutions—Acct. No. 190

Denmar State Hospital—Acct. No. 432

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

Department of Mines—Acct. No. 460

Department of Natural Resources—Acct. No. 565

Department of Veterans Affairs—Acct. No. 404

Fairmont Emergency Hospital—Acct. No. 425

Forestry Camp for Boys No. 1 (Davis)—Acct. No. 371

Huttonsville Correctional Center—Acct. No. 376
§4. Appropriations from surplus revenue.

§5. Awards for claims against the State.

§6. Reappropriations.

§7. Appropriations from revenue sharing trust fund.

§8. Reappropriations—"Revenue sharing trust fund."

§9. Special revenue appropriations.

§10. Specific funds and collection accounts.

§11. Appropriation for refunding erroneous payments.

§12. Sinking fund deficiencies.

§13. Appropriations from taxes and license fees.


§15. Appropriations for local governments.

§16. Total appropriations.

§17. General school fund.
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-seven.

LEGISLATIVE

1—Senate
Acct. No. 101

Fiscal Year
1976-77

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$235,000</td>
</tr>
<tr>
<td>Compensation and per diem of officers and</td>
<td></td>
</tr>
<tr>
<td>employees</td>
<td>$650,000</td>
</tr>
<tr>
<td>Expenses of Members</td>
<td>$130,000</td>
</tr>
<tr>
<td>Current Expenses and Contingent Fund</td>
<td>$130,000</td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>$107,000</td>
</tr>
</tbody>
</table>

The distribution of which shall be by the office of the Clerk of the Senate and shall include seventy-five copies for each member of the Legislature and two copies to each classified and approved High and Junior High school and one to each Elementary school within the state.

The appropriations for the Senate for the fiscal year 1975-76 are to remain in full force and effect, and are hereby reappropriated to June 30, 1977.

Any balances so reappropriated may be transferred and credited to the 1976-77 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 service.

The Clerk of the Senate with approval of the President is authorized to draw his requisitions upon the Auditor, payable out of the Current Expenses and 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, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, 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.

The Clerk of the Senate with approval of the President
shall have authority to employ such staff personnel during
any session of the Legislature as shall be needed in addition to
staff personnel authorized by the Senate resolution adopted
during any such session. The Clerk of the Senate with ap-
proval of the President shall have authority to employ such
staff personnel between sessions of the Legislature as shall be
needed, the compensation of all staff personnel during and
between sessions of the Legislature, notwithstanding any such
Senate resolution, to be fixed by the President of the Senate.
The Clerk is hereby authorized to draw his requisitions for the
payments of all such staff personnel upon the State Auditor,
payable out of the appropriation for compensation and per
diem of officers and employees or Current Expenses and Con-
tingent Fund of the Senate for such services.

For duties imposed by law and the Senate, the Clerk of the
Senate shall be paid a monthly salary of two thousand seven
hundred dollars, payable out of the amount appropriated for
compensation and per diem of officers and employees.

2—House of Delegates

Acct. No. 102

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Compensation of Members $</td>
<td>540,000</td>
</tr>
<tr>
<td>2 Compensation and per diem of officers and employees</td>
<td>410,000</td>
</tr>
<tr>
<td>3 Expenses of Members</td>
<td>320,000</td>
</tr>
<tr>
<td>4 Current Expenses and Contingent Fund</td>
<td>290,000</td>
</tr>
</tbody>
</table>

The appropriations for the House of Delegates for the fiscal
year 1975-76 are to remain in full force and effect, and are
hereby reappropriated to June 30, 1977.

Any balances so reappropriated may be transferred and
credited to the 1976-77 accounts.

Upon written request of the Clerk of the House of Dele-
gates 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 the same to be accompanied by bills to be filed with the Auditor.

For duties imposed by law and by the House of Delegates, including 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 a House Resolution adopted January, 1976, payable from the Per Diem of Officers and Employees Fund or the Contingent Fund of the House of Delegates, and the full-time employees of the House of Delegates shall be paid at the salaries provided in said resolution.

The Speaker of the House of Delegates, upon approval of the House Committee on Rules, 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 from the Per Diem of Officers and Employees Fund or the Contingent Fund of the House of Delegates, for such services.

3—Joint Expenses

Acct. No. 103

Joint Committee on Government and Finance __$ 3,120,857
To Pay the Cost of Legislative Printing __________ 550,000

The appropriations for Joint Expenses for the fiscal year 1975-76 are to remain in full force and effect and are hereby reappropriated to June 30, 1977. Any balances so reappropriated may be transferred and credited to the 1976-77 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—General Judicial

Acct. No. 111

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$5,616,938</td>
</tr>
<tr>
<td>Other Expenses</td>
<td>$1,836,300</td>
</tr>
<tr>
<td>Judges Retirement System</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Other Court Costs</td>
<td>$1,572,000</td>
</tr>
<tr>
<td>Magistrate Training Program</td>
<td>$50,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$10,075,238</strong></td>
</tr>
</tbody>
</table>

This appropriation shall be administered by the Administrative Director of the State Supreme Court of Appeals who shall draw his requisitions for warrants in payments in the form of payrolls, making deductions therefrom, as required by law, for taxes and other items. The appropriation for Judges' Retirement System is to be transferred to the Judges' Retirement Fund, in accordance with the law relating thereto upon requisition of the Administrative Director of the State Supreme Court of Appeals.

Any unexpended balance remaining in this appropriation at the close of fiscal year 1975-76 is hereby reappropriated for expenditures during fiscal year 1976-77.

EXECUTIVE

5—Governor's Office

Acct. No. 120

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
<td>$41,854</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$222,128</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$60,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$15,000</td>
</tr>
<tr>
<td>Publication of Governor's Papers and Inaugural Expense</td>
<td>$100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$438,982</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining at the close of the fiscal year 1975-76 for "Publication of Governor's Papers and Inaugural Expense" is hereby reappropriated for expenditure during the fiscal year 1976-77.
6—Governor’s Office—Custodial Fund

Acct. No. 123

1 Total _____________________________ $ 91,500

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

7—Governor’s Office—Civil Contingent Fund

Acct. No. 124

1 Total _____________________________ $ 250,000

2 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.

3 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

8—Governor’s Office—Federal-State Coordination

Acct. No. 125

1 Federal-State Coordination ______________________________ $ 1,560,000

2 Governor’s Committee on Crime, Delinquency and Correction __________________________ 575,000

3 Regional Councils—To Match Federal Funds __________________________ 220,000

4 Total _____________________________ $ 2,355,000

5 Any unexpended balance remaining in accounts “Federal-State Coordination,” “Governor’s Committee on Crime, Delinquency and Correction,” and “Regional Councils—To Match Federal Funds” at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

9—Governor’s Office—Disaster Relief-Matching

Acct. No. 126

1 Total ________________ $ 50,000
2 To match and aid federal or any programs, and any part of this appropriation may be transferred to any department for such purposes.

10—Governor’s Office—McMenemy and Stonewood Relief

Acct. No. 127

1 Any unexpended balance remaining in the appropriation for “Governor’s Office—McMenemy and Stonewood Relief” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

11—West Virginia Commission on Energy, Economy and Environment

Acct. No. 129

1 Any unexpended balance remaining in the appropriation for “West Virginia Commission on Energy, Economy and Environment” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

12—Office of Emergency Services

Acct. No. 130

<table>
<thead>
<tr>
<th>Services</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$154,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$41,840</td>
</tr>
<tr>
<td>Equipment</td>
<td>$7,800</td>
</tr>
</tbody>
</table>

Total $203,640

FISCAL

13—Auditor’s Office—General Administration

Acct. No. 150

<table>
<thead>
<tr>
<th>Services</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of State Auditor</td>
<td>$28,750</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$837,247</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$230,110</td>
</tr>
<tr>
<td>Equipment</td>
<td>$39,700</td>
</tr>
</tbody>
</table>
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5 Mental Hygiene Fund ___________________ 100,000
6 Microfilm __________________________ 10,000

7 Total ________________________________ $ 1,245,807

14—Auditor’s Office—Social Security
Acct. No. 151

1 To match contributions of state employees
2 for social security ____________________$ 11,000,000

3 The above appropriation is intended to cover the state’s
4 share of social security costs for those spending units oper-
5 ating from General Revenue Fund. The State Department of
6 Highways, Department of Motor Vehicles, Workmen’s Com-
7 pensation Commission, Public Service Commission, and other
8 departments operating from Special Revenue Fund and/or
9 Federal Funds shall pay their proportionate share of the
10 social security cost for their respective divisions.

11 Any unexpended balance remaining in the appropriation
12 for “Auditor’s Office—Social Security” at the close of the
13 fiscal year 1975-76, is hereby reappropriated for expenditure
14 during the fiscal year 1976-77.

15—Treasurer’s Office
Acct. No. 160

1 Salary of State Treasurer __________________$ 28,750
2 Other Personal Services ______________________ 264,000
3 Current Expenses __________________________ 120,000
4 Equipment ______________________________ 25,000
5 Microfilm Program __________________________ 7,000

6 Total ________________________________$ 444,750

16—Treasurer’s Office—School Building Sinking Fund
Acct. No. 165

1 Total ________________________________$ 9,432,500
2 Any unexpended balance remaining in the appropriation
for "Treasurer's Office—School Building Sinking Fund" at
the close of the fiscal year 1975-76, is hereby reappropriated
for expenditure during the fiscal year 1976-77.

17—Sinking Fund Commission

Acct. No. 170

1 Personal Services $ 52,079
2 Current Expenses 6,000
3 Equipment 3,000

Total $ 61,079

18—State Tax Department

Acct. No. 180

1 Personal Services $ 3,131,840
2 Current Expenses 2,178,700
3 Equipment 115,000
4 Circuit Breaker Reimbursement 200,000

Total $ 5,625,540

The above appropriation "Circuit Breaker Reimbursement"
is to be used in accordance with Engrossed House Bill No.
751, 1972 Regular Session of the Legislature.

19—State Tax Department—
Property Appraisal

Acct. No. 185

1 Personal Services $ 1,384,087
2 Other Expenses 885,030
3 Reimbursement to Counties for
4 Computerization 80,000

Total $ 2,349,117

Any balance remaining in the "Property Appraisal Account"
at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

20—*State Commissioner of Public Institutions*

Acct. No. 190

1 Salary of Commissioner $27,500
2 Salaries of Board Members—
3 Board of Probation and Parole 48,000
4 Other Personal Services 672,926
5 Current Expenses 164,730
6 Repairs and Alterations 650
7 Equipment 4,000

8 Total $917,806

21—*Department of Finance and Administration*

Acct. No. 210

1 Personal Services $1,322,052
2 Current Expenses 440,270
3 Repairs and Alterations 79,700
4 Equipment 20,000
5 Postage 600,600
6 Records Management 58,025
7 State Agency Surplus Property 84,040
8 Utilities 550,000
9 Fire Service Fee 73,965
10 Building Equipment and Supplies 25,000
11 Major Building Repairs 1,500,000

12 Total $4,753,652

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 the Department for postage in excess of this appropriation.

Any unexpended balance remaining in the “Postage Account” at the close of the fiscal year 1975-76 is hereby re-appropriated for expenditure during the fiscal year 1976-77.

Any unexpended balance remaining at the close of the fiscal year 1975-76 for “Major Building Repairs” is hereby reappropriated for expenditure during the fiscal year 1976-77.

(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 2A, Section 13 of the Code of West Virginia.

There also is appropriated for the State Agency for Surplus Property all sums of money collected by that agency from the sale of surplus state property which has been declared expendable by the director of the Purchasing Division, and a special account created for expenditure for the purchase of operating equipment.

22—State Board of Insurance

Acct. No. 225

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$42,230</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$11,040</td>
</tr>
<tr>
<td>Equipment</td>
<td>$700</td>
</tr>
</tbody>
</table>
4 Self-Insurance Fund ______________________ 600,000
5 Combined Insurance Premiums ______________ 1,000,000

6 Total ____________________________________ $ 1,653,970

7 The above appropriation on line 5 is for the purpose of paying premiums for fire, automobile and bonds for the various state agencies. Should this appropriation be insufficient to meet the premium requirements of the state spending units, any excess premium requirements shall be a proper charge against the units and each spending unit shall reimburse to the Board of Insurance any amount required for that department for premiums in excess of this appropriation.

8 Any unexpended balance remaining in the appropriation for “Self-Insurance Fund” at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

9 Any or all of the funds appropriated for “Self-Insurance Fund” may be transferred to a special account for disbursement for payment of premiums and self-insurance losses.

LEGAL

23—Attorney General

Acct. No. 240

1 Salary of Attorney General ________________ $ 29,500
2 Other Personal Services ____________________ 894,792
3 Current Expenses __________________________ 104,000
4 Equipment ________________________________ 16,000
5 To protect the resources or tax structure of the State in controversies or legal proceedings affecting same ______________________ 3,250
6 Consumer Protection ________________________ 130,510

9 Total ________________________________ $ 1,178,052

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

The above appropriation for "Consumer Protection" is to be used in accordance with Engrossed Senate Bill No. 240, 1974 Regular Session of the Legislature.

Any unexpended balance remaining in the appropriation for "Buffalo Creek Legal Expenses" at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

The appropriation "Buffalo Creek Legal Expenses" is to pay for legal expenses in instituting legal proceedings to recompense the state and its local governments, including boards of education, for expenditures incurred as a result of the disaster at Buffalo Creek on February 26, 1972.

24—Commission on Uniform State Laws

Acct. No. 245

1 Total ________________________________ $ 7,500

2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

25—Secretary of State

Acct. No. 250

1 Salary of Secretary of State .................. $ 28,750
2 Other Personal Services ..................... 213,586
3 Current Expenses .......................... 50,000
4 Equipment ................................ 24,000
5 Certification of Primary and General Elections ................................ 3,000

6 Total ........................................ $ 319,336
## Appropriations

### Educational

#### 26—State Department of Education

<table>
<thead>
<tr>
<th>Acct. No. 277</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teacher Education Program</td>
<td>$131,250</td>
</tr>
</tbody>
</table>

#### 27—West Virginia Board of Regents (Control)

<table>
<thead>
<tr>
<th>Acct. No. 279</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$71,000,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$13,891,156</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$2,520,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$3,255,000</td>
</tr>
<tr>
<td>5</td>
<td>Oak Wilt Research</td>
<td>$13,200</td>
</tr>
<tr>
<td>6</td>
<td>Veterinary Tuition</td>
<td>$349,000</td>
</tr>
<tr>
<td>7</td>
<td>Educational TV</td>
<td>$718,576</td>
</tr>
<tr>
<td>8</td>
<td>Bureau for Coal Research</td>
<td>$800,000</td>
</tr>
<tr>
<td>9</td>
<td>Forestry Products</td>
<td>$146,500</td>
</tr>
<tr>
<td>10</td>
<td>Regional Research Institute</td>
<td>$100,000</td>
</tr>
<tr>
<td>11</td>
<td>Intensive Agricultural Demonstration Trial</td>
<td>$33,700</td>
</tr>
<tr>
<td>12</td>
<td>Community and Development Research</td>
<td>$29,000</td>
</tr>
<tr>
<td>13</td>
<td>Center for Economic Action</td>
<td>$56,400</td>
</tr>
<tr>
<td>14</td>
<td>New Programs</td>
<td>$360,000</td>
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<tr>
<td>15</td>
<td>Unclassified</td>
<td>$330,000</td>
</tr>
<tr>
<td>16</td>
<td>Title I—Matching Funds</td>
<td>$133,000</td>
</tr>
<tr>
<td>17</td>
<td>Scholarship Program</td>
<td>$1,650,000</td>
</tr>
<tr>
<td>18</td>
<td>Awareness Program</td>
<td>$53,000</td>
</tr>
<tr>
<td>19</td>
<td>Facilities and Scholarship Program</td>
<td>$82,000</td>
</tr>
<tr>
<td>20</td>
<td>Agricultural Experiment Station—Intensive</td>
<td>$38,000</td>
</tr>
<tr>
<td>21</td>
<td>Horticultural Demonstration</td>
<td>$110,000</td>
</tr>
<tr>
<td>22</td>
<td>Optometry Tuition</td>
<td>$11,000</td>
</tr>
<tr>
<td>23</td>
<td>Podiatry Tuition</td>
<td>$11,000</td>
</tr>
<tr>
<td>24</td>
<td>Architectural Education Tuition</td>
<td>$40,000</td>
</tr>
<tr>
<td>25</td>
<td>Total</td>
<td>$95,719,532</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

**28—West Virginia Board of Regents**

**Acct. No. 280**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$440,000</td>
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<tr>
<td>Current Expenses</td>
<td>$115,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$556,500</strong></td>
</tr>
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</table>

**29—West Virginia College of Osteopathic Medicine**

**Acct. No. 281**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,650,000</strong></td>
</tr>
</tbody>
</table>

**30—Marshall University—Medical School**

**Acct. No. 284**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td><strong>$871,915</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

**31—West Virginia University—Medical School**

**Acct. No. 285**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$7,304,812</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,464,995</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$368,200</td>
</tr>
<tr>
<td>Equipment</td>
<td>$256,900</td>
</tr>
<tr>
<td>Family Practice Residency Support Program</td>
<td>$300,000</td>
</tr>
<tr>
<td>Intern and Residency Support Programs for Community Hospitals</td>
<td>$675,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$12,369,907</strong></td>
</tr>
</tbody>
</table>

To be transferred to the West Virginia University—Medical School Fund upon the requisition of the Governor.
### 32—Department of Education

#### Acct. No. 286

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$852,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>224,300</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>11,000</td>
</tr>
<tr>
<td>4</td>
<td>National Defense Education Act</td>
<td>445,000</td>
</tr>
<tr>
<td>5</td>
<td>Statewide Testing Program</td>
<td>131,000</td>
</tr>
<tr>
<td>6</td>
<td>Safety Education—Aid to Counties</td>
<td>210,000</td>
</tr>
<tr>
<td>7</td>
<td>State Aid to Children's Home</td>
<td>75,000</td>
</tr>
<tr>
<td>8</td>
<td>Regional Education Service Agency</td>
<td>457,000</td>
</tr>
<tr>
<td>9</td>
<td>Project 0629-061, Identification &amp; Remediation of Learning Disabilities</td>
<td>50,000</td>
</tr>
<tr>
<td>10</td>
<td>Project 0629-062, Diagnosis and Remediation of Learning Disabilities</td>
<td>50,000</td>
</tr>
<tr>
<td>11</td>
<td>Project 0629-067, Early Learning and Child Care</td>
<td>50,000</td>
</tr>
<tr>
<td>12</td>
<td>Project 0629-077, Early Learning and Child Care</td>
<td>50,000</td>
</tr>
<tr>
<td>13</td>
<td>Project 0629-078, Early Learning and Child Care</td>
<td>50,000</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td>$2,655,800</td>
</tr>
</tbody>
</table>

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

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

### 33—State Department of Education—School Lunch Program

#### Acct. No. 287

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$123,000</th>
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<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>30,000</td>
</tr>
<tr>
<td>3</td>
<td>Aid to Counties—Includes hot lunches and canning for hot lunches</td>
<td>1,327,104</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,480,104</td>
</tr>
</tbody>
</table>
### 34—State Board of Education—Vocational Division

**Acct. No. 289**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$168,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$51,950</td>
</tr>
<tr>
<td>Equipment</td>
<td>$3,575</td>
</tr>
<tr>
<td>Vocational Aid</td>
<td>$6,869,500</td>
</tr>
<tr>
<td>Adult Basic Education</td>
<td>$500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,593,025</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Building Construction” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

### 35—State Department of Education—Professional Educators

**Acct. No. 290**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td><strong>$27,629,371</strong></td>
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</table>

### 36—Educational Broadcasting Authority

**Acct. No. 291**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$52,932</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$29,255</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,500</td>
</tr>
<tr>
<td>Regional ETV</td>
<td>$1,365,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,449,687</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.
### 37—State Board of Education—Vocational Division

**Acct. No. 292**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

### 38—State Board of Education—Vocational Division

**Acct. No. 294**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation “Aid to Counties” at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

### 39—State Department of Education—State Aid to Schools

**Acct. No. 295**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Professional Services</td>
<td>$168,126,170</td>
</tr>
<tr>
<td>Salaries—Other Personnel</td>
<td>33,625,234</td>
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<tr>
<td>Fixed Charges</td>
<td>15,837,485</td>
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<tr>
<td>Transportation Charges</td>
<td>9,303,040</td>
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<tr>
<td>Administration</td>
<td>1,681,240</td>
</tr>
<tr>
<td>Other Current Expenses</td>
<td>20,175,140</td>
</tr>
<tr>
<td>National Average Attainment</td>
<td>14,092,639</td>
</tr>
<tr>
<td>Program Improvement</td>
<td>1,939,503</td>
</tr>
<tr>
<td>Increased Enrollment</td>
<td>700,000</td>
</tr>
<tr>
<td>Sub Total</td>
<td>$265,480,451</td>
</tr>
<tr>
<td>Less Local Share</td>
<td>48,874,036</td>
</tr>
<tr>
<td>Total</td>
<td>$216,606,415</td>
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</table>

### 40—Department of Education—Aid for Exceptional Children

**Acct. No. 296**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$183,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>70,835</td>
</tr>
</tbody>
</table>
3 Out-of-State Instruction 360,000
4 Aid to Counties 4,500,000

5 Total $ 5,113,835

6 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.

41—State Board of Education—Early Childhood Aides

Acct. No. 297

1 Early Childhood Aides $ 2,882,880

42—Teacher's Retirement Board

Acct. No. 298

1 Teachers Retirement Fund $ 27,000,000
2 Employers Accumulation Fund 5,000,000
3 Expense Fund 35,000

4 Total $ 32,035,000

43—Department of Education

Acct. No. 299

1 To fund minimum salaries for Support Personnel—Total $ 11,500,000

44—West Virginia Schools for the Deaf and the Blind

Acct. No. 333

1 Personal Services $ 1,773,500
2 Current Expenses 450,000
3 Repairs and Alterations 103,000
4 Equipment 95,000

5 Total ___________________________ $ 2,421,500

45—State FFA-FHA Camp and Conference Center

Acct. No. 336

1 Personal Services ______________________ $ 90,000
2 Current Expenses ______________________ 18,500
3 Repairs and Alterations ________________ 21,000
4 Equipment ____________________________ 21,000

5 Total ________________________________ $ 150,500

46—Department of Archives and History

Acct. No. 340

1 Personal Services ______________________ $ 141,000
2 Current Expenses ______________________ 54,030
3 Repairs and Alterations ________________ 2,000
4 Equipment ____________________________ 30,000

5 Total ________________________________ $ 227,030

47—West Virginia Library Commission

Acct. No. 350

1 Personal Services ______________________ $ 530,000
2 Current Expenses ______________________ 146,390
3 Repairs and Alterations ________________ 3,500
4 Equipment ____________________________ 5,000
5 Grants-in-Aid __________________________ 2,000,000
6 Library Matching Funds _________________ 1,500,000
7 Books and Periodicals _________________ 60,000

8 Total ________________________________ $ 4,244,890

9 Any unexpended balance remaining in the appropriation for
10 “Library Matching Funds” at the close of the fiscal year 1975-
76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

CHARITIES AND CORRECTION

48—Anthony Center

Acct. No. 369

1 Personal Services $ 291,300
2 Current Expenses 120,000
3 Repairs and Alterations 15,000
4 Equipment 14,500

Total $ 440,800

49—West Virginia Industrial School for Boys

Acct. No. 370

1 Personal Services $ 772,000
2 Current Expenses 257,000
3 Repairs and Alterations 65,000
4 Equipment 34,500

Total $ 1,128,500

50—Davis Center

Acct. No. 371

1 Personal Services $ 286,000
2 Current Expenses 150,000
3 Repairs and Alterations 17,000
4 Equipment 22,000

Total $ 475,000

51—West Virginia Industrial Home for Girls

Acct. No. 372

1 Personal Services $ 500,000
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>160,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>35,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>42,000</td>
</tr>
<tr>
<td>5</td>
<td>Vocational Training</td>
<td>5,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>742,000</td>
</tr>
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</table>

**52—Leckie Center**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>285,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>151,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>38,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>20,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>494,000</td>
</tr>
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</table>

**53—West Virginia State Prison for Women**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>187,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>92,000</td>
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<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>21,000</td>
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<tr>
<td>4</td>
<td>Equipment</td>
<td>12,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>312,000</td>
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**54—West Virginia Penitentiary**

<table>
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<tr>
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<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>2,066,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>1,200,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>84,500</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>200,000</td>
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<tr>
<td>5</td>
<td>Total</td>
<td>3,550,500</td>
</tr>
</tbody>
</table>

6. Any unexpended balance remaining in the accounts “Replacement of Sanitary System (Sewers) and Construction of
Boiler Plant”; and “Purchase of Building and Land” at the
close of the fiscal year 1975-76 is hereby reappropriated for
expenditure during the fiscal year 1976-77.

Any or all of the accounts “Replacement of Sanitary Sys-
tem (Sewers) and Construction of Boiler Plant” may be used
to match and aid Federal Funds.

55—Huttonsville Correctional Center

<table>
<thead>
<tr>
<th>Acct. No. 376</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
</tr>
<tr>
<td>4 Equipment</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

56—West Virginia State Industries

<table>
<thead>
<tr>
<th>Acct. No. 377</th>
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</thead>
<tbody>
<tr>
<td>1 Operating Expenses</td>
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</table>

57—West Virginia Children’s Home

<table>
<thead>
<tr>
<th>Acct. No. 380</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
</tr>
<tr>
<td>4 Equipment</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
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</table>

58—Andrew S. Rowan Memorial Home

<table>
<thead>
<tr>
<th>Acct. No. 384</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
</tr>
<tr>
<td>2 Current Expenses</td>
</tr>
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</table>
### APPROPRIATIONS

<table>
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<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repairs and Alterations</td>
<td>$39,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$40,000</td>
</tr>
<tr>
<td>Total</td>
<td>$1,084,500</td>
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</table>

### HEALTH AND WELFARE

#### 59—State Health Department

<table>
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<tr>
<th>Acct. No. 400</th>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$275,000</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$37,500</td>
</tr>
<tr>
<td>4</td>
<td>Cancer Control and Treatment</td>
<td>$255,000</td>
</tr>
<tr>
<td>5</td>
<td>Local Health Services</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Heart Disease Control</td>
<td>$142,000</td>
</tr>
<tr>
<td>7</td>
<td>Dental Clinics</td>
<td>$170,000</td>
</tr>
<tr>
<td>8</td>
<td>Maternal and Child Healthmobile Medical Examination Clinic</td>
<td>$695,500</td>
</tr>
<tr>
<td>9</td>
<td>Hospital and Medical Facilities Construction Program</td>
<td>$20,000</td>
</tr>
<tr>
<td>10</td>
<td>Mobile Chest X-ray Diagnostic Services for Tuberculosis Control</td>
<td>$90,000</td>
</tr>
<tr>
<td>11</td>
<td>Home Health Services</td>
<td>$48,000</td>
</tr>
<tr>
<td>12</td>
<td>Special Project for Eradication of Tuberculosis</td>
<td>$285,000</td>
</tr>
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<td>13</td>
<td>Environmental Health Services</td>
<td>$196,000</td>
</tr>
<tr>
<td>14</td>
<td>Nursing Home Inspection Unit</td>
<td>$98,000</td>
</tr>
<tr>
<td>15</td>
<td>Biologicals for Immunization and Venereal Disease</td>
<td>$210,000</td>
</tr>
<tr>
<td>16</td>
<td>Early Childhood Development Program</td>
<td>$250,000</td>
</tr>
<tr>
<td>17</td>
<td>Regional Health Services</td>
<td>$275,000</td>
</tr>
<tr>
<td>18</td>
<td>Emergency Medical Services</td>
<td>$50,000</td>
</tr>
<tr>
<td>19</td>
<td>Total</td>
<td>$6,397,000</td>
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</tbody>
</table>

#### 60—Commission on Postmortem Examination

<table>
<thead>
<tr>
<th>Acct. No. 401</th>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$150,000</td>
</tr>
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</table>
Any unexpended balance remaining in the appropriation "Commission on Postmortem Examination" at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

61—Department of Veterans Affairs

Acct. No. 403

1. In aid of Veterans Day Patriotic Exercises $ 5,000
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.

62—Department of Veterans Affairs

Acct. No. 404

1. Personal Services $ 420,000
2. Current Expenses $ 84,000
3. Equipment $ 5,500
4. Educational opportunities for children of War Veterans $ 20,000
5. Total $ 529,500

Any unexpended balance remaining in the appropriation "To Provide Educational Opportunities for Children of War Veterans" at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

63—Department of Welfare

Acct. No. 405

1. Personal Services $ 8,500,000
2. Current Expenses $ 2,363,530
3. Equipment $ 46,865
4. Public Assistance Grants $ 14,218,994
5. T.R.I.P. —0—
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Social Security Matching Fund</td>
<td>507,416</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Services to Children, Aged, Blind and Disabled</td>
<td>7,284,261</td>
<td></td>
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<tr>
<td>8</td>
<td>Emergency Assistance Program</td>
<td>1,550,000</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$34,471,066</td>
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</table>

### 64—State Commission on Aging

**Acct. No. 406**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$71,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>47,500</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>700</td>
</tr>
<tr>
<td>4</td>
<td>Programs for Elderly</td>
<td>500,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$619,200</td>
</tr>
</tbody>
</table>

### 65—Department of Welfare—Food Stamp and Government Donated Food

**Acct. No. 407**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>414,720</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>12,500</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$427,220</td>
</tr>
</tbody>
</table>

### 66—Department of Welfare—Medical Program

**Acct. No. 408**

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
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<td>995,000</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>8,750</td>
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<tr>
<td>4</td>
<td>Direct Services</td>
<td>15,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$16,003,750</td>
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</tbody>
</table>
### Appropriations

#### 67—Department of Mental Health

**Acct. No. 410**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$950,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$215,000</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$13,500</td>
</tr>
<tr>
<td>4 Research and Training</td>
<td>$10,000</td>
</tr>
<tr>
<td>5 Civil Service Costs</td>
<td>$140,000</td>
</tr>
<tr>
<td>6 Division of Health Education</td>
<td>$21,000</td>
</tr>
<tr>
<td>7 Community Mental Retardation Program</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>8 Alcohol and Drug Abuse Program</td>
<td>$400,000</td>
</tr>
<tr>
<td>9 Community Mental Health Programs</td>
<td>$2,500,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$5,249,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Mental Health Center—Princeton” and “Logan-Mingo Area Mental Health Center” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

#### 68—Commission On Mental Retardation

**Acct. No. 411**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$56,000</td>
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<tr>
<td>2 Current Expenses</td>
<td>$17,500</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$2,000</td>
</tr>
<tr>
<td>4 Assistance to D.D.A. Projects</td>
<td>$0</td>
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<tr>
<td><strong>Total</strong></td>
<td>$75,500</td>
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</table>

#### 69—Greenbrier School for Mentally Retarded Children

**Acct. No. 414**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$718,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$159,000</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$100,000</td>
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<td>4 Equipment</td>
<td>$60,000</td>
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<td><strong>Total</strong></td>
<td>$1,037,000</td>
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</table>
### 70—Roney’s Point Branch Hospital

**Acct. No. 417**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$195,386</td>
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<tr>
<td>Current Expenses</td>
<td>$58,281</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$20,000</td>
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<tr>
<td>Equipment</td>
<td>$3,750</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$277,417</strong></td>
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</table>

### 71—Guthrie Center

**Acct. No. 418**

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$506,725</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$211,275</td>
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<tr>
<td>Repairs and Alterations</td>
<td>$45,000</td>
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<tr>
<td>Equipment</td>
<td>$35,000</td>
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<td><strong>Total</strong></td>
<td><strong>$798,000</strong></td>
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</table>

### 72—Colin Anderson Center

**Acct. No. 419**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,918,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$600,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$90,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$200,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$4,808,000</strong></td>
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</table>

### 73—Weston State Hospital

**Acct. No. 420**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$5,297,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,620,000</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$138,725</td>
</tr>
<tr>
<td>Equipment</td>
<td>$114,450</td>
</tr>
<tr>
<td>Psychiatric Training Center for Student Nurses</td>
<td>$150,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,320,175</strong></td>
</tr>
</tbody>
</table>
### 74—Spencer State Hospital

**Acct. No. 421**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,150,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>967,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>86,000</td>
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<tr>
<td>Equipment</td>
<td>82,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,285,000</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in "Boiler Plant" at the close of fiscal year 1975-76, is hereby reappropriated for expenditure during fiscal year 1976-77.

### 75—Huntington State Hospital

**Acct. No. 422**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,683,000</td>
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<tr>
<td>Current Expenses</td>
<td>1,065,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>155,000</td>
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<tr>
<td>Equipment</td>
<td>85,000</td>
</tr>
<tr>
<td>Student Nurse Affiliation Program</td>
<td>45,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,033,000</strong></td>
</tr>
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</table>

### 76—Lakin State Hospital

**Acct. No. 423**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,767,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>525,000</td>
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<tr>
<td>Repairs and Alterations</td>
<td>99,000</td>
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<tr>
<td>Equipment</td>
<td>66,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,457,000</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation "To complete Heating System" at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.
### APPROPRIATIONS

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

1. Personal Services $1,092,000  
2. Current Expenses $253,000  
3. Repairs and Alterations $23,000  
4. Equipment $25,000  
5. Total $1,393,000

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

1. Personal Services $473,000  
2. Current Expenses $351,000  
3. Repairs and Alterations $9,000  
4. Equipment $132,200  
5. Total $965,200

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

1. Personal Services $850,000  
2. Current Expenses $349,400  
3. Repairs and Alterations $95,000  
4. Equipment $70,000  
5. Total $1,364,400

**80—Hopemont State Hospital**  
Acct. No. 430

1. Personal Services $2,862,000  
2. Current Expenses $598,606  
3. Repairs and Alterations $57,500  
4. Equipment $90,000  
5. Total $3,608,106
81—Pinecrest State Hospital

Acct. No. 431

1 Personal Services $ 2,437,000
2 Current Expenses 727,000
3 Repairs and Alterations 119,000
4 Equipment 94,300

5 Total $ 3,377,300

82—Denmar State Hospital

Acct. No. 432

1 Personal Services $ 1,792,000
2 Current Expenses 682,550
3 Repairs and Alterations 84,000
4 Equipment 129,300

5 Total $ 2,687,850

83—State Board of Education—Rehabilitation Division

Acct. No. 440

1 Personal Services $ 1,240,000
2 Current Expenses 428,300
3 Rehabilitation Center 1,248,000
4 Case Services 1,833,113
5 Supervisory Services for Vending Stand Program for Blind 178,410
6 Training and Special Projects 500,192
7 Social Security Matching Fund 112,488
8 Program for Blind Food Service 0

10 Total $ 5,540,503

Any unexpended balances remaining in the appropriations for "Rehabilitation Center Construction" and "Program for Blind Food Service" at the close of the fiscal year 1975-76,
14 are hereby reappropriated for expenditure during the fiscal year 1976-77.

BUSINESS AND INDUSTRIAL RELATIONS

84—Bureau of Labor and Department of Weights and Measures

Acct. No. 450

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 800,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 228,450</td>
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<td>3</td>
<td>Equipment</td>
<td>$ 12,970</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 1,041,420</td>
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</tbody>
</table>

85—Interstate Mining Compact Commission

Acct. No. 451

<p>| | | |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Total</td>
<td>$ 0</td>
</tr>
</tbody>
</table>

86—Department of Mines

Acct. No. 460

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 2,200,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 500,000</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$ 53,025</td>
</tr>
<tr>
<td>4</td>
<td>Special Mine Drainage Program</td>
<td>$ 50,000</td>
</tr>
<tr>
<td>5</td>
<td>Mine Training, Education and Certification</td>
<td>$ 200,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$ 3,003,025</td>
</tr>
</tbody>
</table>

7 Any unexpended balance remaining in the appropriation for “Subsidence-Federal Matching” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.
APPROPRIATIONS

87—Department of Commerce

Acct. No. 465

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$675,000</td>
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<tr>
<td>Current Expenses</td>
<td>1,449,270</td>
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<tr>
<td>Equipment</td>
<td>47,000</td>
</tr>
<tr>
<td>Mt. State Forest Festival</td>
<td>25,000</td>
</tr>
<tr>
<td>Theatre Arts of West Virginia</td>
<td>0</td>
</tr>
<tr>
<td>Alpine Festival</td>
<td>7,500</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>283,000</td>
</tr>
<tr>
<td>West Virginia Water Festival</td>
<td>15,000</td>
</tr>
<tr>
<td>Oil and Gas Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>White Water Weekend</td>
<td>3,000</td>
</tr>
<tr>
<td>Calhoun County Wood Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>New Martinsville Regatta</td>
<td>2,500</td>
</tr>
<tr>
<td>Braxton County Regatta</td>
<td>4,000</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>223,856</td>
</tr>
<tr>
<td>Cherry River Festival</td>
<td>2,000</td>
</tr>
<tr>
<td>Mothers Day Founders Festival</td>
<td>15,000</td>
</tr>
<tr>
<td>Mountain Heritage Arts and Crafts Fair</td>
<td>5,000</td>
</tr>
<tr>
<td>Wellsburg July 4th Celebration</td>
<td>2,000</td>
</tr>
<tr>
<td>Sternwheel Regatta</td>
<td>1,000</td>
</tr>
<tr>
<td>Sistersville Outboard Regatta</td>
<td>1,000</td>
</tr>
<tr>
<td>West Virginia's Participation in American Bicentennial</td>
<td>325,000</td>
</tr>
<tr>
<td>Ohio River Festival</td>
<td>1,000</td>
</tr>
<tr>
<td>King Coal Festival</td>
<td>1,000</td>
</tr>
<tr>
<td>Industrial Development Revolving Fund</td>
<td>500,000</td>
</tr>
<tr>
<td>Independence Hall, Wheeling, West Virginia</td>
<td>150,000</td>
</tr>
</tbody>
</table>

Total $3,743,126

The above appropriations, Mt. State Forest Festival, Theatre Arts of West Virginia, West Virginia Water Festival, Oil and Gas Festival, White Water Weekend, Calhoun County Wood Festival, New Martinsville Regatta, Braxton County Regatta, Cherry River Festival, Mothers Day Founders Festival, Mt. Heritage Arts and Crafts Fair, Wellsburg July 4th Celebration, Sternwheel Regatta, Sistersville Outboard Regatta, Ohio River Festival and King Coal Festival shall be expended only upon
authorization of the Commerce Commissioner and in accord-
ance with the provisions of Chapter 5A and Chapter 12,
Article 3 of the Code of West Virginia.

All federal moneys received as reimbursement to the De-
partment of Commerce, for moneys expended from the Gen-
eral Revenue fund for Arts and Humanities are hereby reap-
propriated for the purposes as originally made, including
Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation
for “Independence Hall, Wheeling, West Virginia” at the close
of the fiscal year 1975-76 is hereby reappropriated for ex-
penditure during the fiscal year 1976-77.

Any unexpended balance remaining in the appropriation for
“National Youth Science Camp” at the close of the fiscal year
1975-76 is hereby reappropriated for expenditure during the
fiscal year 1976-77.

Any unexpended balance remaining in the appropriation for
“West Virginia’s Participation in American Bicentennial” at
the close of the fiscal year 1975-76, is hereby reappropriated
for expenditure during the fiscal year 1976-77.

88—Ohio River Basin Commission

Acct. No. 469

1 Total $21,600

89—State Commission on Manpower, Technology
and Training

Acct. No. 470

1 Total $10,000

90—Council of State Governments

Acct. No. 472

1 Total $21,900
### Appropriations

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

**Acct. No. 473**

1. West Virginia's contribution to Potomac River Basin Interstate Commission $12,450

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

**Acct. No. 474**

1. West Virginia's contribution to the Ohio River Valley Water Sanitation Commission $40,575

#### 93—Southern Regional Education Board

**Acct. No. 475**

1. West Virginia's contribution to Southern Regional Education Board $64,000
2. To be expended upon requisition of the Governor.

#### 94—West Virginia Air Pollution Commission

**Acct. No. 476**

1. Personal Services $430,000
2. Current Expenses $125,360
3. Equipment $9,325
4. Total $564,685

#### 95—Interstate Education Compact

**Acct. No. 477**

1. West Virginia's contribution to Interstate Education Compact $14,250

#### 96—Antiquities Commission

**Acct. No. 478**

1. Personal Services $26,400
2. Current Expenses $9,130
Ch. 7]  

APPROPRIATIONS  

3 Equipment  

4 Total ________________________________ $ 37,680  

97—Department of Banking  

Acct. No. 480  

1 Personal Services ................................ $ 275,000  

2 Current Expenses .................................. 166,550  

3 Equipment ........................................... 3,900  

4 Total .................................................. $ 445,450  

98—West Virginia State Aeronautics Commission  

Acct. No. 485  

1 Personal Services ... $ 37,000  

2 Current Expenses .................................. 22,845  

3 Equipment ........................................... 2,000  

4 Aerial Markers ...................................... 1,200  

5 Civil Air Patrol Expenses ........................ 18,500  

6 Airport Matching ................................... 1,000,000  

7 Total .................................................. $ 1,081,545  

8 Any unexpended balance remaining in the appropriation  

9 “Airport Matching” at the close of the fiscal year 1975-76  

10 is hereby reappropriated for expenditure during fiscal year  

11 1976-77.  

99—West Virginia Nonintoxicating Beer Commission  

Acct. No. 490  

1 Personal Services .................................. $ 240,000  

2 Current Expenses .................................. 74,350  

3 Equipment ........................................... 3,000  

4 Total .................................................. $ 317,350
### Appropriations

#### 100—West Virginia Racing Commission

**Acct. No. 495**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$334,825</td>
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<tr>
<td>Current Expenses</td>
<td>$47,291</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$0</td>
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<tr>
<td>Equipment</td>
<td>$2,000</td>
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<tr>
<td>Total</td>
<td>$384,116</td>
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</table>

### Agriculture

#### 101—Department of Agriculture

**Acct. No. 510**

<table>
<thead>
<tr>
<th>Item</th>
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</tr>
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<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$28,750</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,250,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$640,215</td>
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<tr>
<td>Equipment</td>
<td>$22,495</td>
</tr>
<tr>
<td>Marijuana and Multiflora Rose Eradication Program</td>
<td>$37,000</td>
</tr>
<tr>
<td>Total</td>
<td>$1,978,460</td>
</tr>
</tbody>
</table>

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

Any unexpended balance remaining in the appropriation for "Marijuana and Multiflora Rose Eradication Program" at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

#### 102—Department of Agriculture—

**Soil Conservation Committee**

**Acct. No. 512**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$222,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$68,440</td>
</tr>
</tbody>
</table>
3 Watershed Program ..................... 200,000
4 Mud River Flood Control Project ....... 50,000

5 Total ....................................... $ 540,440

6 Any unexpended balance remaining in the appropriations
7 for “Watershed Program,” “Mud River Flood Control Project”
8 and “Channelization of Kelley’s Creek” at the close of the
9 fiscal year 1975-76 is hereby reappropriated for expenditure
10 during fiscal year 1976-77.

103—Department of Agriculture—Division of Rural Resources
(Matching Fund)

Acct. No. 513

1 Personal Services ...................................... $ 455,818
2 Current Expenses ...................................... 105,182
3 Total .................................................. $ 561,000

4 Any part or all of this appropriation may be transferred to
5 Special Revenue Fund for the purpose of matching Federal
6 Funds for the above-named program.

104—Department of Agriculture—Meat Inspection

Acct. No. 514

1 Unclassified .......................................... $ 383,000

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

5 Any unexpended balance remaining in the appropriation
6 for “Meat Inspection” at the close of the fiscal year 1975-76
7 is hereby reappropriated for expenditure during the fiscal
8 year 1976-77.
## 105—Department of Agriculture—Agricultural Awards

### Acct. No. 515

<table>
<thead>
<tr>
<th>No.</th>
<th>Event</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Agricultural Awards</td>
<td>$66,000</td>
</tr>
<tr>
<td>2</td>
<td>West Virginia State Fair</td>
<td>$25,000</td>
</tr>
<tr>
<td>3</td>
<td>Black Walnut Festival</td>
<td>$4,000</td>
</tr>
<tr>
<td>4</td>
<td>Apple Festival</td>
<td>$2,000</td>
</tr>
<tr>
<td>5</td>
<td>Strawberry Festival</td>
<td>$5,450</td>
</tr>
<tr>
<td>6</td>
<td>Buckwheat Festival</td>
<td>$4,000</td>
</tr>
<tr>
<td>7</td>
<td>Marshall Fair</td>
<td>$3,000</td>
</tr>
<tr>
<td>8</td>
<td>Town and Country Days</td>
<td>$3,000</td>
</tr>
<tr>
<td>9</td>
<td>Potato Festival</td>
<td>$2,000</td>
</tr>
<tr>
<td>10</td>
<td>Webster Logging Festival</td>
<td>$2,500</td>
</tr>
<tr>
<td>11</td>
<td>Paden City Labor Day Festival</td>
<td>$2,500</td>
</tr>
<tr>
<td>12</td>
<td>Jackson County Junior Fair</td>
<td>$2,000</td>
</tr>
<tr>
<td>13</td>
<td>Tyler County Fair</td>
<td>$3,000</td>
</tr>
<tr>
<td>14</td>
<td>Wyoming County Labor Day Festival</td>
<td>$3,000</td>
</tr>
<tr>
<td>15</td>
<td>(4-H awards)</td>
<td>$3,000</td>
</tr>
<tr>
<td>16</td>
<td>Lincoln County Tomato Festival</td>
<td>$1,500</td>
</tr>
<tr>
<td>17</td>
<td>Clay County Golden Delicious Festival</td>
<td>$2,000</td>
</tr>
<tr>
<td>18</td>
<td>West Virginia Sports Festival</td>
<td>$2,000</td>
</tr>
<tr>
<td>19</td>
<td>Wood County Fair</td>
<td>$3,500</td>
</tr>
<tr>
<td>20</td>
<td>Braxton Fair Association</td>
<td>$2,500</td>
</tr>
<tr>
<td>21</td>
<td>Virginia Point Days (Wayne County)</td>
<td>$2,000</td>
</tr>
<tr>
<td>22</td>
<td>Monroe County Farmer's Day (Union)</td>
<td>$2,000</td>
</tr>
<tr>
<td>23</td>
<td>Huntington River Day Fair</td>
<td>$1,500</td>
</tr>
<tr>
<td>24</td>
<td>Pocahontas County Pioneer Days</td>
<td>$1,500</td>
</tr>
<tr>
<td>25</td>
<td>Mannington District Fair</td>
<td>$1,500</td>
</tr>
<tr>
<td>26</td>
<td>Paw Paw District Fair</td>
<td>$1,500</td>
</tr>
<tr>
<td>27</td>
<td>Winfield District Fair</td>
<td>$1,500</td>
</tr>
<tr>
<td>28</td>
<td>Putnam County Midway Fair</td>
<td>$1,500</td>
</tr>
<tr>
<td>29</td>
<td>Mason County Fair</td>
<td>$4,000</td>
</tr>
<tr>
<td>30</td>
<td><strong>Total</strong></td>
<td><strong>$155,950</strong></td>
</tr>
</tbody>
</table>

## CONSERVATION AND DEVELOPMENT

### 106—Geological and Economic Survey Commission

### Acct. No. 520

<table>
<thead>
<tr>
<th>No.</th>
<th>Event</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$500,000</td>
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</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>194,214</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>10,450</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>56,673</td>
</tr>
<tr>
<td>5 Cooperative Mapping Program</td>
<td>240,000</td>
</tr>
<tr>
<td>6 Coal Quality and Reserve Study</td>
<td>293,000</td>
</tr>
<tr>
<td>7 Archaeological Investigations</td>
<td>30,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,324,337</strong></td>
</tr>
</tbody>
</table>

Of the above appropriation for Cooperative Mapping Program, the sum of $65,000 may be used to cooperate with the United States Geological Survey in Ground Waters Resources Study.

107—*West Virginia Commission on Energy, Economy and Environment*

Acct. No. 562

<table>
<thead>
<tr>
<th>Item</th>
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</thead>
<tbody>
<tr>
<td>1 Total</td>
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</table>

108—*Department of Natural Resources*

Acct. No. 565

<table>
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<tr>
<th>Item</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$4,125,000</td>
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<tr>
<td>2 Current Expenses</td>
<td>1,049,168</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>339,218</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>414,190</td>
</tr>
<tr>
<td>5 Division of Law Enforcement</td>
<td>0</td>
</tr>
<tr>
<td>6 Clarke-McNary Fire Prevention</td>
<td>400,000</td>
</tr>
<tr>
<td>7 Debt Service</td>
<td>975,000</td>
</tr>
<tr>
<td>8 A.R.A.-E.D.A. Parks Program</td>
<td>108,000</td>
</tr>
<tr>
<td>9 Water Resources Board</td>
<td>15,000</td>
</tr>
<tr>
<td>10 Special Works Program</td>
<td>312,000</td>
</tr>
<tr>
<td>11 Berkeley Springs State Park</td>
<td>135,000</td>
</tr>
<tr>
<td>12 Reclamation Board of Review</td>
<td>15,000</td>
</tr>
<tr>
<td>13 U. S. Geological Survey</td>
<td>52,500</td>
</tr>
<tr>
<td>14 Coal Refuse Disposal and Dam Control Act</td>
<td>222,000</td>
</tr>
<tr>
<td>15 Rabies Control</td>
<td>37,500</td>
</tr>
<tr>
<td>16 French Creek Game Farm</td>
<td>97,000</td>
</tr>
<tr>
<td>17 Wonderful West Virginia (Publication)</td>
<td>150,000</td>
</tr>
<tr>
<td></td>
<td>Appropriations</td>
</tr>
<tr>
<td>---</td>
<td>----------------</td>
</tr>
<tr>
<td>18</td>
<td>Pipestem State Park</td>
</tr>
<tr>
<td>19</td>
<td>Family Recreation on Public Fishing and Hunting Areas</td>
</tr>
<tr>
<td>20</td>
<td>Subsistence for Conservation Officers</td>
</tr>
<tr>
<td>21</td>
<td>Repairs and Replacement of Equipment and Furnishings at State Parks and Forests</td>
</tr>
<tr>
<td>22</td>
<td>Implementation of Federal Sewage Grant Program</td>
</tr>
<tr>
<td>23</td>
<td>Canaan Valley State Park</td>
</tr>
<tr>
<td>24</td>
<td>New River Scenic Railroad State Park</td>
</tr>
<tr>
<td>25</td>
<td>Beech Fork, Grave Creek Mound and Sandstone Falls State Park</td>
</tr>
<tr>
<td>26</td>
<td>Hawks Nest State Park</td>
</tr>
<tr>
<td>27</td>
<td>Cass Scenic Railroad</td>
</tr>
<tr>
<td>28</td>
<td>Abandoned Coal Refuse Disposal Pile Reclamation</td>
</tr>
<tr>
<td>29</td>
<td>West Virginia Heritage Trust Program</td>
</tr>
<tr>
<td>30</td>
<td>Total</td>
</tr>
</tbody>
</table>


Any or all funds appropriated for "Clarke-McNary Fire Prevention" may be transferred to a Special Revenue fund to match and aid Federal Funds.

Out of the above appropriation for Subsistence for Conservation Officers, subsistence shall be paid at the rate of two hundred twenty-eight dollars ($228.00) per month to the chief conservation officer and each full-time uniformed conservation officer, under his direct supervision, whose primary duties and responsibilities are law enforcement.

From the above appropriation "Subsistence for Conservation Officers," there may be transferred to a Department of...
Natural Resources Special Revenue Account as reimbursement for payment of subsistence to the chief conservation officer and each full-time uniformed conservation officer, under his direct supervision, whose primary duties and responsibilities are law enforcement, an amount not to exceed two hundred twenty-eight dollars ($228.00) per month.

109—Public Land Corporation

Acct. No. 566

Any unexpended balance remaining in the appropriations for “Public Land Corporation,” “Blennerhassett Island,” and “National Track and Field Hall of Fame” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

110—Water Development Authority

Acct. No. 567

Personal Services ........................................ $ 70,000
Operating Expenses ........................................ 70,000
Capital Outlay ............................................. 3,000,000

Total ......................................................... $ 3,140,000

Any unexpended balance remaining in the appropriation for “Capital Outlay” at the close of the fiscal year 1975-76, is hereby reappropriated for expenditure during the fiscal year 1976-77.

111—West Virginia Railroad Maintenance Authority

Acct. No. 569

Total ......................................................... $ 100,000

PROTECTION

112—Department of Public Safety

Acct. No. 570

Personal Services ........................................ $ 7,197,039
## Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Current Expenses</td>
<td>2,781,723</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>163,500</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>1,160,000</td>
</tr>
<tr>
<td>5 Emergency Fund</td>
<td>5,000</td>
</tr>
<tr>
<td>6 Arrest and Witness Fee</td>
<td>225,000</td>
</tr>
<tr>
<td>7 Total</td>
<td>11,532,262</td>
</tr>
</tbody>
</table>

### 113—Adjutant General—State Militia

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>160,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>324,400</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>36,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>7,700</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>95,360</td>
</tr>
<tr>
<td>6 Property Maintenance</td>
<td>365,200</td>
</tr>
<tr>
<td>8 State Armory Board</td>
<td>1,325,000</td>
</tr>
<tr>
<td>9 Total</td>
<td>2,313,660</td>
</tr>
</tbody>
</table>

### Miscellaneous Boards and Commissions

#### 114—West Virginia State Board of Land Surveyors

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To pay the per diem of members and other general expenses</td>
<td>8,000</td>
</tr>
<tr>
<td>2 From Collections</td>
<td>8,000</td>
</tr>
</tbody>
</table>

#### 115—State Board of Professional Foresters

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To pay the per diem of members and other general expenses</td>
<td>800</td>
</tr>
<tr>
<td>2 From Collections</td>
<td>800</td>
</tr>
</tbody>
</table>

#### 116—West Virginia Board of Examiners for Practical Nurses

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To pay the per diem of members and other general expenses</td>
<td>60,000</td>
</tr>
<tr>
<td>2 From Collections</td>
<td>60,000</td>
</tr>
</tbody>
</table>
117—State Board of Chiropractic Examiners

Acct. No. 588

1 To pay the per diem of members and other
2 general expenses ........................................ $1,800
3 From Collections ........................................ 1,800

118—State Board of Pharmacy

Acct. No. 590

1 To pay the per diem of members and other
2 general expenses ........................................ $62,000
3 From Collections ........................................ 62,000

119—State Board of Osteopathy

Acct. No. 591

1 To pay the per diem of members and other
2 general expenses ........................................ $6,000
3 From Collections ........................................ 6,000

120—State Board of Embalmers and Funeral Directors

Acct. No. 593

1 To pay the per diem of members and other
2 general expenses ........................................ $30,000
3 From Collections ........................................ 30,000

121—State Board of Registration for Professional Engineers

Acct. No. 594

1 To pay the per diem of members and other
2 general expenses ........................................ $58,000
3 From Collections ........................................ 58,000

122—State Board of Architects

Acct. No. 595

1 To pay the per diem of members and other
2 general expenses ........................................ $14,000
3 From Collections ........................................ 14,000
123—State Veterinary Board
Acct. No. 596
1 To pay the per diem of members and other $ 2,000
2 general expenses $ 2,000
3 From Collections

124—Human Rights Commission
Acct. No. 598
1 Personal Services $ 222,000
2 Current Expenses $ 127,000
3 Equipment $ 10,000
4 Total $ 359,000

125—West Virginia State Board of Sanitarians
Acct. No. 599
1 To pay the per diem of members and other $ 800
2 general expenses $ 800
3 From Collections

126—West Virginia Public Employees Retirement Board
Acct. No. 614
1 Employers Accumulation Fund $ 8,000,000
2 Expense Fund $ 100,000
3 Total $ 8,100,000
4 The above appropriation is intended to cover the state's share of West Virginia Public Employee's Retirement coverage for those departments operating from General Revenue Fund and State Road Fund appropriations. 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 balance in the various Special Revenue Funds in excess of specific appropriations.

127—West Virginia Public Employees Insurance Board

Acct. No. 615

1 Expense Fund $113,000
2 Public Employees Health Insurance—
3 State Contribution 14,000,000

Total $14,113,000

The above appropriation is intended to cover the state's share of Public Employees Health Insurance 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 Public Employees Health Insurance cost 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.

128—Insurance Commissioner

Acct. No. 616

1 Personal Services $308,477
2 Current Expenses 83,000
3 Repairs and Alterations 3,500
4 Equipment 3,500

Total $398,477

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 5A, Article 2 of the Code of West Virginia the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred seventy-seven.
129—State Department of Highways
Acct. No. 670
TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Expressway, Trunkline and Feeder</td>
<td>$39,027,847</td>
</tr>
<tr>
<td>2</td>
<td>State Local Services</td>
<td>$34,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Inventory Revolving</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment Revolving</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>5</td>
<td>General Operations</td>
<td>$18,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Debt Service</td>
<td>$69,880,000</td>
</tr>
<tr>
<td>7</td>
<td>Construction from Tax Funds</td>
<td>$0</td>
</tr>
<tr>
<td>8</td>
<td>Other Operations</td>
<td>$0</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$163,907,847</td>
</tr>
</tbody>
</table>

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

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.

There is hereby appropriated, within the above 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 17 and 18, Code of West Virginia, one thousand nine hundred thirty-one, as amended.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,240,750</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,428,698</td>
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</tbody>
</table>
Ch. 7]  

**Appropriations**

3 Equipment 35,000  
4 Purchase of License Plates 625,000  
5 Social Security Matching 73,370  
6 Public Employees Retirement Matching 118,000  
7 Public Employees Health Insurance 56,000  
8 Total $3,576,818  

131—State Tax Department—Gasoline Tax Division

**Acct. No. 672**

TO BE PAID FROM STATE ROAD FUND

1 Personal Services $360,000  
2 Current Expenses 133,665  
3 Equipment 4,800  
4 Social Security Matching 25,000  
5 Public Employees Retirement Matching 37,000  
6 Public Employees Health Insurance 14,300  
7 Total $574,765  

132—Department of Education—Veterans Education

**Acct. No. 702**

TO BE PAID FROM GENERAL SCHOOL FUND

1 Personal Services $135,879  
2 Other Expenses 47,400  
3 Total $183,279  

Expenditures from this appropriation shall not exceed the amount to be reimbursed by the Federal Government.  
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.
133—Treasurer's Office
Acct. No. 800
TO BE PAID FROM SPECIAL REVENUE FUND

1 Abandoned and Unclaimed Property—Trust and Expenses Fund $34,300

134—Real Estate Commission
Acct. No. 801
TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services $81,797
2 Current Expenses 26,000
3 Equipment 1,050
4 Social Security Matching 5,500
5 Public Employees Retirement Matching 7,000
6 Public Employees Health Insurance 2,600

7 Total 123,947

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

135—West Virginia Racing Commission
Acct. No. 808
TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses $5,000

2 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.

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

136—Auditor's Office—Land Department Operating Fund
Acct. No. 812
TO BE PAID FROM SPECIAL REVENUE FUND

1 Total $12,000
The total amount of this appropriation shall be paid from Special Revenue Fund out of fees and collections as provided by law.

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

Acct. No. 814

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>$280,000</td>
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<tr>
<td>Current Expenses</td>
<td>$15,130</td>
</tr>
<tr>
<td>Equipment</td>
<td>$6,500</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$15,500</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$27,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$13,170</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$357,300</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund as provided by Chapter 5A, 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.

138—Department of Finance and Administration—Information System Services Division Fund

Acct. No. 8151

<table>
<thead>
<tr>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Current Expenses</td>
<td>$2,855,700</td>
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<tr>
<td>Equipment</td>
<td>$100,600</td>
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<tr>
<td>Social Security Matching</td>
<td>$168,900</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$217,000</td>
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<tr>
<td>Public Employees Health Insurance</td>
<td>$102,000</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$5,764,200</strong></td>
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</table>
The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Finance and Administration as provided by law.

139—Department of Agriculture

Acct. No. 818

<table>
<thead>
<tr>
<th>Item</th>
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<tr>
<td>Personal Services</td>
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<td>Current Expenses</td>
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<td>Equipment</td>
<td>$12,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$15,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$27,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$11,000</td>
</tr>
</tbody>
</table>

Total $391,920

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.

140—State Committee of Barbers and Beauticians

Acct. No. 822

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Current Expenses</td>
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<tr>
<td>Equipment</td>
<td>$1,200</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$5,400</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$8,446</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$5,240</td>
</tr>
</tbody>
</table>

Total $166,181

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.
141—Public Service Commission

Acct. No. 828

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Salaries of Commissioners</td>
<td>$60,000</td>
</tr>
<tr>
<td>2  Other Personal Services</td>
<td>$1,214,205</td>
</tr>
<tr>
<td>3  Current Expenses</td>
<td>$476,800</td>
</tr>
<tr>
<td>4  Equipment</td>
<td>$32,905</td>
</tr>
<tr>
<td>5  Social Security Matching</td>
<td>$62,575</td>
</tr>
<tr>
<td>6  Public Employees Retirement Matching</td>
<td>$115,000</td>
</tr>
<tr>
<td>7  Public Employees Health Insurance</td>
<td>$55,625</td>
</tr>
</tbody>
</table>

8  Total                                     $2,017,110

9  The total amount of this appropriation shall be paid from Special Revenue Fund out of collections for special license fees from public service corporations as provided by law.
10 Out of the above appropriation $5,000 may be transferred to the State Water Resources Commission of the Department of Natural Resources for use in cooperation with the U. S. Geological Survey in a program of stream gauging.

142—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

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>$97,100</td>
</tr>
<tr>
<td>2  Current Expenses</td>
<td>$46,730</td>
</tr>
<tr>
<td>3  Equipment</td>
<td>$3,500</td>
</tr>
<tr>
<td>4  Social Security Matching</td>
<td>$4,600</td>
</tr>
<tr>
<td>5  Public Employees Retirement Matching</td>
<td>$9,260</td>
</tr>
<tr>
<td>6  Public Employees Health Insurance</td>
<td>$3,600</td>
</tr>
</tbody>
</table>

7  Total                                     $164,790

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

Acct. No. 829

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>$565,348</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$225,443</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$5,060</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$32,560</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$52,920</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$27,180</td>
</tr>
<tr>
<td>7 Total</td>
<td>$908,511</td>
</tr>
</tbody>
</table>

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.

144—Department of Natural Resources

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,240,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$740,870</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$146,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$234,215</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$145,000</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>$225,000</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>$130,000</td>
</tr>
<tr>
<td>8 Land Purchase and Buildings</td>
<td>$350,000</td>
</tr>
<tr>
<td>9 Personal Services—Additional Salary for Conservation Officers</td>
<td>0</td>
</tr>
<tr>
<td>10 Total</td>
<td>$4,211,085</td>
</tr>
</tbody>
</table>

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.
145—Department of Public Safety—Inspection Fees

Acct. No. 835

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>$242,270</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$124,362</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$8,700</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$22,500</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$2,000</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$12,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$411,832</strong></td>
</tr>
</tbody>
</table>

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

146—West Virginia Civil Service System

Acct. No. 840

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>$480,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$242,560</td>
</tr>
<tr>
<td>3 Social Security Matching</td>
<td>$36,160</td>
</tr>
<tr>
<td>4 Public Employees Retirement Matching</td>
<td>$45,000</td>
</tr>
<tr>
<td>5 Public Employees Health Insurance</td>
<td>$18,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$821,720</strong></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.

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

Acct. No. 883

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$543,143</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the appropriations for "Miscellaneous Small Projects, Creative Arts, Utilities, Roads and Parking, and Medical Center—Repairs and Alterations" at the close of the fiscal year 1975-76 are hereby reappropriated for expenditure during fiscal year 1976-77.

148—Board of Regents—State System Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service and Debt Service Reserve</td>
<td>$2,032,698</td>
</tr>
<tr>
<td>Miscellaneous Projects</td>
<td>950,000</td>
</tr>
<tr>
<td>Glenville State College, Campus Development</td>
<td>125,000</td>
</tr>
<tr>
<td>(Complete track and field facilities)</td>
<td></td>
</tr>
<tr>
<td>Parkersburg Community College, Campus Development</td>
<td>100,000</td>
</tr>
<tr>
<td>(Planning for additional educational facilities)</td>
<td></td>
</tr>
<tr>
<td>West Virginia Institute of Technology, Campus Development</td>
<td>130,000</td>
</tr>
<tr>
<td>(Construct mining engineering technology</td>
<td></td>
</tr>
<tr>
<td>laboratory building and property acquisition)</td>
<td></td>
</tr>
<tr>
<td>Potomac State College of WVU, Campus Development</td>
<td>150,000</td>
</tr>
<tr>
<td>(Agriculture and machinery technology</td>
<td></td>
</tr>
<tr>
<td>building addition and renovation)</td>
<td></td>
</tr>
<tr>
<td>Potomac State College—Air Conditioner—Library Building</td>
<td>50,000</td>
</tr>
<tr>
<td>Fairmont State College, Campus Development</td>
<td>454,500</td>
</tr>
<tr>
<td>(Construct new maintenance building—warehouse; plan Colebank Gymnasium renovation)</td>
<td></td>
</tr>
<tr>
<td>Bluefield State College, Campus Development</td>
<td>150,000</td>
</tr>
<tr>
<td>(New parking area, lights, etc.)</td>
<td></td>
</tr>
<tr>
<td>Marshall University, Campus Development</td>
<td>4,000,000</td>
</tr>
</tbody>
</table>
(Construct academic building B; Gullickson Hall air-conditioning and renovation)

West Virginia University, Campus Development 2,586,000
(Central receiving and warehousing facility, pedestrian overpass on Maiden Lane, walks to serve traffic using PRT station, light tennis courts at Coliseum, and property acquisition)

Southern West Virginia Community College,
Campus Development 3,000,000
(Construct new academic building and site improvements—Logan)

West Virginia State College, Campus Development 773,000
(Planning, construction and renovation of educational facilities)

The above projects are listed in a stated order of priority. Projects are to be paid on a cash basis and made available from date of passage. It is intended that only complete and usable projects be constructed and then only in the listed order of priority: Provided, however, That whenever the amount in the special capital improvement fund shall be sufficient to cover all capital expenditures authorized above, then the listed projects shall be considered of equal priority and all of them, or any one or more, may be undertaken as soon as plans can be prepared and contracts let therefor.

The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1971 Legislature.

Any unexpended balances remaining in prior years and in the 1975-76 appropriation are hereby reappropriated for expenditure during fiscal year 1976-77.

149—Board of Regents—Special Capital Improvement Fund
Acct. No. 884

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service $ 1,682,015

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

Any unexpended balances remaining in prior years and 1975-76 appropriations are hereby reappropriated for expenditure during fiscal year 1976-77.

150—Workmen's Compensation Commission

Acct. No. 900

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,287,990</td>
</tr>
<tr>
<td>Equipment</td>
<td>$50,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$124,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$205,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$92,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,959,290</strong></td>
</tr>
</tbody>
</table>

There is hereby authorized to be paid out of the above appropriation for Current Expenses the amount necessary for premiums on bonds given by the State Treasurer as Bond Custodian for the protection of the Workmen's Compensation Fund. This sum shall be transferred to the Board of Insurance.

151—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$25,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$6,532,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,786,200</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$48,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$63,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$361,017</td>
</tr>
<tr>
<td>Agency Operating Expense</td>
<td>$11,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$590,000</td>
</tr>
</tbody>
</table>
APPROPRIATIONS

9 Public Employees Health Insurance .................. 372,000

10 Total .................................................................. $10,788,217

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.

152—West Virginia University—Medical School
Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services .............................................. $23,601,667
2 Current Expenses ............................................. 11,642,834
3 Repairs and Alterations ................................... 1,051,386
4 Equipment .......................................................... 1,686,857
5 Intern and Residency Support Program for Community Hospitals .................. 675,000
6 Family Practice Residency Support Program .... 300,000

8 Total ................................................................. $38,957,744

1 Sec. 3. Supplemental and Deficiency Appropriations.—From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts as itemized, for expenditure during the fiscal year one thousand nine hundred seventy-six to supplement the 1975-76 appropriations, and to be available for expenditure upon date of passage.

153—Commissioner of Public Institutions
Acct. No. 190

1 Current Expenses ............................................... $40,000
2 Prison Industries ............................................... 100,000
3 Total ................................................................. $140,000
88

APPROPRIATIONS

[Ch. 7

154—Secretary of State

Acct. No. 250

1 Current Expenses ........................................ $ 12,000

155—Department of Education—School Lunch Program

Acct. No. 287

1 Aid to Counties—includes hot lunches and can-
2 ning for hot lunches ....................................... $ 188,850

156—West Virginia Schools for the Deaf and the Blind

Acct. No. 333

1 Personal Services ......................................... $ 51,100

157—Forestry Camp for Boys No. 1 (Davis)

Acct. No. 371

1 Current Expenses ......................................... $ 26,000
2 Repairs and Alterations ................................. 5,000
3 Total ......................................................... $ 31,000

158—West Virginia State Prison for Women

Acct. No. 374

1 Current Expenses ......................................... $ 35,000
2 Repairs and Alterations ................................. 5,000
3 Total ......................................................... $ 40,000

159—West Virginia Penitentiary

Acct. No. 375

1 Current Expenses ......................................... $ 84,000
2 Repairs and Alterations ................................. 10,000
3 Equipment .................................................... 15,000
4 To Install Glass Block Windows ......................... 30,000
5 Boiler Installation .......................................... 250,000
6 Total ......................................................... $ 389,000

160—Huttonsville Correctional Center

Acct. No. 376

1 Current Expenses ......................................... $ 160,000
### Appropriations

**161—West Virginia Children's Home**  
Acct. No. 380  
1 Current Expenses $20,000

**162—Andrew S. Rowan Memorial Home**  
Acct. No. 384  
1 Current Expenses $40,000

**163—Department of Veterans Affairs**  
Acct. No. 404  
1 Current Expenses $22,100

**164—Colin Anderson Center**  
Acct. No. 419  
1 Current Expenses $70,000

**164-a—Fairmont Emergency Hospital**  
Acct. No. 425  
1 Current Expenses $5,000

**164-b—Denmar State Hospital**  
Acct. No. 432  
1 Current Expenses $25,000

**165—Department of Mines**  
Acct. No. 460  
1 Current Expenses $45,000

**166—Department of Natural Resources**  
Acct. No. 565  
1 Current Expenses $150,000  
2 Debt Service $290,000  
3 Clarke-McNary, Fire Prevention and Control $150,000  
4 Berwind Lake Public Hunting and Fishing Area $300,000  
5 Total $890,000

The above appropriation for “Berwind Lake Public Hunting and Fishing Area” is for campsites (to include water, sewage and electric); boat dock and launching ramp (to include purchase of a small number of boats for rental purposes); parking area to accommodate boat dock and launching area (contingent upon availability of suitable land); combination office storage building; and land purchase to expand present recreation area.
167—Adjutant General
Acct. No. 580

1 Current Expenses $10,000
2 Equipment $4,000
3 Total $14,000

168—Department of Motor Vehicles
Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

1 Current Expenses $130,000
2 License Plates $200,000
3 Total $330,000

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

TO BE PAID FROM WORKMEN'S COMPENSATION FUND

1 Current Expenses $200,000
2 Public Employees Health Insurance $24,000
3 Total $224,000

170—Alcohol Beverage Control Commissioner
Acct. No. 927

1 Public Employees Health Insurance $67,000

Sec. 4. Appropriations from Surplus Revenue.—The following items are appropriated from the General Revenue Fund, subject to the following terms and conditions:

(a) The following items are hereby appropriated and are to be available for expenditure out of the surplus in the Treasury, subject to the approval of the Governor.

(b) The Governor shall review the revenues of the State from the date that appropriations hereunder are expected to be made available for expenditure, and determine whether, in his opinion, revenues then in prospect or on hand will be sufficient to meet all appropriations under the 1975 Budget Act, and this section, and make a finding with respect thereof. In the event that such finding shall show sufficient revenues
on hand or in prospect to meet all other appropriations and
reappropriations made by the 1975 Budget Act and subject
to the foregoing conditions, any or all of the following items
may be released for expenditure by the Governor from the
date of passage of this bill and such appropriations shall remain
in full force and effect until June 30, 1977.

In the event that surplus revenues as of June 30, 1976
are not sufficient to meet all appropriations made by this
section, then the appropriations shall be available, in priority
order only to the extent of the total actual surplus accrued
as of June 30, 1976.

Item I. West Virginia Water Development Authority
  1 Waste water Collection and Treatment System,
  2 Grants & Loans ............................................. $ 1,800,000

Item II. Department of Commerce
  1 A. John Brown Theater Production .............. $ 55,000
  2 B. Honey in the Rock ......................... 55,000
  3 C. Theatre Arts of West Virginia .......... 120,000

  4 Total ..................................................... $ 230,000

Item III. Department of Natural Resources
  1 A. Coopers Rock State Park ....................... $ 100,000
  2 B. Hawks Nest State Park .......................... 121,000
  3 C. Cedar Creek State Park ...................... 100,000
  4 D. Matoaka State Park ............................. 15,000

  5 Total ..................................................... $ 336,000

Item IV. Department of Mental Health
  1 A. Logan-Mingo Community Mental
  2 Health Center ........................................... $ 480,000

  1 Sec. 5. Awards for Claims Against the State.—From the
  2 funds designated there are hereby appropriated for the re-
  3 mainder of the fiscal year 1975-76 and to remain in effect
  4 until June 30, 1977, for payment of claims against the state,
  5 the following amounts as itemized:

  6 (a) Claims against the nonintoxicating beer
### Appropriations

**7** commission: (To be paid from General Revenue Fund)

**9** (1) The F. & M. Schaefer Brewing Company $24,474.67

**10** (2) The Queen City Brewing Co. $8,974.82

**12** (b) Claims against the department of finance and administration: (To be paid from General Revenue Fund)

**15** (1) Ronald L. Cook $4,375.00

**16** (c) Claims against the department of natural resources: (To be paid from General Revenue Fund)

**19** (1) Larry James $1,500.00

**20** (d) Claims against the department of mental health: (To be paid from General Revenue Fund)

**23** (1) James R. Clowser $1,020.00

**24** (2) Tabitha V. Partlow $57.68

**25** (3) Inland Mutual Insurance Company, subrogee of Tabitha V. Partlow $342.83

**27** (4) J. Wilbur Swisher and Alice V. Swisher d/b/a Swisher's Feed and Supply Company $2,580.76

**30** (5) Jordan, McGettigan & Yule $5,942.20

**31** (6) Pfizer, Inc. $473.23

**32** (7) American Can Company $1,125.85

**33** (8) Parke, Davis & Company $545.96

**34** (e) Claims against the department of public institutions: (To be paid from General Revenue Fund)

**37** (1) J. J. Englert Company $5,834.40

**38** (2) Shen K. Wang, M.D. $15,300.00

**39** (3) Physicians Fee Office $111.92

**40** (4) Xerox Corporation $1,166.18

**41** (5) Ashland Chemical Company $249.65

**42** (6) Valley Welding Supply Company $25.70

**43** (f) Claims against the state auditor: (To be paid from General Revenue Fund)
## Appropriations

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>45</td>
<td>(1) Archie Day, Sheriff</td>
<td>$18.00</td>
</tr>
<tr>
<td>46</td>
<td>(2) D. A. Wright, Sheriff</td>
<td>$762.00</td>
</tr>
<tr>
<td>47</td>
<td>(3) Russell E. Duvernoy &amp; Henry Todd Duvernoy</td>
<td>$775.00</td>
</tr>
<tr>
<td>49</td>
<td>(4) Frank A. Rocchio, Sheriff</td>
<td>$16.00</td>
</tr>
<tr>
<td>50</td>
<td>(g) Claims against the department of commerce: (To be paid from General</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revenue Fund)</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>(1) Ski South Magazine</td>
<td>$679.50</td>
</tr>
<tr>
<td>54</td>
<td>(h) Claims against the department of public safety: (To be paid from General</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Revenue Fund)</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>(1) Associated Dry Goods d/b/a The Diamond Department Store</td>
<td>$441.96</td>
</tr>
<tr>
<td>59</td>
<td>(i) Claims against the board of vocational rehabilitation, division of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>vocational rehabilitation: (To be paid from General Revenue Fund)</td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>(1) Richard D. Kitching, M.D.</td>
<td>$405.00</td>
</tr>
<tr>
<td>64</td>
<td>(2) Charleston Area Medical Center, Inc.</td>
<td>$2,972.37</td>
</tr>
<tr>
<td>65</td>
<td>(j) Claims against the department of highways: (To be paid from State Road</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fund)</td>
<td></td>
</tr>
<tr>
<td>67</td>
<td>(1) Mrs. Samuel Kelly</td>
<td>$58.00</td>
</tr>
<tr>
<td>68</td>
<td>(2) The Chesapeake and Potomac Telephone Company of West Virginia</td>
<td>$3,856.86</td>
</tr>
<tr>
<td>69</td>
<td>(3) Daniel Crockett</td>
<td>$257.96</td>
</tr>
<tr>
<td>71</td>
<td>(4) Larry W. Lohan and Pamela Lohan</td>
<td>$38.37</td>
</tr>
<tr>
<td>72</td>
<td>(5) Robert Douglas Baker</td>
<td>$35.00</td>
</tr>
<tr>
<td>73</td>
<td>(6) Mark A. Melrose, Executor of the Estate of J. J. Melrose, deceased, and</td>
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<tr>
<td></td>
<td>Frank R. Melrose</td>
<td>$3,000.00</td>
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<tr>
<td>76</td>
<td>(7) Bobby Shafer</td>
<td>$305.85</td>
</tr>
<tr>
<td>77</td>
<td>(8) Ryan, Incorporated of Wisconsin</td>
<td>$40,000.00</td>
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<tr>
<td>78</td>
<td>(9) Kenneth E. Plants</td>
<td>$14,500.00</td>
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<td>79</td>
<td>(10) Gerald E. Tinsley</td>
<td>$163.10</td>
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<td>80</td>
<td>(11) Robert L. Jefferson</td>
<td>$100.00</td>
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<tr>
<td>81</td>
<td>(12) Wanda M. Gannon</td>
<td>$3,450.00</td>
</tr>
<tr>
<td>82</td>
<td>(13) Thomas Edison Hale</td>
<td>$8,250.00</td>
</tr>
<tr>
<td></td>
<td>Name</td>
<td>Subrogee Of</td>
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<tr>
<td>83</td>
<td>(14) Larry Lee Wingate</td>
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<td>84</td>
<td>(15) Everett L. Dunbrack</td>
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<td>85</td>
<td>(16) Ronald E. Ferguson</td>
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<td>86</td>
<td>(17) Travelers Insurance Co., subrogee of William R. Beckner</td>
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<td>88</td>
<td>(18) Prudential Property &amp; Casualty Insurance Co., subrogee of</td>
<td></td>
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<tr>
<td>89</td>
<td>Beverly J. Maxwell</td>
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<td>91</td>
<td>(19) Randy Cooper</td>
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<td>92</td>
<td>(20) State Farm Mutual Automobile Insurance Co., subrogee of</td>
<td></td>
</tr>
<tr>
<td>93</td>
<td>Thelma Criner</td>
<td></td>
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<tr>
<td>95</td>
<td>(21) Maryland Casualty Co., subrogee of Michael E. Heitz</td>
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<tr>
<td>97</td>
<td>(22) Michael E. Heitz</td>
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<td>98</td>
<td>(23) Westfield Insurance Co., subrogee of David Sago</td>
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<td>101</td>
<td>(24) Buckeye Union Insurance Co., subrogee of Raymond L. Maddy</td>
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<td>102</td>
<td>(25) Kenneth S. Kayser</td>
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<tr>
<td>103</td>
<td>(26) Clyde Speer and Mildred Speer</td>
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<td>104</td>
<td>(27) Patricia G. McFann</td>
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<td>105</td>
<td>(28) Hershel Ray Wiley</td>
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<td>106</td>
<td>(29) Paul G. Nohe &amp; June D. Nohe</td>
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<td>107</td>
<td>(30) Roy E. Brassfield, Jr.</td>
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<td>108</td>
<td>(31) Helen Cremeans</td>
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<td>109</td>
<td>(32) James E. White</td>
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<tr>
<td>110</td>
<td>(33) Carmie Riddle</td>
<td></td>
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<td>111</td>
<td>(34) Motor Insurance Corp., subrogee of Quincy E. Holstein</td>
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<tr>
<td>113</td>
<td>(35) Fred H. Gregory</td>
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<td>114</td>
<td>(36) Coal River Public Service District</td>
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<td>115</td>
<td>(37) L. M. Casdorph</td>
<td></td>
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<tr>
<td>116</td>
<td>(38) Mr. &amp; Mrs. T. E. Reed</td>
<td></td>
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<td>117</td>
<td>(39) David R. Dietz</td>
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<tr>
<td>118</td>
<td>(40) Tygart Valley Telephone Company</td>
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<tr>
<td>119</td>
<td>(41) Dana H. Carney</td>
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<tr>
<td>120</td>
<td>(42) H. Ronald Harris</td>
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<tr>
<td>121</td>
<td>(43) T. A. Galyean, Jr., Ann T. Galyean, his wife, John G. Anderson,</td>
<td></td>
</tr>
<tr>
<td>122</td>
<td>(44) Trustee, and</td>
<td></td>
</tr>
</tbody>
</table>
Ch. 7] APPROPRIATIONS

123 Huntington Federal Savings and
124 Loan Association $ 7,500.00
125 (44) Clarke W. Greene $ 183.95
126 (45) James R. Lantz $ 43.30
127 (46) Velva K. Corzine $ 221.98
128 (47) Mrs. W. G. Via $ 55.10
129 (48) Monongahela Power Company $ 189.79
130 (49) Samuel Miller $ 123.60
131 (50) Harry C. Henderson $ 6,600.00
132 (51) Clyde M. Ellison $ 25.00
133 (52) James M. Duffy $ 25.00
134 (53) John L. Cooper $ 25.00
135 (54) Norfolk & Western Railway Company $ 1,258.29
136 (55) Opal Baker Thomas & Elsey Thomas $ 1,920.00

(k) Claims against the rehabilitation environmental action program: (To be paid from special account in State Road Fund)
140 (1) Lena Solomon $ 500.00
141 (2) Edward H. Stanley $ 200.00
142 (3) Geneva Maria Burch $ 150.00

(l) Claims against the alcohol beverage control commissioner: (To be paid from Special Revenue Fund)
146 (1) Maryland Casualty Co. $ 2,500.00

(m) Claims against the workmen's compensation fund: To be paid from Workmen's Compensation Fund)
150 (1) Leonard Johnson Funeral Home, Inc. $ 1,200.00

(n) Claims against the secretary of state: (To be paid from General Revenue Fund)
153 (1) International Business Machines Corporation $ 70.23

(o) Claims against the office of emergency services: (To be paid from General Revenue Fund)
158 (1) Jay H. Cadle, d/b/a Cadle Sanitary Service $ 10,492.50

(p) Claims against the department of motor vehicles: (To be paid from State Road Fund)
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 payments 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 of said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

Sec. 6. Reappropriations.—Any unexpended balances of Items I, II, V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV in the appropriations made by and under the authority of Section 4 of the 1972 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1976-77.

Any unexpended balances of Items I, II, III, IV, V, VI, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI and XVII in the appropriations made by and under the authority of Section 4 of the 1973 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1976-77.

Sec. 7. Appropriations from Revenue Sharing Trust Fund. The following items are hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1976-77.

Revenue Sharing Trust Fund—
State Department of Highways

Acct. No. 9705

Bridges and Access Roads $ 7,755,377
172—Revenue Sharing Trust Fund—
Department of Mental Health

Acct. No. 9710

1 Weirton Area Mental Health Area $1,600,000
2 Fairmont-Morgantown Area 1,600,000
3 Keyser/Romney 1,600,000
4 Moundsville MR Center 800,000
5 Total $5,600,000

173—Revenue Sharing Trust Fund—
Teachers Retirement Board

Acct. No. 298

1 Teachers Retirement Fund $3,400,000
2 Employers Accumulation Fund 4,000,000
3 Total $7,400,000

174—Revenue Sharing Trust Fund—
West Virginia Board of Regents (Control)

Acct. No. 279

1 Educational Facility Development
2 Medical Center—Charleston Division $1,185,000

175—Revenue Sharing Trust Fund—
State Commission on Aging

Acct. No. 406

1 Senior Citizens Centers $250,000

176—Revenue Sharing Trust Fund—
Department of Commerce

Acct. No. 465

1 Methodist Historical Society—
2 Old Rehobeth Church $100,000

177—Revenue Sharing Trust Fund—
Department of Agriculture

Acct. No. 510

1 Kanawha Farmers Market $200,000
2 Beckley Farmers Market 15,000
APPROPRIATIONS

178—Revenue Sharing Trust Fund—
Department of Agriculture—
Soil Conservation Committee

Acct. No. 512

1 Coal River Rehabilitation Project $ 50,000

179—Revenue Sharing Trust Fund—
Department of Natural Resources

Acct. No. 972

1 Grave Creek Mound State Park $ 1,300,000
2 Beech Fork State Park $ 1,600,000
3 Sandstone Falls State Park $ 25,000
4 Tomlinson Run State Park $ 1,000,000
5 Minden Railroad $ 162,000
6 Twin Falls State Park (9-hole golf course) $ 750,000
7 Cathedral State Park $ 15,000
8 Cacapon State Park—Golf Course $ 274,500

180—Revenue Sharing Trust Fund—
State Auditor’s Office

Acct. No. 9775

1 Braxton County Memorial Hospital $ 400,000

Sec. 8. Reappropriations.—“Revenue Sharing Trust Fund”.

—Any unexpended balances to the appropriations made by
and under Section 8, of the 1973 Budget Act and Supplementary Acts to Chapter 10, Acts of the Legislature, Regular
Session 1973, under Section 5 of the 1974 Budget Act, and
Supplementary Acts to Chapter 11, Acts of the Legislature,
Regular Session 1975 are hereby reappropriated for expenditure
during the fiscal year 1976-77.

Sec. 9. Special Revenue Appropriations.—There is here-
by appropriated for expenditure during the fiscal year one
thousand nine hundred seventy-seven 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, un-
less 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 pur-
poses the fund is to be expended.

Sec. 10. 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. 11. Appropriation for Refunding Erroneous Payments.
—Money that has been erroneously paid in to 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. 12. Sinking Fund Deficiencies.—There is hereby
appropriated to the governor a sufficient amount to meet
any deficiencies that may arise in the mortgage finance bond
insurance fund of the West Virginia Housing Development
Fund which is under the supervision and control of the state
sinking fund commission as provided by Chapter 31, Article
18, Section 20b of the West Virginia Code, 1931, as amended,
or 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 obliga-
tion 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 these
purposes.

The state sinking fund commission shall reimburse the
State of West Virginia through the governor from the first
remittance collected from the West Virginia Housing Develop-
ment Fund or from any state agency or local taxing district
for which the governor advanced funds, with interest at the
rate carried by the bonds for the security or payment of which
the advance was made.

Sec. 13. 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.

There is hereby appropriated from the cigarette tax revenues
for administration and enforcement of the law relating to
said tax, a sum not to exceed one 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 collec-
tions.

Sec. 14. Appropriations to Pay Costs of Publication of
Delinquent Corporations.—There is hereby appropriated out
of the state fund, general revenue, out of funds not otherwise
appropriated to be paid upon requisitions 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 84 and 86 of the Code of
West Virginia.

Sec. 15. 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 forefeitures.

Sec. 16. 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 1, Section 3.

Sec. 17. 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 9A, 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.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Department of Agriculture, Account No. 510, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 510, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

AGRICULTURE

Department of Agriculture

Acct. No. 510

3 Current Expenses $ 37,200

The purpose of this bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1975-76. Any unexpended balance remaining at the close of the fiscal year 1975-76, as to this item, is hereby re-appropriated for expenditure during the fiscal year 1976-77.

CHAPTER 9

(Com. Sub. for H. B. 1598—By Mr. Seibert)

[Passed March 12, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the total existing appropriations of the Attorney General, Account No. 240; Fairmont Emergency Hospital, Account No. 425; Hopemont State Hospital, Account No. 430; and Pinecrest State Hospital, Account No. 431, all as appropriated by chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total existing appropriations of Account No. 240, Account No. 425, Account No. 430 and Account No. 431, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending units and accounts thereof, above, with no new moneys being appropriated hereby. The amounts as newly itemized in each of the above accounts for expenditure during the fiscal year one thousand nine hundred seventy-six shall be available for expenditure upon the effective date of this bill.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Barboursville State Hospital, Account No. 9734, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1975, which included the statement of Federal Revenue Sharing Funds, further detailed in the Governor's communication of January 24, 1975, including the fiscal year 1975-76; and

WHEREAS, The Legislature has enacted a Budget Bill and supplementary appropriation bills for said fiscal year 1975-76, thereby appropriating a portion of said Federal Revenue Sharing Funds, with a sufficient balance thereof remaining unappropriated and available for appropriation and expenditure for said fiscal year 1975-76; a portion of such balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 9734, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following account:

1 TITLE II—APPROPRIATIONS.

2 Sec. 7. Appropriations from Revenue Sharing Trust Fund.

3 HEALTH AND WELFARE

4 Barboursville State Hospital

5 Acct. No. 9734

6 TO BE PAID FROM REVENUE SHARING TRUST FUND

7 1 Repairs and Alterations .................................. $60,000
The purpose of this bill is to supplement the aforesaid item to provide moneys for repairs for recreational buildings, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1975-76. Any unexpended balance remaining at the close of the fiscal year 1975-76, as to this item, is hereby reappropriated for expenditure during the fiscal year 1976-77.

CHAPTER 11

(H. B. 1686—By Mr. Burke)

[Passed March 17, 1976; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Farm Management Commission, Account No. 500, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor’s estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor’s Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the
fiscal year ending June thirtieth, one thousand nine hundred seventy-six; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 500, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1. TITLE II—APPROPRIATIONS.
2. Section 1. Appropriations from General Revenue.
3. AGRICULTURE
4. Farm Management Commission
5. Acct. No. 500
6. 1 Personal Services $250,000
7. 2 Current Expenses 400,000
8. 3 Repairs and Alterations 62,000
9. 4 Total $712,000

The purpose of this bill is to supplement the aforesaid account and items therein for expenditure in the fiscal year 1975-76. Such amounts shall be available for expenditure upon the effective date of this bill. Any unexpended balance remaining in this account at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.

CHAPTER 12

(S. B. 578—Originating in the Senate Committee on Finance)

[Passed May 15, 1976; 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-six,
for payment of certain claims against the state and designated agencies thereof, supplementing chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the “Budget Bill.”

WHEREAS, By Enrolled Senate Bill No. 450, acts of the Legislature, regular session, one thousand nine hundred seventy-six, the Legislature found and declared certain claims to be moral obligations of the state and directed the auditor to issue warrants for the payments thereof; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, 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 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Section 5. Awards for Claims Against the State.</td>
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<tr>
<td>TO BE PAID FROM GENERAL REVENUE FUND</td>
</tr>
<tr>
<td>4 Claims against the department of public institutions:</td>
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<tr>
<td>5 1 Drs. Butler, Aceto &amp; Assoc., Inc. .......... $ 8.00</td>
</tr>
<tr>
<td>6 2 Xerox Corporation ......................... 798.46</td>
</tr>
<tr>
<td>7 3 Mellon-Stuart Company ...................... 5,919.64</td>
</tr>
<tr>
<td>8 4 West Virginia State Industries ............ 3,857.84</td>
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</tbody>
</table>
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Department of Public Safety, as appropriated by Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 570, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-six, shall be made available for expenditure upon the effective date of this bill.

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-seven, to the State Fire Commission, Account No. 617, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropria-
tion balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, one thousand nine hundred seventy-six, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of said balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new Account No. 617, with the designated line items and sums:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 PROTECTION
4 128a—State Fire Commission
5 Acct. No. 617
6 1 Personal Services ____________________________ $ 245,047
7 2 Current Expenses ______________________________ 72,960
8 3 Repairs and Alterations ____________________________ 2,150
9 4 Equipment ______________________________________ 3,000
10 5 Total ________________________________________ $ 323,157
11 The purpose of this supplementary appropriation bill is to fund the State Fire Commission, created by Enrolled Senate Bill No. 146, acts of the Legislature, regular session, one thousand nine hundred seventy-six.
AN ACT amending, supplementing and reappropriating an existing appropriation as appropriated in Title II, Section 1, Enrolled Committee Substitute for Senate Bill No. 23, an act of the Legislature, regular session and first extraordinary session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The purpose of this bill is to add reappropriating authority to the West Virginia Board of Regents (Control) Account No. 279; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 279, Enrolled Committee Substitute for Senate Bill No. 23, an act of the Legislature, regular session and first extraordinary session, one thousand nine hundred seventy-five, known as the Budget Bill, be amended and supplemented by adding the following language to the designated lines:

1  Any unexpended balance remaining in the appropriation for "West Virginia School of Osteopathic Medicine,"
2  at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77,
3  and may be transferred to the 1976-77 fiscal year.

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 one-a;
to amend and reenact section three, article one, chapter five-a of said code; to amend and reenact sections three, five, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-six, twenty-seven and thirty-four, article two of said chapter five-a; to further amend article two of said chapter five-a by adding thereto a new section, designated section thirty-six; and to amend and reenact section three, article four, chapter twelve of said code, all relating to implementation of the modern budget amendment; relating to submission of the budget bill to the Legislature by the governor; statement of legislative findings and purposes; requiring the proposed appropriations of the budget bill to be itemized and classified as prescribed by said article; prescribing the form and detail for the submission of appropriations for the legislative and judicial branches; creating a system of uniform itemization for the proposed appropriations for spending units of the executive department, and defining the uniform items; permitting the governor to submit subclassifications and subitems under such uniform items; permitting the governor to submit separate line items for specific programs of a spending unit; permitting an "unclassified" item; permitting the governor to submit proposed appropriations for a single spending unit under more than one account number; prescribing the itemization of proposed appropriations for the state department of highways and state aid to schools; relating to the council of finance and administration, quarterly meetings to be called; site of meetings; requests for appropriations; requiring spending officers to transmit copies of such requests to legislative auditor; funds of spending unit withheld until copies forthcoming; forms of requests; tentative budget to be prepared by commissioner of finance and administration and submitted to governor; commissioner to submit copies to Legislature; treasurer's certification to accompany tentative budget; itemization of tentative budget; definitions of uniform items; requiring commissioner to certify revenue estimates and reports on revenue collections to governor and legislative auditor; funds of department withheld until certifications forthcoming; expenditure schedules; requiring spending offici-
cers to transmit copies to legislative auditor; funds of spending unit withheld until copies forthcoming; expenditure schedule to provide information on positions budgeted under personal services; requiring copies of requested amendments and approved amendments in such schedules to be transmitted to legislative auditor; requiring commissioner to transmit copies of reports from spending units to legislative auditor; requiring state agencies to send copies of requests for federal aid to legislative auditor; requiring commissioner to send copies of federally-approved requests to legislative auditor; requiring commissioner to submit consolidated report of federal funds to legislative auditor; eliminating authority of governor to make transfers of appropriations; personnel classification of offices and employments in state government; providing a criminal penalty for failure to transmit copies of requests, tentative budget, schedules, reports, etc., to legislative auditor, and requiring certification by treasurer of the condition of state revenues and funds.

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 one-a; that section three, article one, chapter five-a of said code be amended and reenacted; that sections three, five, ten, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-six, twenty-seven and thirty-four, article two of said chapter five-a be amended and reenacted; that article two of said chapter five-a be further amended by adding thereto a new section, designated section thirty-six, and that section three, article four, chapter twelve 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; Itemization of Proposed Appropriations in Budget Bill Submitted by Governor to Legislature; Board of Public Works; Salary Increase for State Employees; 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; West Virginia Public Employees Insurance Act; West Virginia Commission on Energy, Economy and Environment.

5A. Department of Finance and Administration.


CHAPTER 5.
GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE; BOARD OF PUBLIC WORKS; SALARY INCREASE FOR STATE EMPLOYEES; 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; WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT; WEST VIRGINIA COMMISSION ON ENERGY, ECONOMY AND ENVIRONMENT.

ARTICLE IA. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.

§5-1A-1. Legislative findings and purposes.
§5-1A-2. Submission of budget bill; form prescribed by article.
§5-1A-3. Proposed appropriations for legislative and judicial branches.
§5-1A-4. Uniform itemization; definitions; subclassifications and subitems; separate line items for specific programs or purposes; separate account numbers for single spending units permitted.
§5-1A-5. Itemization of appropriations for state department of highways; state aid to schools.
The Legislature finds and declares that section fifty-one, article six of the constitution, known as the "modern budget amendment", authorizes the Legislature to prescribe by law the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to it by the governor, and that said section further authorizes the Legislature to enact such laws, not inconsistent with said section, as may be necessary and proper to carry out its provisions. The Legislature further finds and declares that said section makes the Legislature solely responsible for enacting all appropriations needed for the operation of state government, and that in carrying out such responsibility, the Legislature requires a continuous and timely flow of accurate information relative to the financial condition of the state, the needs and operations of the various agencies and departments of the state, and the amounts and purposes of all funds, including federal funds, being requested, received or expended by such agencies and departments from sources other than the revenues of the state.

Therefore, it is the purpose of this article to implement the aforementioned provisions of the constitution, to enable the Legislature to carry out its constitutional responsibility by prescribing the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to the Legislature by the governor, and in conjunction with the provisions of this act amending certain sections of articles one and two, chapter five-a, and section three, article four, chapter twelve, to ensure that the Legislature will be furnished the information needed to discharge such responsibility.
and classified in the form and detail prescribed by this article.

§5-1A-3. Proposed appropriations for legislative and judicial branches.

(a) The proposed appropriations in such bill for the legislative branch shall be itemized and classified by the governor in the identical amounts, language, form and detail as certified by the presiding officer of each house and transmitted to the governor.

(b) The proposed appropriations in such bill for the judicial branch shall be itemized and classified by the governor in the identical amounts, language, form and detail as certified by the auditor and transmitted to the governor.

§5-1A-4. Uniform itemization; definitions; subclassifications and subitems; separate line items for specific programs or purposes; separate account numbers for single spending units permitted.

(a) With the exception of the spending units or purposes mentioned in section five of this article, the proposed appropriations submitted by the governor for the spending units of the executive department shall be itemized and classified according to the provisions of this section. The budget bill shall itemize appropriations separately for:

1. “Personal services” which shall mean salaries, wages, and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. Unless otherwise specified in the budget bill, appropriations for personal services shall include salaries of heads of spending units. Where a salary of a head of a spending unit, including a constitutional officer, is separately stated, all other personal services for the spending unit shall be designated in the bill as “Other Personal Services.”
(2) "Current expenses" which shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings or lands.

(3) "Equipment" which shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

(4) "Repairs and alterations" which shall mean repairs to structures and improvements to property which do not increase the capital asset.

(5) "Buildings" which shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection, or the improvement of a natural condition.

(6) "Lands" which shall mean the purchase of real property or interests in real property.

Nothing in this section shall prohibit the governor from listing in the budget bill any subclassifications and subitems of proposed expenditure under any or all of the above uniform items: Provided, That a total proposed expenditure for each uniform item shall be stated, and such total shall include the proposed expenditure for each subclassification and subitem, if any, listed under such uniform item.

(b) Notwithstanding the uniform items set forth in subsection (a) of this section, when the governor deems it necessary or convenient to establish separate line items for specific programs proposed to be undertaken or continued by a spending unit, or for specific purposes which do not fall within such uniform items, such separate line items may be included in the appropriations for the spending unit, and need not be itemized in accordance with the requirements of subsection (a). In such event, there shall be a separate line item for each such specific program or purpose. All other proposed appropriations for a spending unit or account shall be included within the uniform items prescribed in subsection (a): Provided, That there may be included in the itemization for any spending unit an item designated "unclassified", in an
amount not exceeding one percent of the total amount
of the proposed appropriations for such spending unit.

(c) Nothing in this section shall prohibit the governor
from submitting proposed appropriations for a single
spending unit under more than one account number, pro-
vided that such appropriations are itemized and classified
in accordance with the requirements of this article.

§5-1A-5. Itemization of appropriations for state department
of highways; state aid to schools.

(a) Proposed appropriations for the state department
of highways shall be itemized separately for:

(1) "Debt service" which shall mean the payment of
principal and interest due on all state bonds issued for
the benefit of the state road fund;

(2) "General operations" which shall include all ex-
penses of administration of the Department of Highways;

(3) "Federal Aid Construction—Interstate Program";

(4) "Nonfederal Aid Construction";

(5) "Appalachian Program";

(6) "Other Federal Aid Programs";

(7) "Inventory Purchases";

(8) "Maintenance—State Local Service";

(9) "Maintenance—Expressway, Trunkline and Feed-
er";

(10) "Claims."

Any specific purposes which do not fall within the
above items may be itemized and designated separately
by the governor.

(b) Proposed appropriations for "State Aid to Schools"
shall be itemized separately for each allowance set forth
in section three, article nine-a, chapter eighteen of this
code, for each allowance mentioned elsewhere in said
article and chapter, and for any other purpose mentioned
in said article and chapter for which an appropriation
must be made from the general revenue fund.

CHAPTER 5A. DEPARTMENT OF FINANCE AND
ADMINISTRATION.

Article
1. Department of Finance and Administration.
2. Budget Division.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.


1 The council of finance and administration is hereby
created and shall be composed of ten members, four of
whom shall serve ex officio and six of whom shall be
appointed as herein provided. The ex officio members shall
be the governor, attorney general, the state treasurer and
the state auditor. From the membership of the Legisla-
ture, the president of the Senate shall appoint three
senators as members of the council, not more than two of
whom shall be members of the same political party, and
the speaker of the House shall appoint three delegates as
members of the council, not more than two of whom shall
be members of the same political party. Members of the
council appointed by the president of the Senate and the
speaker of the House shall serve at the will and pleasure
of the officer making their appointment. The commissioner
of finance and administration shall serve as chairman of
the council. Meetings of the council shall be upon call of
the chairman or a majority of the members thereof. It
shall be the duty of the chairman to call at least four
meetings in each fiscal year, one in each quarter, and all
meetings shall be open to the public. All meetings of the
council shall be held at the capitol building in a suitable
committee room which shall be made available by the
Legislature for such purpose: Provided, That the second
quarterly meeting in each fiscal year shall be held on the
first Monday in November and shall be a joint meeting
with the joint committee on government and finance of
the Legislature.

The council shall serve the department of finance and
administration in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state and shall have the following duties:

(1) To review and advise with the commissioner as to all budget proposals to be submitted to the governor;

(2) At the time of the submission of the proposed budget to the governor, to report to the governor its conclusions concerning the proposed budget and any additions, modifications or adjustments that it may care to suggest;

(3) To advise with the commissioner concerning such studies of government and administration as it may consider appropriate; and

(4) To advise with the commissioner in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies. Members of the council shall be paid all necessary expenses incurred in the discharge of their duties.

ARTICLE 2. BUDGET DIVISION.

§5A-2-3. Requests for appropriations; copies to legislative auditor.
§5A-2-5. Forms of requests.
§5A-2-10. Preparation of tentative budget and submission to governor; copies to Legislature.
§5A-2-13. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.
§5A-2-14. Submission of expenditure schedules; contents; copies to legislative auditor.
§5A-2-15. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.
§5A-2-21. Reports by spending units; copies to legislative auditor.
§5A-2-26. Approval by commissioner of requests for federal aid; copies to legislative auditor; consolidated report of federal funds.
§5A-2-34. Personnel classification of offices and employments in state government and agencies.
§5A-2-36. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.
§5A-2-3. Requests for appropriations; copies to legislative auditor.

1 The spending officer of each spending unit, other than the Legislature and the judicial branch of state government, shall on or before the fifteenth day of August of each year, submit to the commissioner a request for appropriations for the fiscal year next ensuing. On or before the same date, the spending officer shall also transmit two copies of such request to the legislative auditor for the use of the finance committees of the Legislature.

2 If the spending officer of any spending unit fails to transmit to the legislative auditor two copies of the request for appropriations within the time specified in this section, the legislative auditor shall notify the commissioner, auditor and treasurer of such failure, and thereafter no funds appropriated to such spending unit shall be encumbered or expended until the spending officer thereof has transmitted such copies to the legislative auditor.

3 If a spending officer submits to the commissioner an amendment to the request for appropriations, two copies of such amendment shall forthwith be transmitted to the legislative auditor.

§5A-2-5. Forms of requests.

1 The commissioner shall specify the form and detail of itemization of requests for appropriations and statements to be submitted by a spending unit: Provided, That such request for appropriations must include at a minimum the information required by section four of this article. The commissioner shall furnish blank forms for this purpose.

§5A-2-10. Preparation of tentative budget and submission to governor; copies to Legislature.

1 The commissioner shall prepare for the consideration of the governor a tentative budget for the fiscal year next ensuing. The budget shall state actual receipts and expenditures for the fiscal year next preceding, estimated receipts and expenditures for the current fiscal year, recommended expenditures for the current fiscal year as shown in the
legislative digest, and it shall state also the requested
amounts or estimates for the fiscal year next ensuing
with respect to:

(1) Appropriations requested by each spending unit
and requested general appropriations;

(2) The amount of the total of each appropriation to
be paid out of collections;

(3) Amounts and purposes of appropriations requested
other than for spending units of the state;

(4) Revenue of each of the funds of the state;

(5) A summary statement of requests and revenues
showing the amount of an anticipated surplus or deficit;

(6) Balances carried forward to the first day of July,
from the fiscal year next preceding on all reappropriated
accounts from general revenue fund and general school
fund;

(7) Percentage of increase or decrease by comparison
of recommended appropriation for next ensuing year
with current fiscal year.

On or before the fifteenth day of November, the com-
missioner shall submit the tentative budgets to the gov-
ernor. The commissioner shall convey to the governor all
explanatory and justification statements and statements of
personnel requirements of spending units as reported and
filed in his office, together with the certification of the
state treasurer verifying the condition of the state rev-
ances and the several funds of the state as required to
be provided to the commissioner under the provisions of
section three, article four, chapter twelve of this code.

At the time the commissioner submits the tentative
budget to the governor, he shall also submit copies thereof
to the president of the Senate, the speaker of the House of
Delegates and the legislative auditor. At any time there-
after that a change or supplement to the tentative budget
is submitted to the governor by the commissioner, the
commissioner shall submit a copy thereof to the legislative
auditor.

1 The tentative budget submitted by the commissioner shall itemize appropriations separately for:

3 (1) "Personal services" which shall mean salaries, wages, and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit: Provided, That the total expenditure shown for personal services shall reflect the actual expenditure for each line item under this classification;

5 (2) "Current expenses" which shall mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings or lands;

7 (3) "Equipment" which shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year;

9 (4) "Repairs and alterations" which shall mean repairs to structures and improvements to property which do not increase the capital asset;

11 (5) "Buildings" which shall include construction and alteration of structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition; and

13 (6) "Lands" which shall mean the purchase of real property or interests in real property.

15 A spending unit or other person requesting an appropriation may submit a different itemization with the prior approval of the commissioner, if the uniform itemization does not apply.


1 The commissioner shall supervise and control the expenditure of appropriations made by the Legislature excluding those made to the Legislature and those made
to the judicial branch of the state government. The expenditure of an appropriation made by the Legislature except that made for the Legislature itself and the judicial branch of the state government shall be conditioned upon compliance by the spending unit with the provisions of this article. An appropriation made by the Legislature except that made for the Legislature itself and the judicial branch of the state government shall be expended only in accordance with this article.

§5A-2-13. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

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 that fiscal year as it relates to the official estimate of revenue for each tax for that fiscal year and the commissioner shall certify this estimate to the governor and the legislative auditor by the thirty-first day of July for that fiscal year.

The commissioner shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him for that month. 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 and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him for that month. The commissioner shall include in this certification the same information previously certified for prior months in each fiscal year. 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.

If the commissioner fails to certify to the governor and the legislative auditor the information required by
this section within the time specified herein, the legis-
lative auditor shall notify the auditor and treasurer of
such failure, and thereafter no funds appropriated to
the department of finance and administration shall be
expended until the commissioner has certified the infor-
mation required by this section.

§5A-2-14. Submission of expenditure schedules; contents;
copies to legislative auditor.

Prior to the beginning of each fiscal year, the spending
officer of a spending unit shall submit to the commissioner
a detailed expenditure schedule for the ensuing fiscal year.
The schedule shall be submitted in such form and at such
time as the commissioner may require.

The schedule shall show:

(1) A proposed monthly rate of expenditure for
amounts appropriated for personal services;

(2) Each and every position budgeted under personal
services for the next ensuing fiscal year, with the monthly
salary or compensation of each such position;

(3) A proposed quarterly rate of expenditure for
amounts appropriated for current expenses, equipment
and repairs and alterations;

(4) A proposed yearly plan of expenditure for amounts
appropriated for buildings and lands.

The commissioner may accept a differently itemized
expenditure schedule from a spending unit to which the
above itemizations are not applicable.

The commissioner shall consult with and assist spend-
ing officers in the preparation of expenditure schedules.

When a spending officer submits an expenditure sched-
ule to the commissioner as required by this section, the
spending officer shall at the same time transmit a copy
thereof to the legislative auditor. If a spending officer
of a spending unit fails to transmit such copy to the
legislative auditor on or before the beginning of the
fiscal year, the legislative auditor shall notify the com-
missioner, auditor and treasurer of such failure, and
§5A-2-15. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.

1 The commissioner shall examine the expenditure schedule of each spending unit, and if he finds that it conforms to the appropriations made by the Legislature, the requirements of this article, and is in accordance with sound fiscal policy, he shall approve the schedule.

6 The expenditure of the appropriations made to a spending unit shall be only in accordance with the approved expenditure schedule unless the schedule is amended with the consent of the commissioner, or unless appropriations are reduced in accordance with the provisions of sections twenty-two to twenty-five, inclusive, of this article. The spending officer of a spending unit shall transmit to the legislative auditor a copy of each and every requested amendment to such schedule at the same time that such requested amendment is submitted to the commissioner. The commissioner shall send to the legislative auditor copies of any schedule amended with the commissioner's approval.

§5A-2-21. Reports by spending units; copies to legislative auditor.

A spending unit shall submit to the commissioner such reports with respect to the work and expenditures of the unit as the commissioner may request for the purposes of this article. Upon receipt thereof, the commissioner shall immediately send copies of all such reports to the legislative auditor.

§5A-2-26. Approval by commissioner of requests for federal aid; copies to legislative auditor; consolidated report of federal funds.

Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or
services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have such request or budget approved in writing by the commis-

sioner before submitting it to the proper federal au-

thority. At the time such agency submits such a request or budget to the commissioner for his approval, it shall send a copy thereof to the legislative auditor. When such federal authority has approved the request or budget, the agency of the state government shall resubmit it to the commissioner for recording before any allotment or encumbrance of the federal funds can be made and the commissioner shall send a copy of the federally ap-

proved request or budget to the legislative auditor.

Whenever any agency of the state government shall re-

ceive from any agency of the federal government a grant or allocation of funds which do not require state match-

ing, the state agency shall report to the commissioner and the legislative auditor for their information the amount of the federal funds so granted or allocated.

In addition to the other requirements of this section, the commissioner shall, as soon as possible after the end of each fiscal year but no later than the first day of September of each year, submit to the governor and the legislative auditor a consolidated report which shall con-
tain a detailed itemization of all federal funds received by the state during the preceding and current fiscal years, as well as those scheduled or anticipated to be received during the next ensuing fiscal year. Such itemization shall show: (a) Each spending unit which has received or is scheduled or expected to receive federal funds in either of such fiscal years, (b) the amount of each separate grant or distribution received or to be received, (c) a brief description of the purpose of every such grant or other distribution, with the name of the federal agency, bureau or department making such grant or distribution: Provided, That it shall not be necessary to include in such report an itemization of federal revenue sharing funds deposited in and appropriated from the revenue sharing trust fund, or federal funds received for the benefit of the department of highways and the state road fund.
The commissioner is authorized and empowered to obtain from the spending units any and all information necessary to prepare such report.

1 The commissioner shall formulate the requirements of a system of management accounting for the planning, management, reporting and control of state expenditures. The requirements shall include methods for recording the collection of all income, amounts available for expenditure, obligations, encumbrances and disbursements for each spending unit, and publication of a detailed statement of receipts and expenditures of state moneys. The system shall include the accounts to be kept by the commissioner, the auditor and the treasurer. The commissioner shall, after the system has been approved by the governor, require its use by all spending units.

§5A-2-34. Personnel classification of offices and employments in state government and agencies.
1 With the exception of those institutions under the control of the state board of education and the West Virginia board of regents and with the exception of classified service positions and pay provided for in section eight, article six, chapter twenty-nine of this code, the commissioner, with the approval of the governor, shall classify the offices and employments in the state government and its agencies into a personnel classification which reflects the differences in training, experience, ability and responsibility required for different types or kinds of service or employment and shall establish uniform salary and wage scales within each class.
13 The governor shall require the state board of education and the West Virginia board of regents to prepare and apply personnel classifications to the institutions under their control.

§5A-2-36. Submission of requests, amendments, reports, etc., to legislative auditor; penalty for noncompliance.
1 The provisions of sections three, ten, thirteen, fourteen, fifteen, twenty-one, twenty-six and twenty-eight of this
article requiring the commissioner or the spending officer of the spending units, as the case may be, to supply copies of the documents specified therein to the legislative auditor, shall be strictly adhered to by all such persons. Any failure by any person to do so shall be a misdemeanor, and, upon conviction thereof, such person shall be fined the sum of one thousand dollars. Such penalty shall be in addition to other penalties provided elsewhere in this article and other remedies provided by law.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-3. Accounts of appropriations; treasurer to certify condition of revenues and funds of the state.

1 The auditor and treasurer shall each keep in books to be used for that purpose exclusively an account of every appropriation made by law, and of the several sums drawn thereon, so that such books may show at all times the balance undrawn on each appropriation. The account so kept shall be compared every quarter-year and the errors, if any, be corrected.

2 In addition to the other requirements of this section, the treasurer shall certify annually to the commissioner of finance and administration the condition of the state revenues and the several funds of the state. Such certification shall be used by such commissioner in the preparation of a tentative state budget as required of him by article two, chapter five-a of this code.

CHAPTER 17

(H. B. 1647—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 13, 1976; 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, relating to transfers of amounts between items of appropriations for spending units of the executive, leg-
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 of executive, legislative and judicial branches.

1 Notwithstanding any other provision of law to the contrary, there shall be no transfer of amounts between items of appropriations nor shall moneys appropriated for any particular purpose be expended for any other purpose by any spending unit of the executive, legislative or judicial branch except as hereinafter provided:

2 (1) Any transfer of amounts between items of appropriations for the executive branch of state government shall be made only as specifically authorized by the Legislature.

3 (2) Any transfer of amounts between items of appropriations for the legislative branch of state government shall be made only pursuant to the joint rules adopted by such body and any amendments thereto, as certified to the state auditor, the state treasurer and the legislative auditor.

4 (3) Any transfer of amounts between items of appropriations for the judicial branch of state government shall be made only pursuant to rules adopted by the supreme court of appeals and any amendments thereto, as certified to the state auditor, the state treasurer and the legislative auditor.

CHAPTER 18

(H. B. 1572—By Mr. Speaker, Mr. McManus and Mr. Seibert)

[Passed March 3, 1976; in effect from passage. Approved by the Governor.]
adding thereto a new section, designated section twelve-a, relating to nonintoxicating beer; establishing requirements for the issuance of a brewer’s license to a foreign corporation; providing that under certain circumstances none of the officers or directors of such foreign corporation need be residents of this state; establishing an annual license fee for such a brewer’s license; providing for the renewal of such a brewer’s license; prohibiting a licensed brewer from engaging in the business of a distributor or retailer; and relating to the suspension of such a brewer’s license.

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 twelve-a, to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-12a. Brewer's license for foreign corporation; application; bond; contents of application; limitations; annual license fee; renewal; suspension.

(a) A brewer’s license shall be issued by the commissioner to a foreign corporation which submits an application therefor accompanied by the license fee hereinafter prescribed, the bond required by section five of this article and a certified copy of the certificate of authority issued by the secretary of state authorizing such foreign corporation to transact business in this state. Such application shall be verified and shall state:

(1) The name of the corporation and the state under the laws of which it is incorporated;
(2) The date of incorporation;
(3) The address of the principal office of the corporation;
(4) The names and respective addresses of the directors and officers of the corporation; and
(5) The date that such foreign corporation qualified to transact business in this state.

(b) So long as such foreign corporation remains qualified
to transact business in this state so that the secretary of state can accept service of notice and process for such foreign corporation, then, notwithstanding any other provision of this article to the contrary, none of the officers and directors of such foreign corporation need be residents of this state.

(c) The license fee for a brewer's license for a foreign corporation, whether or not its principal place of business be located in this state, shall be five hundred dollars per annum for each brewery located in this state. The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a lesser period, the same shall be prorated quarterly in proportion to the remainder of the fiscal year.

(d) A brewer's license issued under the provisions of this section shall be renewed annually upon application for renewal on a form prescribed by the commissioner and payment of the annual license fee.

(e) If at any time such foreign corporation is no longer qualified to transact business in this state, the secretary of state shall notify the commissioner of such fact and the commissioner shall thereupon suspend the brewer’s license issued to such foreign corporation until such time as such foreign corporation has again qualified to transact business in this state and has otherwise complied with the provisions of this section.

Notwithstanding any other provision of this article to the contrary, any corporation issued a brewer's license under the provisions of this article shall not engage in the business of a distributor or retailer as defined in this article.

CHAPTER 19

(Com. Sub. for H. B. 862—By Mr. Speaker, Mr. McManus, and Mr. Rollins)

[Passed March 10, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article sixteen, chapter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the rights of a distributor under franchise agreement with a brewer.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, 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.

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

(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:

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.

Whenever the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale of any
brewer is acquired by another brewer, the franchised dis-
tributor of the selling brewer shall be entitled to continue
distributing the selling brewer's beer products as autho-
rized in the distributor's existing franchise agreement, and the
acquiring brewer shall market all the selling brewer's beer
products through said franchised distributor as though the
acquiring brewer had made the franchise agreement, and the
acquiring brewer may terminate said franchise agreement only
in accordance with subdivision (2), subsection (b) of this sec-
tion: Provided, That the acquiring brewer may distribute any of
its other beer products through its duly authorized franchises
in accordance with all other provisions of this section.

(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 pro-
mulgated 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 cancella-
tion, 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 20

(H. B. 1479—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article five-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state boxing commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. STATE BOXING COMMISSION.

§29-SA-1. Creation of commission; members; officers; seal and rules.
§29-SA-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.
§29-SA-3. Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.
§29-SA-4. Licenses to be in lieu of all other licenses.
§29-SA-5. Expense of commission.
§29-SA-6. Payment of official in charge.
§29-SA-7. Interference with or restraining of professional boxing or exhibitions.
§29-SA-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.
§29-SA-9. Sanction or permit from commission.
§29-SA-10. Sanction of commission and reports, etc., for showing of telecasts of boxing, sparring, etc.
§29-SA-11. Intoxicating liquor.
§29-SA-12. Length of rounds; weight of gloves.
§29-SA-13. Cancellation of license for fake boxing, etc., exhibition; penalty for participating in such exhibition.
§29-SA-14. Suspension, revocation, etc. of license.
§29-SA-15. Reports by clubs to commission; bonds of applicants for license.
§29-SA-16. Presence of members of commission or inspector at exhibitions and matches.
§29-SA-17. Referee and judges; appointment by commission; powers, payment.
§29-SA-18. Examination of contestants by physician; presence at contest; report to commission.
§29-SA-20. Licenses for contestants, referees and managers.
§29-SA-22. Penalty for violating not expressly provided for.
§29-SA-23. Injunctive relief for violation of chapter.
§29-SA-25. Special permits to American Legion and other organizations.

§29-SA-1. Creation of commission; members; officers; seal and rules.

Upon passage of this bill, the board created in one thousand nine hundred thirty-one and known as the state athletic commission shall become known as the state boxing commission. The commission shall consist of three persons appointed by the governor, no more than two of whom shall belong to the same political party, and no two of whom shall be residents of the same county at the same time, and who shall serve without pay. The present members and terms of the members of the state athletic commission shall continue as the state boxing commission. At the expiration of the term of each member, his successor shall be appointed by the governor for a term of four years. In the event of a vacancy in said board said vacancy shall likewise be filled by appointment by the governor and the governor shall likewise have the power to remove any
commissioner at his pleasure. Any two members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall at the first meeting after their appointment elect one of their number chairman of the commission, and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. The concurrence of at least two commissioners shall be necessary to render a choice or decision of the commission.

§29-5A-2. Powers and duties of secretary; penalty for false swearing, etc.; biennial reports of commission.

The office of the commission may be changed at pleasure by the said commission. The commission may designate as its official headquarters the residence or place of business of any one of its members. It shall be the duty of the secretary to keep a full and true record of all proceedings of said commission, to preserve all its books, documents and papers, to prepare for service such notices and other papers as may be required of him by the commission, and to perform such other duties as the commission may prescribe; and he may at the direction of the commission issue subpoenas for the attendance of witnesses before the commission with the same effect as if they were issued in an action in any circuit court of the state, and may administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The subpoenas shall be on forms prescribed by the commission and served by the sheriff's department of the county in which the individual being subpoenaed resides. Such subpoenas shall be signed by at least two members. Disobedience of such subpoena and false swearing before such secretary shall be attended by the same consequences and be subject to the same penalties as if such disobedience or false swearing occurred in an action in any circuit court of the state. The commission shall make to the Legislature biennial reports of their proceedings for the two years ending with the last day...
of the preceding December, and may submit with such report, such recommendations pertaining to its affairs, as to it shall seem advisable.

§29-5A-3. **Commission to have sole control of boxing, etc., matches; licenses; municipality not to tax boxing, etc., club.**

The commission shall have and hereby is vested with the sole direction, management and control of the jurisdiction over all boxing, sparring matches and exhibitions or any form thereof, to be conducted, held or given with the state by any club, individual, corporation or association; and no boxing, sparring or exhibition shall be conducted, held or given within the state except pursuant to its authority and held in accordance with this article. The commission may, in its discretion, issue and at its pleasure, revoke the license to conduct, hold, or give boxing or sparring or exhibitions to any club, corporation, association or individual. Every license shall be subject to such rules and regulations and amendments thereto as the commission may prescribe. Every application for a license, as herein provided for, shall be on a blank form provided by the commission. No promoter's license shall be granted to any club, corporation, association or individual, unless the signer of the application be a bona fide resident of the state of West Virginia. Upon application of such promoter's license, the promoter shall pay a state license fee of one hundred twenty-five dollars for one year. Such fee shall be in the form of a certified check or money order and shall be issued to the treasurer of the state of West Virginia to be deposited in the general fund. Should such license not be granted, the treasurer shall refund the full amount. Nonprofit chartered and charitable organizations shall be exempt from this license fee for all amateur events. No municipal corporation shall impose any license tax on such boxing, sparring or exhibition clubs, notwithstanding the provisions of any section of the code respecting municipal taxes and licenses. The granting of such license to such club by the commission, or the holding of such license by such club, individual, corporation or association, shall not prevent the commission from canceling or revoking the license to conduct such an event, as hereinbefore provided.
§29-5A-4. Licenses to be in lieu of all other licenses.

1 The licenses herein imposed shall be in lieu of all other licenses or license taxes of the state of West Virginia, and no county, city, town or other municipality or other political subdivision of the state of West Virginia shall be empowered to levy or impose any license or license tax on any such person engaged in the business of conducting boxing or sparring matches and exhibitions under the jurisdiction of and being licensed by the commission.

§29-5A-5. Expense of commission.

1 On or before December thirty-one of each year, the secretary of the commission shall present to the governor projected expenses for the following year. Such projections shall include all expenses of the commission and its official headquarters. Necessary expenses incurred by the commission shall be submitted on a standard expense form to the treasurer of the state of West Virginia to be paid from the general fund. Such expenses shall not exceed five thousand five hundred dollars per year.

§29-5A-6. Payment of official in charge.

1 The deputy, inspector or official designated by the commission to be in charge of a boxing event shall be paid by the promoter at a rate of twenty-five dollars for each weigh-in ceremony and twenty-five dollars for each day of bouts. If a weigh-in occurs within three hours before the boxing bouts are scheduled to begin, he will be paid only twenty-five dollars once for that particular night or day’s events.

§29-5A-7. Interference with or restraining of professional boxing or exhibitions.

1 No person or persons, club, organization or corporation shall, except in accordance with law, interfere with or restrain, or attempt to interfere with or restrain, by any act, threat or otherwise, either within or without this state, the putting on or the conduct of any professional boxing match or exhibition of this state.
§29-5A-8. Issuance of license; qualification for licenses; application of other provisions of chapter; hearings.

The commission, at its discretion, may issue a license to promote, conduct or hold boxing, sparring matches and exhibitions to any person, corporation, association, club or organization eligible for a license under this chapter.

Before being granted a license, or the renewal of such license, the applicant must establish to the satisfaction of the commission that he:

(a) Is skilled, or has knowledge, in the profession of boxing;
(b) Is of good moral character;
(c) Is physically fit and mentally sound;
(d) Will conduct his business in the best interest and welfare of the public, preserving the safety and health of participants and the best interests of professional boxing generally;
(e) Will adhere to and comply with all the rules and regulations of the commission pertaining to such license.

In the case of a corporate applicant, these factors shall pertain to its officers, directors, principal stockholders and employees.

Every license and licensee shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe.

§29-5A-9. Sanction or permit from commission.

No boxing, sparring or exhibitions shall be conducted by any individual, club, organization or corporation having a license to conduct any such exhibitions in this state except by a sanction or permit from the commission.

§29-5A-10. Sanction of commission and reports, etc., for showing of telecasts of boxing, sparring, etc.

Every club, corporation or association holding, showing or exhibiting a simultaneous telecast of any live, current or spontaneous boxing, sparring or exhibition or performance on a closed circuit telecast or subscription television viewed within
this state, whether originating in this state or another state, and
for which an admission charge is made shall obtain a permit
from the commission, and shall within twenty-four hours after
the termination of such showing, furnish the commission a
written report, duly verified by one of its officers, showing the
number of tickets sold for such showing and the amount of the
gross proceeds thereof, and such other matters as the com-
mission may prescribe.


1 No intoxicating liquor shall be given away, sold or offered
for sale in any building or part thereof, in which boxing or
sparring exhibitions are being conducted.

§29-5A-12. Length of rounds; weight of gloves.

1 No boxing or sparring match or exhibition shall be more
than fifteen rounds of three minutes each in length with
intermission of one minute each between rounds; and the
contestants shall wear, during such contests, gloves weighing
at least ten ounces.

§29-5A-13. Cancellation of license for fake boxing, etc., exhibition; penalty for participating in such exhibition.

1 Any club, corporation, association or individual which may
conduct, hold or give or participate in any sham or fake box-
ing, sparring or exhibition shall thereby forfeit its license
issued in accordance with the provisions of this article, which
shall thereupon be, by the commission, canceled and de-
clared void; and it shall not be entitled to receive another
such license or any license pursuant to the provisions of
this article, nor shall any license thereafter be granted to any
club, corporation, association or individual, including among
its members, directors, partners or stockholders, any mem-
ber, director, partner or stockholder of the club, corpora-
tion, association or individual whose license has been so
forfeited. Any contestant who shall participate in any sham
or fake boxing, sparring or exhibition, and any other person
whatsoever who shall in any manner be connected with the
arranging, planning, holding, conducting or giving of any
such sham or fake boxing, sparring or exhibition shall be guilty of a misdemeanor, and, shall upon conviction thereof, be fined not less than five hundred dollars, nor more than one thousand dollars, or be confined in jail for a period of not less than six months, nor more than one year or both; and any contestant so participating shall be further totally disqualified from further admission or participation in any boxing or sparring held or given by any club, corporation, association or individual duly licensed for said purpose.

§29-SA-14. Suspension, revocation, etc., of license.

The commission shall have the additional authority and power to suspend, revoke or place on probation the license of any licensee licensed under this chapter, who in the discretion of the commission:

(a) Is guilty of failure to obey any lawful order of the commission, the secretary or any inspector thereof;

(b) Is guilty of gross immorality;

(c) Is unfit or incompetent by reason of negligence;

(d) Is guilty of violating any provision of this chapter or rules and regulations of the commission;

(e) Has committed fraud or deceit in securing a license for himself or another;

(f) Has been convicted of a felony or misdemeanor involving moral turpitude in any jurisdiction within one year preceding the suspension or revocation and such conviction not previously reported to the commission by said licensee;

(g) Is an habitual drunkard or addicted to the use of narcotics;

(h) Is or has become mentally incompetent;

(i) Is or has been guilty of unprofessional or unethical conduct, or such conduct as to require a suspension or revocation of license in the interest of the public;

(j) Has failed to furnish the proper party a copy of any contract or statement required by this chapter or the
rules and regulations promulgated hereunder, or has breached such a contract;

(k) Has loaned or permitted another person to use his license, or has borrowed or used the license of another;

(l) Has failed to maintain in force the bond required by this chapter;

(m) Has by act or omission conducted himself in a manner which would tend to be detrimental to the best interests of boxing generally, or to the public interest and general welfare;

(n) Has been disciplined in any manner by the boxing commission or similar agency or body of any jurisdiction;

(o) Has failed to pay a fine or forfeiture imposed by this chapter;

(p) Has, either within or without this state, by any act, threat, statement or otherwise, restrained, hindered, interfered with or prevented another promoter, club, association or booking agent, or has attempted, either within or without this state, in any such manner to restrain, hinder, interfere with or prevent another promoter, club, association or booking agent from presenting any boxing match or exhibition within or without the state of West Virginia;

(q) Has, either within or without this state, engaged, directly or indirectly, in restraints or monopolies or taken any action tending to create or establish restraints or monopolies or conspired with others to restrain any person or persons from participating or competing in any boxing match or exhibition for any promoter, club, association or booking agent.

§29-5A-15. Reports by clubs to commission; bonds of applicants for license.

Every club, corporation, association or individual which may hold or exercise any of the privileges conferred by this article, shall within twenty-four hours after the determination of any contest, furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of the gross proceeds
thereof, and such other matters as the commission may pre-
scribe. Before any license shall be granted to any club, cor-
poration, association or individual to conduct, hold or give
any boxing, sparring or exhibition, such applicant therefor
shall execute and file with the commission a surety bond in the
sum of which shall be at the discretion of said commission, to
be approved as to form and the sufficiency of the security
thereon by the said commission. Such bond shall cover all
purses, awards and payments to be paid by the promoter.

§29-5A-16. Presence of members of commission or inspector at
exhibitions and matches.

Each member of the commission shall have the privilege of
being present at all exhibitions and matches without charge
therefor, and shall, when present, see that the rules are strictly
observed, and may be present at the counting of the gross
receipts; and in the event that no member of the commission
can be present, the commission may appoint an inspector to
be present representing said commission, which inspector shall
have the same privilege hereby conferred upon a member of
the commission; and said inspector shall immediately mail
to the commission the official box office statement received
by him from the officers of the club.

§29-5A-17. Referee and judges; appointment by commission; pow-
ers, payment.

The chief official of the boxing match or exhibition shall
be the referee. The referee and judges shall be appointed by
the commission, and shall receive from the commission a
card authorizing them to act as such, and no club shall
employ or permit anyone to act as referee except one holding
such card of authorization from the commission. The referee
shall have general supervision and control over the match
or exhibition and shall be paid by the promoter twenty-five
dollars for each day or night's services. The referee shall
be limited to refereeing a maximum of thirty rounds per day
or night unless special consent is given by the commission.
§29-5A-18. Examination of contestants by physician; presence at contest; report to commission.

In any boxing or exhibition match, each contestant must be examined by a qualified physician prior to entering the ring. The physician shall certify in writing over his signature, as to contestant's physical condition to engage in such contest. Qualified technicians may assist the physician in the examinations, and a physician shall be in attendance during any boxing bouts prepared to deal with any emergency which may arise. But in the event that said physician is convinced of the unfitness of either of the contestants to enter the contest, he shall at once certify such opinion to the club, corporation, association or individual under whose management the contest is conducted, and it shall thereupon be unlawful for said club, corporation, association or individual to proceed with such. Whenever a participant, in the opinion of the physician, is unable to continue in a boxing match, the physician may stop the bout.


No boxer shall be permitted to contest against an opponent ten pounds heavier than himself when the weight of either contestant is less than one hundred fifty pounds.

§29-5A-20. Licenses for contestants, referees and managers.

No professional contestant, referee or professional manager shall be permitted to take part in any boxing contest or exhibition unless holding a license from the state, said license to be issued by the commission upon payment of five dollars a year for contestants and referees and three dollars a year for a manager. Such fees shall accompany the application and shall be in the form of a certified check or money order and shall be issued to the treasurer of the state of West Virginia to be deposited in the general fund. Should such license not be granted, the treasurer shall refund the full amount.


Any person who shall engage in a boxing contest with another person for money or other such things of value, or for any championship, when an admission fee is charged, either
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4 directly or indirectly in this state, except when such contest is 
5 held in compliance with this article, shall be deemed guilty of a 
6 misdemeanor, and, upon conviction thereof, shall be fined not 
7 less than fifty dollars, and not more than five hundred dollars.

§29-SA-22. **Penalty for violation not expressly provided for.**

1 If any person shall violate any provision of this article, for 
2 which violation a penalty is not here expressly provided, he 
3 shall be guilty of a misdemeanor, and, upon conviction thereof, 
4 shall be fined not less than fifty dollars, nor more than five 
5 hundred dollars.

§29-SA-23. **Injunctive relief for violation of chapter.**

1 In the event of violation of any provision of this chapter, 
2 in addition to any other remedy, the commission may apply to 
3 any court of record in the state of West Virginia for relief 
4 without being compelled to allege or prove that any adequate 
5 remedy at law does not exist.

§29-SA-24. **Rules and regulations governing contestants and 
matches.**

1 The commission is empowered to prescribe and promulgate 
2 such rules and regulations as it may deem desirable, not in 
3 conflict with this chapter, governing boxers and boxing con-
4 tests, matches and exhibitions.

§29-SA-25. **Special permits to American Legion and other organi-
zations.**

1 Nothing in this article contained shall be construed to render 
2 unlawful boxing, sparring or exhibition contests for any 
3 charitable purpose, the American Legion, National Guard, 
4 Veterans of Foreign Wars, or other charitable organizations, but 
5 a permit shall be obtained from the commission. No charge 
6 shall be made for such permit.

§29-SA-26. **Severability.**

1 If any section, clause, provision or portion of this article 
2 shall be held to be invalid or unconstitutional by any court of 
3 competent jurisdiction, such holding shall not affect any other 
4 section, clause or provision of this article which is not in and 
5 of itself unconstitutional.
CHAPTER 21
(Com. Sub. for H. B. 1043—By Mr. Speaker, Mr. McManus)

[Passed March 12, 1976; 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 eight, relating to the creation of a capitol building commission; providing for composition, terms of members; vacancies; meetings; decisions of commission; officers; reimbursement of expenses of members; and powers and duties generally.

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 eight, to read as follows:

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.
§4-8-2. Terms of members; vacancies; meetings; decisions of commission.
§4-8-3. Officers; expenses.
§4-8-4. Powers and duties generally.
§4-8-5. Contracts and changes requiring commission approval.

§4-8-1. Creation; composition; qualifications.

There is hereby created a capitol building commission, hereinafter referred to as the commission, which shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate on the first day of July, one thousand nine hundred seventy-six, plus the commissioner of the department of finance and administration who shall be a nonvoting member. No more than three members shall be of the same political party. One member shall be an architect selected from three persons recommended by the board of architects, one member shall be a registered professional engineer selected from three persons recommended by the board of engineers, one member shall be selected from three persons who are interested in the historical
§4-8-2. Terms of members; vacancies; meetings; decisions of commission.

Members shall be appointed for terms of four years and may be reappointed at the expiration of their terms. In the event of a vacancy, an appointment shall be made to fill the unexpired term. Whenever the approval of the commission is requested, as required by sections four and five of this article, the commission shall meet and render its decision, in writing, within ninety days of the filing with the commission of such request.

§4-8-3. Officers; expenses.

The capitol building commission shall organize by electing a chairman, a vice chairman and a secretary from among the members of the commission. The members of the commission shall serve without compensation and shall be reimbursed for such necessary travel expenses, subsistence and other reasonable expenses as may be actually incurred by them in the performance of their duties, all to be paid by the joint committee on government and finance.

§4-8-4. Powers and duties generally.

The capitol building commission shall review and approve or reject all plans recommending substantial physical changes inside the state capitol building or surrounding complex. The approval of the commission is mandatory before a contract may be let for work which constitutes a substantial physical change inside the capitol building or surrounding complex, or before changes are started if the work is not done under a contract. As used in this article, the surrounding complex shall include the governor's mansion and other buildings used by the governor as part of his residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include but not be limited to permanent physical changes that alter the ap-
appearance of the public areas of the capitol building and sur-
rounding complex. The commissioner of the department of
finance and administration shall promulgate rules and regu-
lations, which rules and regulations shall be subject to the
approval of the capitol building commission, to implement the
provisions of this article.

§4-8-5. Contracts and changes requiring commission approval.

No contract or contracts which will result in physical changes
to the capitol building or any approaches, structures or facili-
ties incidental thereto shall be let, nor shall any physical
changes be made not requiring a contract, until approval of
the commission has been obtained.

CHAPTER 22
(Com. Sub. for H. B. 1388—By Mr. Sattes)

[Passed May 15, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article six, chapter
twenty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to civil service for
state employees generally, dismissals and demotions of em-
ployees in the classified service; hearings upon such dismissals
or demotions; the burden of proof with respect to such hearings;
authorizing certain action by the commission following such
hearings; and judicial review of any decision following such
hearings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-13. Appeals by employees to commission; hearings; review
by court of appeals.

Any employee in the classified service who is dismissed or
demoted after completing his probationary period of service or who is suspended for more than thirty days in any one year, may, within thirty days after such dismissal, demotion or suspension, appeal to the commission for review thereof. Upon such review, both the appealing employee and the appointing authority whose action is reviewed shall have the right to be heard publicly and to present evidentiary facts. At the hearing of such appeals, technical rules of evidence shall not apply. At any such hearing, the burden of proof will be upon the appointing authority to establish that the dismissal or demotion was proper in all respects and that such dismissal or demotion was not arbitrary or capricious. Such burden shall remain with the appointing authority throughout every stage of such hearing. If the commission finds that the action complained of was taken by the appointing authority without good cause, the employee shall be reinstated to his former position or a position of like status and pay, without loss of pay for the period of his suspension, and awarded his reasonable and necessary attorneys fees expended therein, such fees to be paid by the appointing authority. If the commission finds that the action complained of and taken by the appointing authority was too severe but was with good cause, the commission may provide for such other remedy or remedies, as may be deemed appropriate and in the best interest of the parties. The commission shall expressly have the authority by order to provide for such remedies as it may deem to be appropriate after it has made a complete review of the circumstances of each individual case and such remedies shall include, but not be limited to, the restoration of all or part of an individual’s back pay or wages for the period of the suspension or reinstatement of an individual to his former position or a position of like status and pay or reemployment to any other position which in the judgment of the commission is in the best interest of the parties or any combination of such remedies. When any employee is dismissed and not reinstated after such appeal the commission in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he has been removed. Any final action or decision taken or made hereunder shall be subject to review by the supreme court of appeals, if appeal is made within sixty days of the action or decision complained of.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state, and directing the auditor to issue warrants for the payments thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of public institutions and the sinking fund commission to be moral obligations of the state and directing payment thereof.

1 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, the department of public institutions and the sinking fund commission, agencies thereof, which have arisen due to over-expenditures of departmental appropriations by officers of such 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 section ten,
CLAIMS AGAINST THE STATE

§1. Finding and declaring certain claims against the nonintoxicating beer commission; department of finance and administration; department of natural resources; depart-

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the nonintoxicating beer commission; department of finance and administration; department of natural resources; depart-

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CLAIMS AGAINST THE STATE

23 article three, chapter twelve of the code of West Virginia,
24 one thousand nine hundred thirty-one, as amended, for
25 the payment thereof out of any fund appropriated and
26 available for the purpose.
27 (a) Claims against the department of public
28 institutions:
29 (To be paid from General Revenue Fund)
30 (1) Drs. Butler, Aceto & Assoc., Inc. $ 8.00
31 (2) Xerox Corporation $ 798.46
32 (3) Mellon-Stuart Company $ 5,919.64
33 (4) West Virginia State Industries $ 3,857.84
34 (5) Kirk's Photo-Art Center $ 452.19
35 (6) Goldsmit-Black, Inc. $ 1,407.75
36 (7) Ashland Chemical Company $ 51.80
36a (8) Mountaineer Motel, Inc. $ 250.79
37 (b) Claims against the sinking fund commission:
38 (1) International Business Machines Cor-
39 poration $ 61.40
40 TOTAL $12,807.87

CHAPTER 24

(S. B. 457—By Mr. Savilla, Mr. Hinkle and Mr. Steptoe)

(Passed February 28, 1976; in effect from passage. Approved by the Governor.)
ment of mental health; department of public institutions; state auditor; department of commerce; department of public safety; board of vocational education, division of vocational rehabilitation; department of highways; rehabilitation environmental action program; alcohol beverage control commissioner; workmen’s compensation fund; secretary of state; office of emergency services, and department of motor vehicles to be moral obligations of the state and directing payment thereof.

1 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 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.

11 (a) Claims against the nonintoxicating beer commission: (To be paid from General Revenue Fund)

14 (1) The F. & M. Schaefer Brewing Company $ 24,474.67

16 (2) The Queen City Brewing Co. $ 8,974.82

17 (b) Claims against the department of finance and administration: (To be paid from General Revenue Fund)

20 (1) Ronald L. Cook $ 4,375.00

21 (c) Claims against the department of natural resources: (To be paid from General Revenue Fund)

24 (1) Larry James $ 1,500.00

25 (d) Claims against the department of mental health: (To be paid from General Revenue Fund)

28 (1) James R. Clowser $ 1,020.00
## Claims Against the State

### (2) Tabitha V. Partlow
- Subrogee of Tabitha V. Partlow
- Amount: $57.68

### (3) Inland Mutual Insurance Company
- Amount: $342.83

### (4) J. Wilbur Swisher and Alice V. Swisher d/b/a Swisher's Feed and Supply Company
- Amount: $2,580.76

### (5) Jordan, McGettigan & Yule
- Amount: $5,942.20

### (6) Pfizer, Inc.
- Amount: $473.23

### (7) American Can Company
- Amount: $1,125.85

### (8) Parke, Davis & Company
- Amount: $545.96

### (e) Claims against the department of public institutions: (To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>J. J. Englert Company</td>
<td>$5,834.40</td>
</tr>
<tr>
<td>Shen K. Wang, M.D.</td>
<td>$15,300.00</td>
</tr>
<tr>
<td>Physicians Fee Office</td>
<td>$111.92</td>
</tr>
<tr>
<td>Xerox Corporation</td>
<td>$1,166.18</td>
</tr>
<tr>
<td>Ashland Chemical Company</td>
<td>$249.65</td>
</tr>
<tr>
<td>Valley Welding Supply Company</td>
<td>$25.70</td>
</tr>
</tbody>
</table>

### (f) Claims against the state auditor: (To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archie Day, Sheriff</td>
<td>$18.00</td>
</tr>
<tr>
<td>D. A. Wright, Sheriff</td>
<td>$762.00</td>
</tr>
<tr>
<td>Russell E. Duvernoy &amp; Henry Todd Duvernoy</td>
<td>$775.00</td>
</tr>
<tr>
<td>Frank A. Rocchio, Sheriff</td>
<td>$16.00</td>
</tr>
</tbody>
</table>

### (g) Claims against the department of commerce: (To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ski South Magazine</td>
<td>$679.50</td>
</tr>
</tbody>
</table>

### (h) Claims against the department of public safety: (To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Associated Dry Goods d/b/a The Diamond Department Store</td>
<td>$441.96</td>
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<tr>
<td></td>
<td>Name and Details</td>
</tr>
<tr>
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<td>----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>63</td>
<td>Claims against the board of vocational education, division of vocational rehabilitation: (To be paid from General Revenue Fund)</td>
</tr>
<tr>
<td>64</td>
<td>(i)</td>
</tr>
<tr>
<td>65</td>
<td>(ii)</td>
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<tr>
<td>66</td>
<td>(j)</td>
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<td>(2)</td>
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<td>(3)</td>
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<td>84</td>
<td>(18)</td>
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<tr>
<td>85</td>
<td>(19)</td>
</tr>
<tr>
<td>86</td>
<td>(20)</td>
</tr>
</tbody>
</table>
100 (21) Maryland Casualty Co., subrogee of Michael E. Heitz $134.88
101 (22) Michael E. Heitz $100.00
102 (23) Westfield Insurance Co., subrogee of David Sago $106.02
103 (24) Buckeye Union Insurance Co., subrogee of Raymond L. Maddy $207.93
104 (25) Kenneth S. Kayser $100.00
105 (26) Clyde Speer and Mildred Speer $328.60
106 (27) Patricia G. McFann $61.14
107 (28) Hershel Ray Wiley $300.00
108 (29) Paul G. Nohe & June D. Nohe $100.00
109 (30) Roy E. Brassfield, Jr. $69.21
110 (31) Helen Cremeans $391.45
111 (32) James E. White $43.28
112 (33) Carmie Riddle $87.55
113 (34) Motors Insurance Corp., subrogee of Quincy E. Holstein $228.00
114 (35) Fred H. Gregory $35.63
115 (36) Coal River Public Service District $201.00
116 (37) L. M. Casdorph $61.29
117 (38) Mr. & Mrs. T. E. Reed $600.00
118 (39) David R. Dietz $82.40
119 (40) Tygart Valley Telephone Company $109.79
120 (41) Dana H. Carney $67.61
121 (42) H. Ronald Harris $78.92
122 (43) T. A. Galyean, Jr., Ann T. Galyean, his wife, John G. Anderson, Trustee, and Huntington Federal Savings and Loan Association $7,500.00
123 (44) Clarke W. Greene $183.95
124 (45) James R. Lantz $43.30
125 (46) Velva K. Corzine $221.98
126 (47) Mrs. W. G. Via $55.10
127 (48) Monongahela Power Company $189.79
128 (49) Samuel Miller $123.60
129 (50) Harry C. Henderson $6,600.00
CLAIMS AGAINST THE STATE

(51) Clyde M. Ellison ____________________________ $ 25.00
(52) James M. Duffy ______________________________ $ 25.00
(53) John L. Cooper ______________________________ $ 25.00
(54) Norfolk & Western Railway Company__ $ 1,258.29
(55) Opal Baker Thomas & Elsey Thomas....$ 1,920.00

(k) Claims against the rehabilitation environmental action program: (To be paid from special account in State Road Fund)
(1) Lena Solomon ________________________________ $ 500.00
(2) Edward H. Stanley ___________________________ $ 200.00
(3) Geneva Marie Burch __________________________ $ 150.00

(l) Claims against the alcohol beverage control commissioner: (To be paid from Special Revenue Fund)
(1) Maryland Casualty Co. _________________________ $ 2,500.00

(m) Claims against the workmen’s compensation fund: (To be paid from Workmen’s Compensation Fund)
(1) Leonard Johnson Funeral Home, Inc. ________ $ 1,200.00

(n) Claims against the secretary of state: (To be paid from General Revenue Fund)
(1) International Business Machines Corporation ___________________________ $ 70.23

(o) Claims against the office of emergency services: (To be paid from General Revenue Fund)
(1) Jay H. Cadle, d/b/a Cadle Sanitary Service ____________________________ $ 10,492.50

(p) Claims against the department of motor vehicles: (To be paid from State Road Fund)
(1) Mid-Mountain Mack, Inc. ________________________ $ 2,088.02

Total of all claims ___________________________ $205,003.08

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 payments 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 obliga-
tions arising from the matters considered by the Legisla-
ture in the finding of the moral obligations and the
making of the appropriations of said claimant. The court
of claims shall deliver all releases obtained from claim-
ants to the department against which the claim was
allowed.

CHAPTER 25
(Com. Sub. for H. B. 1024—By Mrs. Spears and Mr. Satter)

[Passed March 12, 1976; in effect ninety days from passage.
Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter
fourteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to venue for certain
suits and actions; venue in actions seeking injunctive or man-
damus relief involving the taking, title, or collection for or
prevention of damage to real property.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§14-2-2. Venue for certain suits and actions.

(a) The following proceedings shall be brought and pro-
secuted only in the circuit court of Kanawha County:

(1) Any suit in which the governor, any other state officer,
or a state agency is made a party defendant, except as
garnishee or suggestee.
(2) Any suit attempting to enjoin or otherwise suspend
or affect a judgment or decree on behalf of the state obtained
in any circuit court.

(b) Any proceeding for injunctive or mandamus relief
involving the taking, title, or collection for or prevention of
damage to real property may be brought and presented in the
circuit court of the county in which the real property affected
is situate.

This section shall apply only to such proceedings as are not
prohibited by the constitutional immunity of the state from suit
under section thirty-five, article six of the constitution of the
state.

CHAPTER 26

(Com. Sub. for S. B. 193—By Mr. Palumbo and Mr. Steptoe)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections twenty-five and ninety-seven, article
one, chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, and to en-
act in lieu thereof a new section twenty-five; and to amend
and reenact sections six, twenty, twenty-three, twenty-
seven, thirty, seventy-three, one hundred nine and one
hundred forty of said article one, relating to corporations;
business and nonprofit corporations; definitions; quorums
of shareholders, members and directors; director conflicts
of interest; contents of article of incorporation; organiza-
tional meetings; action without meeting; article of amend-
ment; and removal of directors.

Be it enacted by the Legislature of West Virginia:

That sections twenty-five and ninety-seven, article one, chapter
thirty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be repealed, and a new section
twenty-five be enacted in lieu thereof; and that sections six,
twenty, twenty-three, twenty-seven, thirty, seventy-three, one
hundred nine and one hundred forty of said article one be amended and reenacted to read as follows:

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.
§31-1-6. Definitions.
§31-1-20. Quorum of shareholders or members.
§31-1-23. Quorum of directors.
§31-1-25. Director conflicts of interest.
§31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with bylaws; acknowledgment.
§31-1-30. Organizational meeting; notice, waiver of notice.
§31-1-73. Action by shareholders, members or directors without a meeting.
§31-1-109. Articles of amendment.
§31-1-140. Removal of directors.

§31-1-6. Definitions.

1 As used in this article, unless the context otherwise requires a different meaning, the term:

3 (a) “Articles of incorporation” means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

7 (b) “Authorized shares” means the shares of all classes which a business corporation is authorized to issue.

10 (c) “Business corporation” means a corporation organized for profit.

12 (d) “Bylaws” means the code or codes of rules adopted for the regulation or management of the affairs of the corporation, irrespective of the name or names by which such rules are designated.

16 (e) “Capital surplus” means the entire surplus of a business corporation other than its earned surplus.

18 (f) As used in part one and part two of this article, “corporation” or “domestic corporation” means a business corporation or a nonprofit corporation, subject to the provisions of this article, except a foreign corporation.

23 (g) “Director or directors” or “board of directors” shall include those who are vested with the management
of the affairs of the corporation, by whatever name they may be called.

(h) "Earned surplus" means the portion of the surplus of a business corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Earned surplus shall include also any portions of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign.

(i) "Employee" includes officers but not directors. A director may accept duties which make him also an employee.

(j) As used in part one and part two of this article, "foreign corporation" means a business corporation or nonprofit corporation organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this article.

(k) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

(l) "Member" means one having membership in a nonprofit corporation in accordance with the provisions of its articles of incorporation or bylaws.

(m) "Net assets" means the amount by which the total assets of a corporation exceed the total debt of the corporation.

(n) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its shareholders, members, directors or officers.
"Shareholder" means one who is a holder of record of shares in a corporation and may include the term "member."

(Shareholders) "Shares" means the units into which the proprietary interests in a corporation are divided.

(Shares) "Stated capital" means, at any particular time, the sum of (1) the par value of all shares of a business corporation having a par value that have been issued, (2) the amount of the consideration received by a business corporation for all shares of such corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (3) such amounts not included in clauses (1) and (2) of this subdivision as have been transferred to stated capital of such corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sums as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees, franchise taxes and other charges prescribed by law.

(Subscribers) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(Surplus) "Surplus" means the excess of the net assets of a business corporation over its stated capital.

(Treasury shares) "Treasury shares" means shares of a business corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be issued shares, but not outstanding shares.

§31-1-20. Quorum of shareholders or members.

In the case of a business corporation, unless otherwise
provided in the articles of incorporation, a majority of the
shares entitled to vote, represented in person or by proxy,
shall constitute a quorum at a meeting of shareholders,
but in no event shall a quorum consist of less than one
third of the shares entitled to vote at the meeting.

In the case of a nonprofit corporation, the bylaws may
provide the number or percentage of members entitled
to vote represented in person or by proxy, which shall
constitute a quorum at a meeting of members and in the
absence of any such provision, members holding one tenth
of the votes entitled to be cast on the matter to be voted
upon represented in person or by proxy shall constitute a
quorum. A majority of the votes entitled to be cast on a
matter to be voted upon by the members present or repre-
sented by proxy at a meeting at which a quorum is pres-
ent shall be necessary for the adoption thereof unless
a greater proportion is required by this article, the articles
of incorporation or the bylaws.

If a quorum is present, the affirmative vote of the
majority of the shares represented or members present at
the meeting and entitled to vote on the subject matter
shall be the act of the shareholders or members, unless
the vote of a greater number or voting by classes is
required by this article or the articles of incorporation or
bylaws. Any number less than a quorum present may
adjourn any stockholders or members meeting until a
quorum is present.

§31-1-23. Quorum of directors.

A majority of the number of directors fixed by or in
the manner provided in the bylaws, or in the absence of a
bylaw fixing or providing for the number of directors,
then of the number stated in the articles of incorporation,
shall constitute a quorum for the transaction of business
unless a greater number is required by the articles of
incorporation or the bylaws. The act of the majority of
the directors present at a meeting at which a quorum is
present shall be the act of the board of directors, unless
the act of a greater number is required by the articles of
incorporation or the bylaws. Any number less than a
quorum present may adjourn any directors meeting until a quorum is present.

§31-1-25. Director conflicts of interest.

(a) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

(1) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or

(2) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(3) The contract or transaction is fair and reasonable to the corporation.

(b) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

(c) On any question involving the authorization, approval or ratification of any such contract or transaction, the names of those voting each way shall be entered on the record of their proceedings.

§31-1-27. Articles of incorporation; contents; matters not required to be set forth; inconsistencies with bylaws; acknowledgment.

(a) The articles of incorporation shall set forth:
(1) The name of the corporation.
(2) The period of duration, which may be perpetual.
(3) The purpose or purposes for which the corporation is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this article.
(4) The address of its principal office, and the name and address of the person to whom shall be sent notice or process served upon, or service of which is accepted by, the secretary of state, if such person has been appointed by the corporation.
(5) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as such directors.
(6) The name and address of each incorporator.
(b) In the case of a business corporation, in addition to those matters required to be set forth by the provisions of subsection (a) of this section, the articles of incorporation shall set forth:
(1) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.
(2) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.
(3) If the corporation is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the
40 variations in the relative rights and preferences as be-
41 tween series.

42 (4) Any provision limiting or denying to shareholders
43 the preemptive right to acquire additional unissued or
44 treasury shares of the corporation.

45 (5) Any provision, not inconsistent with law, which
46 the incorporators elect to set forth in the articles of in-
47 corporation for the regulation of the internal affairs of
48 the corporation, including any provision restricting the
49 transfer of shares and any provision which under this
50 article is required or permitted to be set forth in the
51 bylaws.

(c) In the case of a nonprofit corporation, in addition
53 to those matters required to be set forth by the provisions
54 of subsection (a) of this section, the articles of incorpora-
55 tion shall set forth any provisions, not inconsistent with
56 law, which the incorporators elect to set forth in such
57 articles of incorporation for the regulation of the internal
58 affairs of the corporation, including any provisions for
59 distribution of assets on dissolution or final liquidation.

(d) It shall not be necessary to set forth in the articles
60 of incorporation any of the corporate powers enumerated
61 in this article.

(e) Whenever a provision of the articles of incorpora-
64 tion is inconsistent with a bylaw, the provision of the
65 articles of incorporation shall be controlling.

(f) The articles of incorporation shall contain a state-
67 ment of the name and address of the person who, or the
68 firm which, prepared such articles of incorporation.

(g) The articles of incorporation shall be acknowl-
69 edged by the incorporators before a notary public and
70 transmitted with the proper fees to, and shall be filed
72 with, the secretary of state.

§31-1-30. Organizational meeting; notice, waiver of notice.

1 After the issuance of the certificate of incorporation
2 an organizational meeting of the board of directors named
3 in the articles of incorporation shall be held, either within
4 or without this state, at the call of the incorporator or of a
5 majority of the incorporators, for the purpose of adopting
6 bylaws, electing officers and the transaction of such other
7 business as may come before the meeting. The in-
8 corporator or incorporators calling the meeting shall
9 give at least three days' notice thereof by mail to each
10 director so named, which notice shall state the time
11 and place of the meeting, unless such notice is waived in
12 accordance with the provisions of this article.

§31-1-73. Action by shareholders, members or directors with-
out a meeting.

1 (a) Whenever the vote of shareholders or members at
2 a meeting thereof is required or permitted to be taken in
3 connection with any corporate action, the meeting and
4 vote of such shareholders or members may be dispensed
5 with if all of the shareholders or members who would
6 have been entitled to vote upon the action, if such meeting
7 were held, shall agree in writing to such corporate action
8 being taken, and such agreement shall have like effect
9 and validity as though the action were duly taken by the
10 unanimous action of all shareholders or members entitled
11 to vote at a meeting of such shareholders or members
12 duly called and legally held.

13 (b) Unless otherwise provided in the articles of in-
14 corporation or the bylaws, whenever the vote of directors
15 at a meeting thereof is required or permitted to be taken
16 in connection with any corporate action, the meeting and
17 vote of such directors may be dispensed with if all the
18 directors shall agree in writing to such corporate action
19 being taken, and such agreement shall have like effect
20 and validity as though the action were duly taken by the
21 unanimous action of all directors at a meeting of such
22 directors duly called and legally held.

23 (c) In the event that the action which is agreed to, as
24 provided for in subsection (a) or (b) of this section, is
25 such as would have required the filing of any articles,
26 document or certificate with the secretary of state under
27 any provision of this article, if such action had been voted
28 upon by the shareholders or members or by the directors
at a meeting, the articles, document or certificate so filed shall state that written agreement has been executed in lieu of stating that the shareholders, members or directors voted upon the corporate action in question and such articles, document or certificate shall have the same force and effect under all provisions of law as if the action had been taken by the unanimous vote of all shareholders or members entitled to vote, or of all the directors, at a meeting duly called and legally held.

§31-1-109. Articles of amendment.

1. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such articles, and shall set forth:

(a) The name of the corporation.

(b) The amendment so adopted.

(c) The date of the adoption of the amendment by the shareholders, or by the board of directors where no shares have been issued.

(d) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(e) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.

(f) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.
COUNTY COMMISSIONS AND COUNTY OFFICERS  [Ch. 27

27 (g) If such amendment effects a change in the amount
28 of stated capital, then a statement of the manner in
29 which the same is effected and a statement, expressed in
30 dollars, of the amount of stated capital as changed by
31 such amendment.

32 (h) The name and address of the person who, or the
33 firm which, prepared such amendment.

§31-1-140. Removal of directors.

1 A director may be removed from office pursuant to
2 any procedure therefor provided in the articles of incor-
3 poration or bylaws; or, if no procedure therefor is pro-
4 vided in the articles of incorporation or bylaws, directors
5 may be removed at a meeting of members called expressly
6 for that purpose in the manner provided in this section.
7 Any director or the entire board of directors may be re-
8 moved, with or without cause, by a vote of a majority of
9 the members then entitled to vote at an election of di-
10 rectors.

11 If less than the entire board is to be removed, no one
12 of the directors may be removed if the votes cast against
13 his removal would be sufficient to elect him.

14 Whenever the members of any class are entitled to elect
15 one or more directors by the provisions of the articles of
16 incorporation, the provisions of this section shall apply,
17 in respect to the removal of a director or directors so
18 elected, to the vote of the members of that class and not
19 to the vote of all the members entitled to vote.

CHAPTER 27

(S. B. 486—By Mr. Swann and Mr. McGraw)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article ten, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to filling
vacancies in offices of county commissioner or clerk of the county commission.

Be it enacted by the Legislature of West Virginia:

That section seven, article ten, 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 10. FILLING VACANCIES.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

1 Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the governor of the state shall fill any vacancy in such county commission necessary to create a quorum thereof, until the next general election, at which election every such vacancy shall be filled by election for the unexpired term:

Provided, That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner until the next general election, it shall be the mandatory, nondiscretionary duty of each such county commissioner, within sixty days from the date such vacancy occurs, to submit in person to the judge of the circuit court of such county, the name of one person who is a member of the same political party as was the person whose vacancy is being filled and was such a member for at least one year next preceding the filling of such vacancy and who is legally qualified and willing to fill such vacancy. The judge shall thereupon, in the presence of the quorum of the county commission, cause each name to be written on a separate piece of paper, shall fold or roll up the pieces of paper so as to resemble each other and so that the name written thereon shall not be visible on the outside, and shall deposit the pieces of paper in a box from which one of the county commissioners, selected by lot under the supervision of such judge, shall, in the presence of each other and the judge, draw one of the names
and the person whose name is so drawn shall be the
county commission's choice to fill such vacancy. The
circuit court shall have jurisdiction to compel compliance
with the provisions of this proviso.

Notice of such election as aforesaid shall be given by
order of the county commission and published as pre-
scribed in section six of this article. Nomination of can-
didates to fill the office for an unexpired term in the
office of county commission or clerk of the county com-
mission shall be made in the manner prescribed for
making nominations to fill a vacancy in the office of the
clerk of the circuit court.

CHAPTER 28
(H. B. 1103—By Mr. Scott)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter six
of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, relating to bonds of county officers.

Be it enacted by the Legislature of West Virginia:

That section ten, article two, 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 2. OFFICIAL AND OTHER BONDS.


1 Every commissioner of a county commission and every
2 clerk of a circuit court shall give bond with good security,
3 to be approved by the circuit court, or the judge thereof in
4 vacation; and every sheriff, surveyor of lands, clerk of a
5 county commission, assessor, county superintendent of schools,
6 notary public, justice of the peace and constable shall give bond
7 with good security, to be approved, unless otherwise provided
by law, by the county commission of the county in which such officer is to act. The penalty of the bond of each commissioner of a county commission shall be not less than twenty thousand dollars and not more than two hundred thousand dollars, the amount to be fixed by the circuit court of the county, or the judge thereof in vacation, by order entered of record on the proper order books of both the county and circuit courts; of the clerk of the circuit court, not less than ten thousand nor more than fifty thousand dollars; of the sheriff, not less than twenty-five thousand dollars nor more than the aggregate amount of all state, county, district, school, municipal and other moneys which will probably come into his hands during any one year of his term of office; of the surveyor of lands, not less than one thousand nor more than three thousand dollars; of the clerk of the county commission, not less than ten thousand nor more than fifty thousand dollars; of the assessor, not less than two thousand nor more than five thousand dollars; of the county superintendent of schools, not less than ten thousand nor more than fifty thousand dollars; of a notary public, not less than two hundred fifty nor more than one thousand dollars. Any public body required to pay the premiums on official bonds may provide a blanket bond policy for two or more such official bonds: Provided, That the bond herein required to be given by a notary public may be given before the clerk of the county commission, in the vacation of said commission, and approved by it at its next regular session.

CHAPTER 29
(S. B. 27—By Mr. Steptoe)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]
interest borne on assessments paid for permanent improvements to property made by county commissions and increasing from six not to exceed eight percent per annum the interest drawn on the coupon-bearing certificates payable for such assessments.

Be it enacted by the Legislature of West Virginia:

That section three-a, article one, 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 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3a. Construction of waterworks; sewers and sewage disposal plants; improvements of streets, alleys and sidewalks; assessment of cost of sanitary sewers and improved streets.

In addition to all other powers and duties now conferred by law upon county commissions, such commissions are hereby authorized and empowered to install, construct, repair, maintain and operate waterworks, water mains, sewer lines and sewage disposal plants in connection therewith within their respective counties: Provided, That the county commission of Webster County is authorized to expend county funds in the opening of, and upkeep of a sulphur well now situate on county property: Provided, That such authority and power herein conferred upon county commissions shall not extend into the territory within any municipal corporation: Provided, however, That any county commission is hereby authorized to enter into contracts or agreements with any municipality within the county, or with a municipality in an adjoining county, with reference to the exercise of the powers vested in such commissions by this section.

In addition to the foregoing, the county commission shall have the power to improve streets, sidewalks and alleys and lay sewers as follows: Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, between any two cross-streets, or between a cross-street and an
25 alley in any unincorporated community, requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed not only with their portion of the cost of such improvement abutting upon their respective properties, but also offering to have their said properties proportionately assessed with the total cost of paving, grading and curbing the intersections of such streets and alleys, the county commission may cause any such street or alley to be improved or paved or repaved substantially with the materials and according to such plans and specifications as hereinafter provided: Provided, however, That the county commission is further authorized, if the said county commission so determines by a unanimous vote of its constituted membership, that two or more intersecting streets, sidewalks, alleys and sewers, should be improved as one project, in order to satisfy peculiar problems resulting from access as well as drainage problems, then, in that event, the said county commission may order such improvements as one single unit and project, upon petition in writing duly verified of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of all streets or alleys, or portions thereof included by said county commission in said unit and project.

The total cost including labor and materials, engineering, and legal service of grading and paving, curbing, improving any such street or alley (including the cost of the intersections) and assessing the cost thereof shall be borne by the owners of the land abutting upon such street or alley when the work is completed and accepted according to the following plan, that is to say, payment is to be made by all landowners on either side of such street or alley so paved or improved, in such proportion of the total cost as the frontage in feet of each owner's land so abutting bears to the total frontage of all the land so abutting on such street or alley, so paved or improved as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said commission.
Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on one side of any street between any two cross-streets or between a cross-street and an alley in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the total cost thereof, the county commission may cause any sidewalk to be improved, or paved, or repaved, substantially with such materials according to such plans and specifications and the total cost including labor and materials, engineering and legal service of improving, grading, paving or repaving such sidewalk and assessing the cost thereof shall, when the work is completed and accepted, be assessed against the owners of the lots or fractional part of lots abutting on such sidewalk, in such portion of the total cost as the frontage in feet of each owner’s land so abutting bears to the total frontage of all lots so abutting on such sidewalk so paved or improved, as aforesaid, which computation shall be made by the county engineer or surveyor and certified by him to the clerk of said commission.

Upon petition in writing duly verified, of the persons, firms or corporations owning not less than sixty percent of the frontage of the lots abutting on both sides of any street or alley, in any unincorporated community requesting the county commission so to do according to plans and specifications submitted with such petition and offering to have their property so abutting assessed with the cost, as hereinafter provided, the county commission may lay and construct sanitary sewers in any street or alley with such materials and substantially according to such plans and specifications and when such sewer is completed and accepted, the county engineer or surveyor shall report to the county commission, in writing, the total cost of such sewer and a description of the lots and lands, as to the location, frontage, depth and ownership liable for such sewer assessment, so far as the same may be ascertained, together with the amount chargeable against each lot and owner, calculated in the following manner: The total cost
106 of constructing and laying the sewer including labor, 107 materials, legal and engineering services shall be borne by 108 the owners of the land abutting upon the streets and alleys, 109 in which the sewer is laid according to the following plan: 110 Payment is to be made by each landowner on either side of 111 such portion of a street or alley in which such sewer is 112 laid, in such proportions as the frontage of his land upon 113 said street or alley bears to the total frontage of all lots 114 so abutting on such street or alley. In case of a corner 115 lot, frontage is to be measured along the longest dimen-116 sions thereof abutting on such street or alley in which 117 such sewer is laid. Any lot having a depth of two hundred 118 feet or more, and fronting on two streets or alleys, one in 119 the front and one in the rear of said lot, shall be assessed 120 on both of said streets or alleys if a sewer is laid in both 121 such streets and alleys. Where a corner lot has been as-122 sessed on the end it shall not be assessed on the side for 123 the same sewer and where it has been assessed on the side 124 it shall not be assessed on the end for the same sewer. 125 If the petitioners request the improvement of any such 126 street, alley or sidewalk in a manner which does not re-127 quire the permanent paving or repaving thereof, the coun-128 ty commission shall likewise have authority to improve 129 such street, alley or sidewalk, substantially as requested 130 in such petition, and the total cost thereof including labor, 131 materials, engineering and legal services shall be assessed 132 against the abutting owners in the proportion which the 133 frontage of their lots abutting upon such street, alley or 134 sidewalk bears to the total frontage of all lots abutting 135 upon such street, alley or sidewalk so improved. 136 Upon the filing of such petition and before work is 137 begun, or let to contract, the county commission shall 138 fix a time and place for hearing protests and shall re-139 quire the petitioners to post notice of such hearing in at 140 least two conspicuous places on the street, alley or side-141 walk affected, and to give notice thereof by publication 142 of such notice as a Class I legal advertisement in com-143 pliance with the provisions of article three, chapter 144 fifty-nine of this code, and the publication area for such 145 publication shall be the county in which the improvement
is to be made. The hearing shall be held not less than ten nor more than thirty days after the filing of such petition.

At the time and place set for hearing protests the county commission may examine witnesses and consider other evidence to show that said petition was filed in good faith; that the signatures thereto are genuine; and that the proposed improvement, paving, repaving or sewer ing will result in special benefits to all owners of property abutting on said street, alley or sidewalk in an amount at least equal in value to the cost thereof. The commission shall within ten days thereafter enter a formal order stating its decision and if the petition be granted shall proceed after due advertisement, reserving the right to reject any or all bids, to let a contract for such work and materials to the lowest responsible bidder.

Any owner of property abutting upon said street, alley or sidewalk aggrieved by such order shall have the right to review the same on the record made before the county commission by filing within ten days after the entry of such order, a petition with the clerk of the circuit court assigning errors and giving bond in a penalty to be fixed by the circuit court to pay any costs or expenses incurred upon such appeal should the order of the county commission be affirmed. The circuit court shall proceed to review the matter as in other cases of appeal from the county commission.

All assessments made under this section shall be certified to the county clerk and recorded in a proper trust deed book and indexed in the name of the owner of any lot or fractional part of a lot so assessed. The assessment so made shall be a lien on the property liable therefor, and shall have priority over all other liens except those for taxes, and may be enforced by a civil action in the name of the contractor performing the work in the same manner as provided for other liens for permanent improvements. Such assessment shall be paid in not more than ten equal annual installments, bearing interest at a rate not to exceed eight percent per annum as follows: The first installment, together with interest on the whole assessment,
shall be paid not later than one year from the date of such assessment, and a like installment with interest on the whole amount remaining unpaid each year thereafter until the principal and all interest shall have been paid in full.

The county commission may issue coupon-bearing certificates payable in not more than ten equal annual installments for the amount of such assessment and the interest thereon, to be paid by the owner of any lot or fractional part thereof, fronting on such street, alley or sidewalk which has been improved, paved, or repaved or in which a sewer has been laid, as aforesaid, and the holder of said certificate shall have a lien having priority over all other liens except those for taxes upon the lot or part of lot fronting on such street, alley or sidewalk, and such certificate shall likewise draw interest from the date of assessment at a rate not to exceed eight percent per annum, and payment thereof may be enforced in the name of the holder of said certificate by proper civil action in any court having jurisdiction to enforce such lien.

Certificates authorized under this section may be issued, sold or negotiated to the contractor doing the work, or to his assignee, or to any person, firm, or corporation: Provided, That the county commission in issuing such certificates shall not be held as a guarantor, or in any way liable for the payment thereof. Certificates so issued shall contain a provision to the effect that in the event of default in the payment of any one or more of said installments, when due, said default continuing for a period of sixty days, all unpaid installments shall thereupon become due and payable, and the owner of said certificates may proceed to collect the unpaid balance thereof in the manner hereinbefore provided.

In all cases where petitioners request paving or repaving, or the laying of sewers under the provisions of this section, the county commission shall let the work of grading, paving, curbing or sewer ing to contract to the lowest responsible bidder. In each such case the county commission shall require a bond in the penalty of the contract price guaranteeing the faithful performance of the work and each such contract shall require the con-
tractor to repair any defects due to defective workmanship or materials discovered within one year after the completion of the work.

Upon presentation to the clerk of the county commission of the certificates evidencing the lien, duly canceled and marked paid by the holder thereof, or evidence of payment of the assessment if no certificates have been issued, said clerk shall execute and acknowledge a release of the lien which release may be recorded, as other releases in the office of the clerk of the county commission.

The owner of any lot or fractional part of a lot abutting upon such street, alley or sidewalk so improved, paved, repaved or sewered shall have the right to anticipate the payment of any such assessment or certificate by paying the principal amount due, with interest accrued thereon to date of payment, and also to pay the entire amount, without interest at any time, within thirty days following the date of the assessment.

Nothing in this section contained shall be construed to authorize the county commissions of the various counties to acquire any road construction, ditching or paving equipment. The county commissions are hereby authorized to rent from the state road commissioner or any other person, firm or corporation such equipment as may be necessary from time to time, to improve any street or sidewalk which petitioners do not desire to have paved in a permanent manner, and for such purpose to employ such labor as may be necessary but no expense connected therewith shall be charged to any county funds.

No county commission shall be under any duty after the paving, repaving or improvement of any street, alley or sidewalk or the laying of any sanitary sewer under the provisions of this section, to maintain or repair the same, but any such commission shall have authority upon petition duly verified, signed by at least sixty percent of the owners of property abutting upon any improvement made under this section, to maintain or repair such improvement or sewer and to assess the cost thereof against the owners of such abutting property in the same manner as the cost of the original improvement.
AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowances for certain expenses incurred by sheriffs and increasing the allowance for keeping and feeding prisoners in certain counties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-13. Allowance for expenses of sheriff.

The county commission 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, three dollars 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 commission 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 commission. At the end of each month the sheriff shall file with
The county commission 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 commission 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 commission. Reimbursement, properly allowed, shall be made from the general county fund.

CHAPTER 31
(H. B. 847—By Mr. Dinsmore and Mrs. Given)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to vacation time for deputy sheriffs under civil service.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-17a. Vacations for deputy sheriffs.

1 The county commission of each county shall allow the sheriff's deputies in its employ, vacation time accrued in the following manner: For deputies with less than five years of service, vacation time shall be accrued at the rate of one and one-quarter days for each calendar month of service; for deputies with five to ten years of service, vacation time shall be accrued at the rate of one and one-half days for each calendar month of service; for deputies with ten to fifteen years of service, vacation time shall be accrued at the rate of one and three-quarter days for each calendar month of service; for deputies with fifteen or more years of service, vacation time shall be accrued at the rate of two days for each calendar month of service.

14 Each deputy sheriff shall only receive vacation time for each month in which he shall have worked one hour more than one half the normal working hours in a given month as prescribed by the sheriff.

18 No more than thirty days of accrued vacation time may be carried forward from one calendar year to the next.

CHAPTER 32

(Passed March 13, 1976; in effect January 1, 1977. Approved by the Governor.)

AN ACT to repeal sections five-a-(two) through five-a-(fifty-five), article two, chapter eleven, of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend
and reenact sections five-a and five-a-(one) of said article, all relating to additional compensation for assessors according to county classification; additional duties.

Be it enacted by the Legislature of West Virginia:

That sections five-a-(two) through five-a-(fifty-five), article two, chapter eleven, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections five-a and five-a-(one) of said article be amended and reenacted, all to read as follows:

ARTICLE 2. ASSESSORS.

§11-2-5a. Additional compensation; additional duties.
§11-2-5a(1). Additional compensation of assessors according to county classification.

§11-2-5a. Additional compensation; additional duties.

1 In addition to the salary or compensation provided elsewhere in this code, the county commission of each county shall pay to the assessor, on an annual basis, on and after July one, one thousand nine hundred seventy-seven, additional compensation in accordance with the provisions of this section and section five-a-(one) 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.

The duties hereinbefore listed must be substantially completed by the assessor no later than the first day of November of each year, and each assessor shall certify to the tax commissioner that he has substantially completed such duties in accordance with requirements of the tax commissioner. If at this time there has been substantial completion of the above duties to the satisfaction of the tax commissioner, the tax commissioner shall, but no later than the fifteenth day of November of each year, certify to the county commission that the assessor has substantially performed these duties and is entitled to the remuneration provided for in section five-a-(one) of this article.

§11-2-5a(1). Additional compensation of assessors according to county classification.

For the purpose of determining the additional compensation to be paid to the county assessor of each county for the additional duties provided by section five-a of this article, the following compensations for each county assessor by class, as provided in section three, article seven, chapter seven, are hereby established and shall be used by each county commission in determining the compensation of each county assessor:

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Notwithstanding this section or any other section of the code to the contrary, in no event shall the additional compensation paid to the county assessors for performance of additional duties as provided in section five-a of this article be less than the additional compensation such county assessors received January one, one thousand nine hundred seventy-six.

CHAPTER 33

(H. B. 1087—By Mr. Sommerville)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code, all relating to implementing the judicial reform amendment; creating a magistrates court system within the state; abolition of the offices of justice of the peace and constable; designating officer to arrest person accused of illegal voting and delivering affidavits of illegal voting to a magistrate; clarifying the manner of qualifying of security officers and their responsibilities; designating the judicial powers and duties of mayors; jurisdiction of municipal courts; removal of certain jurisdictions from municipal judges; election of magistrates; order of listing magistrate candidates on ballot; extension of filing deadline for candidates for magistrate; number of magistrates; salary of magistrates; qualification of magistrates; educational courses; exemptions for certain persons previously serving as justice of the peace from qualifications; magistrate’s oath of office; removal and disciplinary procedures; filling of vacancies in office of magistrate; position of chief magistrate; qualifications, duties and salary of
magistrate court clerks; appointment of magistrate assistants; requiring bond; location of magistrate court offices by determination of circuit judge; payment of expenses of magistrate courts; prohibited conduct by a magistrate and providing a criminal penalty therefor; requiring magistrates to serve temporarily at other locations within and outside of the county; duty of sheriff to serve process and act as bailiff of magistrate court; maintaining provisions of law relating to justices of the peace in effect until the first day of January, one thousand nine hundred seventy-seven; providing for transition of judicial business to magistrates court; maintaining validity of acts and decisions of justices of the peace; authorizing supervisory rules; setting civil jurisdiction at one thousand five hundred dollars; civil jurisdiction generally; venue; giving magistrates criminal jurisdiction over all misdemeanors; establishing court costs in civil and criminal cases; providing procedures for disposition of costs between county and state; creation of a special county fund; disposition of certain justice of the peace fees and costs; disposition of fees, fines and forfeitures; posting security for costs by nonresident plaintiff; requiring sheriff to collect unpaid costs and fines; requiring the keeping of certain records; requiring financial audit by the chief inspector of public offices; providing procedure for institution of civil actions and criminal proceedings; requiring appointment of counsel for indigent defendants in criminal proceedings; providing that service of civil process shall be accomplished in the same manner as process from circuit courts; providing procedure whereby parties notify magistrate of desire for trial or confession of judgment; allowing removal to another magistrate by filing an affidavit of prejudice; removal to circuit court; allowing counterclaims; requiring sworn evidence for default judgment; requiring dismissal without prejudice of actions not within jurisdiction of magistrate; providing for dismissal of actions under certain circumstances; applying rules of evidence to magistrates court; mandatory and discretionary continuances; requiring the appointment of guardian ad litem in certain instances; providing for the issuance of subpoenas and subpoenas duces tecum; preserving certain communications privileged and prohibiting incompetent testimony; allowing evidentiary depositions; requiring magistrate to hold trials in misdemeanors rather than preliminary hearings when requested by
defendant; providing for jury trials and jury selection; requiring timely entry of judgment; allowing magistrate to set aside judgment in certain instances; contempt powers of magistrate and providing fine and imprisonment; providing procedure for automatic appeal to circuit court; providing for appeal bond; providing for enforcement of civil judgments; providing for filing of judgment in offices of circuit clerk and county clerk; increasing service of process fees to be charged by sheriff and requiring fees thereby collected from magistrates court to be dedicated to sheriff's budget; relating to jurisdiction of justices of the peace and magistrates with respect to parking violations on college campuses; relating to responsibilities and duties of security officers employed by the board of regents; relating to responsibilities and duties of special railroad policemen; and providing certain criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section thirty-nine, article one, chapter three; section two-b, article one, chapter five-a; section one, article ten, chapter eight; section two, article ten, chapter eight; section eight, article nine, chapter sixteen; section thirteen-h, article two, chapter eighteen; section eight-a, article twenty-six, chapter eighteen; section fourteen, article one, chapter fifty-nine; section twenty-eight, article one, chapter fifty-nine; and section forty-one, article three, chapter sixty-one, all of said code be amended and reenacted, all to read as follows:

**Chapter**

3. **Elections.**

5A. **Department of Finance and Administration.**

8. **Municipal Law, Municipalities and Counties; Intergovernmental Relations.**

16. **Public Health.**

18. **Education.**

50. **Magistrate Courts.**

59. **Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

61. **Crimes and Their Punishment.**
CHAPTER 50. MAGISTRATE COURTS.

Article
1. Courts and Officers.
2. Jurisdiction and Authority.
4. Procedure before Trial.
5. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-1. Magistrate court created.
§50-1-2. Number of magistrates.
§50-1-4. Qualifications of magistrates; training; oath; continuing education; time devoted to public duties.
§50-1-5. Removal from office; disciplinary procedures.
§50-1-7. Chief magistrates; administrative responsibility.
§50-1-9. Magistrate assistants; salary; duties; appointment of additional assistants.
§50-1-10. Clerks and assistants to take oath and post bond.
§50-1-11. Offices for magistrates; location; expenses; copy of state code.
§50-1-12. Conduct of office; penalty.
§50-1-13. Temporary service within or outside of county.
§50-1-14. Duties of sheriff; service of process; bailiff.
§50-1-17. Reference to justice of the peace; abolition of the office of constable.

§50-1-1. Magistrate court created.

There is hereby created in each county of this state a magistrate court with such numbers of magistrates for each court as are hereafter provided. There shall be elected by the voters of each county, at the general election to be held in the year one thousand nine hundred seventy-six, and in every fourth year thereafter, such number of magistrates as is provided in section two of this article. The filing fee for the office of magistrate shall be one percent of the annual salary. The term of magistrates shall be for four years and shall begin on the first day of January of the year following the year of election.

In counties where voting machines or electronic voting systems are used, the procedures of section eleven, article four, chapter three and section twelve, article four-a of said chapter
three of this code shall apply respectively to the election of
magistrates in the same manner as they apply to the election of
members of the House of Delegates.

Notwithstanding the provisions of section seven, article
five, chapter three of this code, for purposes of the primary
election to be held in the year one thousand nine hundred
seventy-six, the last day for filing certificates of candidacy
for the office of magistrate shall be extended to the twenty-
seventh day of February of that year.

§50-1-2. Number of magistrates.

In each county which has less than thirty thousand in
population there shall be elected two magistrates. In each
county which has thirty thousand or more in population but
less than sixty thousand in population there shall be elected
three magistrates; except that in the county of McDowell there
shall be elected four magistrates. In each county which has sixty-
thousand or more in population but less than one hundred
thousand in population there shall be elected four magistrates.
In each county which has one hundred thousand or more in
population but less than two hundred thousand in population
there shall be elected seven magistrates. In each county which
has two hundred thousand or more in population there shall
be elected ten magistrates. For the purpose of this article,
the population of each county shall be considered to be the
population as determined by the last preceding census taken
under the authority of the United States government. No
change in the number of magistrates caused by the publication
of more recent such census figures shall be effective until
the next regular election for such office occurring after the
year of such publication.


The salary of each magistrate shall be paid by the state.
Magistrates who serve five thousand or less in population
shall be paid annual salaries of seven thousand dollars.
Magistrates who serve more than five thousand in population
but less than ten thousand in population shall be paid annual
salaries of ten thousand dollars. Magistrates who serve ten
7 thousand or more in population but less than fifteen thou-
8 sand in population shall be paid annual salaries of fourteen
9 thousand dollars. Magistrates who serve fifteen thousand or
10 more in population shall be paid annual salaries of eighteen
11 thousand dollars. For the purpose of determining the popu-
12 lation served by each magistrate, the number of magistrates
13 authorized for each county shall be divided into the popula-
14 tion of each county. Magistrates shall be paid once a month.

§50-1-4. Qualifications of magistrates; training; oath; continuing
education; time devoted to public duties.

1 Each magistrate shall be at least twenty-one years of age,
2 shall have a high school education or its equivalent, shall
3 not have been convicted of any felony or any misdemeanor in-
4 volving moral turpitude and shall reside in the county of his
5 election. No magistrate shall be a member of the immediate
6 family of any other magistrate in the county. In the event more
7 than one member of an immediate family shall be elected in a
8 county, only the member receiving the highest number of votes
9 shall be eligible to serve. For purposes of this section, imme-
10 diate family means the relationship of mother, father, sister,
11 brother, child or spouse. Notwithstanding the foregoing provi-
12 sions of this section, each person who held the office of justice
13 of the peace on the fifth day of November, one thousand nine
14 hundred seventy-four, and who served in or performed the
15 functions of such office for at least one year immediately prior
16 thereto shall be deemed qualified to run for the office of mag-
17 istrate in the county of his residence.
18
19 No person shall assume the duties of magistrate unless he
20 shall have first attended and completed a course of instruction
21 in rudimentary principles of law and procedure which shall be
22 given between the date of election and the beginning of the
23 magistrate's term in accordance with the supervisory rules of
24 the supreme court of appeals.
25
26 All magistrates shall be required to attend such other
27 courses of continuing educational instruction as may be
28 required by supervisory rule of the supreme court of appeals.
29 Failure to attend such courses of continuing educational in-
30 struction without good cause shall constitute neglect of duty.
Such courses shall be provided at least once every other year. Persons attending such courses outside of the county of their residence shall be reimbursed by the state for expenses actually incurred not to exceed thirty-five dollars per day and for travel expenses at the rate of fifteen cents per mile for one round trip.

Each magistrate shall, before assuming the duties of office, take an oath of office to be administered by the circuit judge of the county, or the chief judge thereof if there is more than one judge of the circuit court. Each magistrate shall maintain the qualifications for office at all times.

Each magistrate who serves five thousand or less in population shall devote such time to his public duties as shall be required by rule or regulation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Each magistrate who serves more than five thousand in population shall devote full time to his public duties. As nearly as practicable the work load and the total number of hours required shall be divided evenly among the magistrates in a county by such judge.

§50-1-5. Removal from office; disciplinary procedures.

A magistrate may be removed from office in the manner provided in section seven, article six, chapter six of this code. In addition to the grounds for removal enumerated in section three, article six, chapter six of this code, a magistrate may be removed from office for conviction of a felony, for conviction of a misdemeanor involving moral turpitude or a duty of the office, or for willful violation of this chapter or any rule, regulation or order provided for in this chapter. In addition to other methods provided by law, removal proceedings may be initiated upon the motion of a judge of the circuit court of the county.

A magistrate may be censured or temporarily suspended in accordance with the rules of the supreme court of appeals.


When a vacancy occurs in the office of magistrate the judge of the circuit court, or the chief judge thereof if there is more
than one judge of the circuit court, shall fill the same by ap-
pointment until the next general election and the person so
appointed shall hold office until his successor is elected and
qualified.

At such general election a magistrate shall be elected for
the unexpired term. Such circuit judge shall cause a notice
of such election to be published prior to such election as a
Class II-0 legal advertisement in compliance with the provi-
sions of article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county in-
volved. If the vacancy occurs before the primary election held
to nominate candidates to be voted for at the general election,
at which any such vacancy is to be filled, candidates to fill
such vacancy shall be nominated at such primary election in
accordance with the time requirements and the provisions
and procedures prescribed in article five, chapter three of this
code. Otherwise, they shall be nominated by the county
executive committee in the manner provided in section nine-
teen, article five, chapter three of this code, as in the case of
filling vacancies in nominations, and the names of the per-
sons so nominated and certified to the clerk of the circuit court
of such county shall be placed upon the ballot to be voted
at such next general election.

§50-1-7. Chief magistrates; administrative responsibility.

The judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court, may appoint
one of the magistrates, to serve at the will and pleasure of such
circuit court judge, as the chief magistrate of the county. The
chief magistrate, if there is one, shall be responsible for all of
the administrative functions required of the magistrate court
in each county by this code and as required by rules and regu-
lations of the supreme court of appeals. These functions shall
include, but not be limited to, supervising the circuit clerk or
magistrate court clerk in the establishment and maintenance
of a centralized docketing system, submitting all reports re-
quired by law and promptly notifying such circuit court judge
that additional magistrates are required to handle the cases
then pending in the magistrate court of said county.

In each county having three or more magistrates the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court. In any county a magistrate court clerk may be appointed prior to the first day of January, one thousand nine hundred seventy-seven. The magistrate court clerk shall serve at the will and pleasure of such circuit judge.

Magistrate court clerks shall be paid a monthly salary by the state. Magistrate court clerks serving magistrates who serve five thousand or less in population shall be paid up to two hundred fifty dollars per month. Magistrate court clerks serving magistrates who serve more than five thousand in population but less than ten thousand in population shall be paid up to four hundred fifty dollars per month. Magistrate court clerks serving magistrates who serve more than ten thousand in population but less than fifteen thousand in population shall be paid up to five hundred fifty dollars per month. Magistrate court clerks serving magistrates who serve fifteen thousand or more in population shall be paid up to six hundred fifty dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate court clerk shall be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, within the limits set forth in this section.

In addition to such other duties as may be imposed by the provisions of this chapter or by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the magistrate court clerk to establish and maintain appropriate dockets and records in a centralized system for magistrate court, to assist in the preparation of such reports as may be required of the court and to carry out on
behalf of the magistrates, or chief magistrate, if a chief magistrate is appointed, the administrative duties of the court.

Magistrate court clerk or, if there is no magistrate court clerk in the county, the clerk of the circuit court shall have the authority to issue all manner of civil process in magistrate court.

§50-1-9. Magistrate assistants; salary; duties; appointment of additional assistants.

In each county there shall be one magistrate assistant for each magistrate serving magistrate court. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he shall serve. Such assistant shall not be a member of the immediate family of any magistrate, shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family shall mean the relationships of mother, father, sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or otherwise, as may be assigned by the magistrate and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. In addition to such duties, magistrate assistants shall have the duty to prepare the summons in civil actions, to collect all costs, fees, fines, forfeitures and penalties which may be payable to the court, to submit such moneys, along with an accounting thereof, to appropriate authorities as provided by law, and to submit such reports as by law may be required.

Magistrate assistants shall be paid a monthly salary by the state. Magistrate assistants serving magistrates who serve five thousand or less in population shall be paid up to two hundred fifty dollars per month. Magistrate assistants serving magistrates who serve more than five thousand in population but less than ten thousand in population shall be paid up to four hundred fifty dollars per month. Magistrate assistants serving magistrates who serve more than ten thousand in population but less than fifteen thousand in population shall be
paid up to five hundred fifty dollars per month. Magistrate assistants serving magistrates who serve fifteen thousand or more in population shall be paid up to six hundred fifty dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section. The salary of an additional magistrate assistant appointed pursuant to the provisions of this section shall be established by the person making the appointment of such additional magistrate assistant within such limits.

If required by work load and upon the recommendation of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, the supreme court of appeals may by rule provide for additional magistrate assistants. When an additional magistrate assistant is authorized, such rule shall allow the appointment to be made by the magistrate when such magistrate assistant shall be working exclusively under the supervision of one magistrate but otherwise shall allow the appointment to be made by such judge.

§50-1-10. Clerks and assistants to take oath and post bond.

Each magistrate court clerk and magistrate assistant shall take an oath of office and shall post a bond in the penalty of twenty-five thousand dollars with sufficient surety approved by the administrative director of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, which bond shall be conditioned upon the faithful performance of the duties of the office. The state shall pay the cost of such bond and the administrative director of the supreme court of appeals may obtain, in lieu of individual bonds, a bond including more than one magistrate court clerk or magistrate assistant.

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

Subject to the rules of the supreme court of appeals, the location of offices for magistrates shall be determined by order
3 of the judge of the circuit court, or the chief judge thereof if
4 there is more than one judge of the circuit court. When re-
5 quired by geography or population dispersion and in order to
6 make such offices accessible to the public, such order may re-
7 quire more than one location for each magistrate. As near as
8 practicable within a county, all office accommodations shall
9 be comparable. All expenses of acquiring or renting such of-
10 fices and utility and telephone expenses thereof shall be paid
11 by the county. All other expenses, including but not limited to
12 expenses for furniture, equipment and supplies, shall be paid
13 by the state. The administrative director of the supreme court
14 of appeals shall supply each magistrate with a current copy of
15 the West Virginia code which shall remain the property of the
16 state.

§50-1-12. Conduct of office; penalty.

1 Magistrates shall be subject to and shall abide by the code
2 of judicial ethics as adopted and amended by the supreme
3 court of appeals. In addition to such conduct as may be regu-
4 lated by the rules of the supreme court of appeals, no magis-
5 trate, magistrate court clerk or magistrate assistant shall
6 (a) Acquire or hold any interest in any matter which is be-
7 fore the magistrate court;
8 (b) Purchase, either directly or indirectly, any property be-
9 ing sold upon execution issued by the magistrate court;
10 (c) Act as agent or attorney for any party in any proceeding
11 in any magistrate court in the state; or
12 (d) Engage in, or assist in, any remunerative endeavor, ex-
13 cept the duties of his office, while on the premises of the mag-
14 istrate court office.

Any person who violates the provisions of this section shall
be guilty of official misconduct and shall be guilty of a mis-
demeanor, and, upon conviction thereof, shall be fined not
more than five hundred dollars. Any judgment rendered in-
volving conduct in violation of this section shall be void.

§50-1-13. Temporary service within or outside of county.

1 The chief justice of the supreme court of appeals or judge of
the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may order a magistrate to serve temporarily at locations within the county other than at the regular office or offices of such magistrate.

The chief justice of the supreme court of appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may by order direct a magistrate to serve temporarily in any other county within the judicial circuit for such purposes as the judge may direct. Such magistrate's authority, to the extent ordered by such judge, shall be equal to the jurisdiction and authority of a magistrate elected in the county to which such magistrate is ordered to serve. Such temporary assignment may not exceed sixty days in length in any given calendar year, except with the consent of the transferred magistrate. Magistrates shall be reimbursed for such reasonable expenses incurred in service outside of the county as provided for by rule of the supreme court of appeals.

§50-1-14. Duties of sheriff; service of process; bailiff.

It shall be the duty of each sheriff to execute all civil and criminal process from any magistrate court which may be directed to such sheriff. Process shall be served in the same manner as provided by law for process from circuit courts.

Notwithstanding any provision contained therein to the contrary, the provisions of section thirty-one, article three, chapter fifty-six of this code relating to service of process on nonresident operators of motor vehicles shall apply to actions in magistrate courts.

Subject to the supervision of the chief justice of the supreme court of appeals or of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, it shall be the duty of the sheriff, or his designated deputy, to serve as bailiff of a magistrate court upon the request of the magistrate. Such service shall also be subject to such administrative rules as may be promulgated by the supreme court of appeals. The writ of mandamus shall lie on behalf of a magistrate to enforce the provisions of this section.

Except as the same may be otherwise amended by act of the Legislature, and except for the provisions of article twenty of this chapter, all of the provisions of chapter fifty of this code existing immediately prior to the effective date of this chapter shall remain in full force and effect until the first day of January, one thousand nine hundred seventy-seven.

Immediately after the expiration of his term of office and in no event later than thirty days thereafter each justice of the peace shall pay over to appropriate authorities or persons such moneys as may be held by him and submit such reports to such authorities or persons as are required by law.

Every justice of the peace, upon the expiration of his term of office, shall forthwith deliver his official docket, together with such dockets of his predecessors as he may have, to the magistrate court clerk or, if there is no magistrate court clerk, to the clerk of the circuit court, who shall maintain such dockets as directed by the supreme court of appeals or by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court.

No act done by a justice of the peace prior to the first day of January, one thousand nine hundred seventy-seven, shall be affected by virtue of the abolition of the office of justice of the peace. Matters pending before a justice of the peace prior to such date or which might otherwise require further action by a justice of the peace shall be handled by the magistrate to whom such matter is assigned or in such other manner as may be ordered by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court.


The supreme court of appeals is hereby authorized to promulgate rules to carry out the intent of this chapter and to exercise rule-making authority granted by article eight of the constitution of West Virginia. Rules promulgated by the
§50-1-17. Reference to justice of the peace; abolition of the office of constable.

On and after the first day of January, one thousand nine hundred seventy-seven, the phrase "justice of the peace" and the word "justice," when used in a context meaning "justice of the peace," shall be construed to mean magistrate as created by the provisions of this chapter. At such time the office of constable shall be abolished, and the duties previously performed by constables shall be assumed by deputy sheriffs or by such other persons as elsewhere provided in this code.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.


§50-2-1. Civil jurisdiction.

Except as limited herein and in addition to jurisdiction granted elsewhere to magistrate courts or justices of the peace, magistrate courts shall have jurisdiction of all civil actions in which the damages or the value of property sought is not more than one thousand five hundred dollars. Magistrate courts shall have jurisdiction of matters involving unlawful entry or detainer of real estate so long as the title to such real estate is not in dispute. Magistrate courts shall have jurisdiction of actions on bonds given pursuant to the provisions of this chapter.

Magistrate courts shall not have jurisdiction of actions in equity, of matters in eminent domain, of matters in which the title to real estate is in issue, of proceedings seeking satisfaction of liens through the sale of real estate, of actions for false imprisonment, of actions for malicious prosecution or of actions for slander or libel or of any of the extraordinary remedies set forth in chapter fifty-three of this code.

Magistrates, magistrate court clerks and magistrate as-
19 assistants shall have the authority to administer any oath or
20 affirmation, to take any affidavit or deposition, unless otherwise
21 expressly provided by law, and to take, under such regulations
22 as are prescribed by law, the acknowledgment of deeds and
23 other writings.


1 The provisions of article one, chapter fifty-six of this
code, relating to venue of actions in circuit courts, shall
apply to venue of actions in magistrate courts as if the
same were set forth fully herein.


1 In addition to jurisdiction granted elsewhere to magistrate
courts or a justice of the peace, magistrate courts shall have
jurisdiction of all misdemeanor offenses committed in the
county and to conduct preliminary examinations on warrants
charging felonies committed within the county. A magistrate
shall have the authority to issue arrest warrants in all criminal
matters, to issue warrants for search and seizure and, except
in cases involving capital offenses, to set and admit to bail.

9 Magistrate courts shall have the jurisdiction of violations of
subsection (c), section four hundred one, article four, chapter
sixty-a of this code under the provisions of section four hun-
dred seven of such article, and may discharge the defendant
under the provisions of section four hundred seven of said
article four. The exercise of such jurisdiction shall not pre-
clude the right of the accused to petition the circuit court
of the county for probation under the provisions of section
four, article twelve, chapter sixty-two of this code.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.
§50-3-2. Costs in criminal proceedings.
§50-3-3. Disposition of fines, forfeitures and penalties.
§50-3-4. Disposition of costs; magistrate court fund.
§50-3-5. Security bond for costs.
§50-3-6. Collection of costs and fines.
§50-3-7. Records of magistrate court; reports.
§50-3-8. Audit.
§50-3-1. Costs in civil actions.

The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:

(a) For filing and trying any civil action and for all services connected therewith but excluding services regarding enforcement of judgment $10.00

(b) For each service regarding enforcement of a judgment including execution, suggestion, garnishment and suggestee execution $3.00

(c) For each bond filed in a case $1.00

(d) For taking deposition of witness for each hour or portion thereof $1.00

(e) For taking and certifying acknowledgment of a deed or other writing or taking oath upon an affidavit $0.50

(f) For mailing any matter required or provided by law to be mailed by certified or registered mail with return receipt $1.00

Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment of costs by poor persons, shall be applicable to all costs in civil actions.

§50-3-2. Costs in criminal proceedings.

In each criminal case tried in a magistrate court in which the defendant is convicted there shall be imposed, in addition to such other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of ten dollars. No such costs shall be collected in advance.

A magistrate shall assess costs in the amount of two dollars and fifty cents for issuing a sheep warrant, appointment and swearing appraisers and docketing the same.

In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in
the amount of ten dollars shall be imposed by the magistrate
court and shall be certified to the clerk of the circuit court in
accordance with the provisions of section six, article five, chap-
ter sixty-two of this code.

§50-3-3. Disposition of fines, forfeitures and penalties.

All fines, forfeitures and penalties collected in magistrate
courts in a criminal proceeding shall be submitted on or before
the tenth day of the month following the month of their
collection to the magistrate court clerk or, if there is no magis-
trate court clerk, to the clerk of the circuit court together with
such information as may be required by the rules of the su-
preme court and by the rules of the chief inspector of public
offices. Such moneys shall thereupon be paid to the sheriff
subject to, and to be distributed in accordance with the pro-
visions of section fifteen, article five, chapter seven of this
code.

§50-3-4. Disposition of costs; magistrate court fund.

All costs collected in magistrate courts in a civil or criminal
proceeding shall be submitted on or before the tenth day
of the month following the month of their collection to the
magistrate court clerk or, if there is no magistrate court clerk,
to the clerk of the circuit court along with such information as
may be required by the rules of the supreme court and by the
rules of the chief inspector of public offices. Such clerk shall
pay such costs into the special county fund hereafter created
during each fiscal year until there shall have been paid a sum
equal to ten thousand dollars multiplied by the number of
magistrates authorized for such county. All costs collected in
excess of such sum during a fiscal year shall be paid to the state.
Notwithstanding the provisions of section two, article nineteen,
chapter fifty of this code to the contrary, all costs and fees col-
lected by justices of the peace on or after the first day of July,
one thousand nine hundred seventy-six, shall be paid into said
special county fund hereafter created.

There is hereby created in each county a special county fund
designated as the magistrate court fund. No moneys shall be
appropriated from the fund except for the purposes provided
COURTS AND THEIR OFFICERS

21 for in this section. Any money remaining in the magistrate
court fund on the thirtieth day of June, one thousand nine
hundred seventy-nine, and on the thirtieth day of June of each
year thereafter, shall be paid to the state.

25 A county may appropriate and spend from such fund such
sums as shall be necessary to defray the expenses of providing
bailiff and service of process services by the sheriff, to defray
the cost of acquiring or renting magistrate court offices and
providing utilities and telephones therefor, to defray the ex-
penses of such other services which by the terms of this chap-
ter are to be provided to magistrate court by the county and
to pay to justices of the peace such sums as they may be en-
titled to by law.

§50-3-5. Security bond for costs.
1 A magistrate may and upon the request of a defendant shall
2 require the posting of security by a nonresident plaintiff to
3 cover costs. Such security shall be in an amount and in such
4 form as the magistrate shall determine. In the event costs
5 remain unpaid by such plaintiff the magistrate court may satisfy
6 the same through the security posted and may proceed for such
7 purposes in the name of the defendant.

§50-3-6. Collection of costs and fines.
1 The magistrate court may issue execution or employ other
2 means of enforcing judgment to collect fines and costs imposed
3 in proceedings before the court and tax the cost thereof as a
4 part of the execution or other process. Such execution or other
5 process shall be directed to the sheriff for collection. The
6 sheriff shall collect the fees prescribed for his services from
7 the party from whom the fine or costs are being collected.
8 Money so collected shall be paid by the sheriff to the
9 magistrate court and shall be paid by the magistrate court in
10 the manner provided by law.

§50-3-7. Records of magistrate court; reports.
1 Records of the judicial transactions of magistrate court shall
2 be kept as required by the rules of the supreme court of ap-
3 peals. If, after judgment is rendered in a matter, no appeal is
4 taken within the time allotted, the records of such proceedings
shall be forwarded to the magistrate court clerk or, if there
is no magistrate court clerk, to the clerk of the circuit court.
Such records shall be maintained by such clerk in accordance
with the rules of the supreme court of appeals.

Records of the financial dealings of the magistrate court
shall be kept as may be required by the rules of the chief in-
spector of public offices, who shall promulgate such rules only
after consultation with the supreme court of appeals.

A magistrate court shall prepare and submit such reports as
may be required by the rules of the supreme court of appeals
or by the chief inspector of public offices.

§50-3-8. Audit.

Each magistrate court shall be subject to an annual financial
audit which shall be accomplished by the chief inspector of
public offices. A report of such audit shall be made to the
supreme court of appeals, the circuit court of the county and
the legislative auditor.

ARTICLE 4. PROCEDURE BEFORE TRIAL

§50-4-1. Commencement of civil actions.
§50-4-2. Commencement of criminal actions.
§50-4-3. Appointment of counsel in criminal proceeding.
§50-4-4. Manner of service in civil cases.
§50-4-5. Return date in civil action; setting of trial date; failure to appear
or notify.
§50-4-6. Return date in criminal proceedings; setting trial date.
§50-4-7. Removal to another magistrate.
§50-4-8. Removal to circuit court.
§50-4-10. Judgment before trial.
§50-4-11. Dismissal of actions for lack of jurisdiction.
§50-4-12. Dismissal of actions for failure to appear, testify, etc.

§50-4-1. Commencement of civil actions.

There shall be one form of civil action in magistrate court.
Civil actions shall be commenced by the payment of the fees
required by article three of this chapter and by providing any
magistrate or magistrate assistant with a concise statement,
either oral or written, of the nature of the cause of action.
Such statement must be sufficient to notify the defendant of
the subject matter of the action. The magistrate assistant shall
immediately prepare a summons in such form and containing such information as may be required by the rules of the supreme court of appeals. The summons shall be dated the same day the request therefor is received and the appropriate fees received, and the action shall be deemed commenced as of that day. The magistrate assistant shall thereupon forward the matter to the magistrate court clerk together with any service of process fees which may have been collected.

Upon receipt of the matter by the magistrates court clerk, such clerk shall docket the same in a central docket. Such clerk shall thereupon assign the action for trial to the magistrate in whose office it was filed unless it shall be necessary to assign it to some other magistrate in order to maintain an equitable distribution of cases among the magistrates. In the event it is necessary to assign the matter to some other magistrate, such clerk, as near as practicable, shall assign it to a magistrate whose office is accessible to all parties and who can properly serve the interests of the parties. The judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall by rule determine when it shall be necessary to assign an action to a magistrate other than the magistrate before whom it was filed in order to maintain such equitable distribution of cases. After the matter is assigned, the magistrate court clerk shall make note of the assignment on the summons, sign the summons and forward it, together with any service of process fees which may have been collected, to the sheriff for service of process.

§50-4-2. Commencement of criminal actions.

Criminal actions shall be commenced by warrant obtained and executed in compliance with the provisions of article one, chapter sixty-two of this code.

Even though any matter may be assigned to another magistrate for the purpose of preliminary examination or trial, in addition to such assigned magistrate, the magistrate originating such warrant shall retain the authority to admit to bail.

§50-4-3. Appointment of counsel in criminal proceeding.

In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the
3 magistrate shall forthwith advise a defendant of his right to
counsel and his right to have counsel appointed if such defen-
dant cannot afford to retain counsel. In the event a defendant
requests that counsel be appointed and executes an affidavit
that he is unable to afford counsel, the magistrate shall stay
further proceedings and shall request the judge of the circuit
court, or the chief judge thereof if there is more than one
judge of the circuit court, to appoint counsel. Such judge shall
thereupon appoint counsel. If there is no judge sitting in the
county at the time of the request then the clerk of the circuit
court shall appoint counsel from a list of attorneys in ac-
cordance with the rules established by such judge of the circuit
court. Counsel shall be paid for his services in accordance with
the provisions of section one, article three, chapter sixty-two
of this code.

§50-4-4. Manner of service in civil cases.

Service of process in civil actions shall be made in the same
manner as is provided for service of process in trial courts of
record.

§50-4-5. Return date in civil action; setting of trial date; failure to
appear or notify.

Each summons in a civil action shall notify the defendant
that he must appear within twenty days after service of the
summons upon him or that he must otherwise notify the
magistrate court by that time that he wishes to contest the
matter.

If the magistrate court is notified by the defendant that he
wishes to contest the matter a trial date shall be set and all
parties notified thereof. Such trial date shall be at least five
days from notification thereof unless all parties consent other-
wise thereto.

If no appearance or other notification is made within twenty
days after the service of the summons on the defendant, judg-
ment by default may be entered in accordance with the pro-
visions of section ten of this article.

§50-4-6. Return date in criminal proceedings; setting trial date.

When a warrant is executed in a criminal proceeding the
defendant shall be notified of the return date set by the court.
The defendant shall appear before the magistrate on or before the return date. In the event a trial or preliminary examination is not expressly waived by such defendant, the magistrate shall set a date for such trial or preliminary examination and shall notify all parties.

§50-4-7. Removal to another magistrate.

Any party to a civil or criminal proceeding before a magistrate in any county wherein there is more than one magistrate may file an affidavit that the magistrate before whom the matter is pending has a personal bias or prejudice either against him or in favor of any opposite party or that such magistrate has counseled with any opposite party with respect to the merits of the proceeding. The affidavit shall state the facts and reasons for belief in the truth thereof. The supreme court of appeals shall provide a form affidavit which shall be made available to all parties and which shall comply with the requirements of this section.

Upon the filing of such affidavit before the trial or hearing, the magistrate shall transfer all matters relating to the case to the magistrate court clerk, who shall thereupon assign and transfer the matter to be heard by some other magistrate within the county upon a rotation basis to be established by the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. Such removal and assignment shall be permitted, however, only if there is some other magistrate in the county before whom the matter had not been previously pending. No party shall be entitled to cause such a removal more than once.

The magistrate to whom the matter is assigned shall set a new return date not more than five days from his receipt of the matter, shall notify all parties thereof, and shall proceed with the matter as if it had been originally assigned to him.

§50-4-8. Removal to circuit court.

At any time before trial in a civil action involving more than one hundred dollars any party may, upon payment of a fee in the amount of ten dollars, cause such action to be removed to the circuit court. The magistrate court, upon receiving
such fee and request for removal shall forward the same along
with all appropriate documents to the clerk of the circuit
court. Such fee shall be paid into the county treasury.
The matter shall then be heard by the circuit court.


A defendant in a civil action may at any time within twenty
days after the service of process on him commence a separate
action as a counterclaim and if such counterclaim arises from
the same transaction or occurrence that is the subject matter of
the initial claim they shall be tried together. The requirements
of law relating to the payment of fees and service of process
shall apply to counterclaims. The failure to institute a counter-
claim permitted by this section shall not preclude the
institution of an action on such claim at a later date.

§50-4-10. Judgment before trial.

If a defendant in a civil action fails to appear or other-
wise notify the magistrate court within twenty days after the
service of the summons upon him that he wishes to contest the
action, the magistrate may enter judgment as justice may re-
quire as follows:

(a) The magistrate shall enter judgment by default only
upon affidavit or sworn testimony reflecting the nature of the
claim, whether or not it is for a sum certain or for a sum which
can by computation be made certain, the defendant’s failure
to appear or otherwise notify the court within twenty days after
service of the summons upon him that he wishes to contest the
action and supporting the relief sought. In the event the plain-
tiff’s claim is not for a sum certain or for a sum which can by
computation be made certain, the court shall require such fur-
ther proof by affidavit or sworn testimony as is necessary to
determine the propriety of the relief sought.

(b) No judgment by default shall be rendered against a
person who is an infant, incompetent person or incarcerated
convict unless such person is represented in the action by a
guardian ad litem, guardian, committee, curator or other like
fiduciary.

Upon motion made by the defendant within twenty days
after the entry of such judgment, the magistrate may, for good cause shown, set aside the judgment and set the matter for trial.

If a defendant offers to confess judgment at any time, the magistrate shall take the same in writing and enter judgment for the amount confessed plus costs. In the event the amount claimed by plaintiff exceeds the amount confessed by defendant the plaintiff may request that the matter be set for trial. If plaintiff’s recovery therein does not exceed the amount confessed, costs shall be assessed against the plaintiff.

§50-4-11. Dismissal of actions for lack of jurisdiction.

If at any time a magistrate determines that an action involves a matter outside of or an amount in excess of the jurisdiction of the magistrate court, the action shall be dismissed without prejudice. Judgment shall be awarded against the plaintiff in such event for any costs incurred by defendant. A plaintiff may, at any time before such dismissal, forgive in writing any amounts which may be in excess of the monetary limitation of the court’s jurisdiction and confer jurisdiction thereby.

§50-4-12. Dismissal of actions for failure to appear, testify, etc.

A magistrate may render judgment against the plaintiff dismissing his action with prejudice to a new action and awarding costs to the defendant when (a) the plaintiff fails to appear and prosecute his action at the proper time for appearance; (b) the plaintiff fails or refuses to testify when properly required to do so; or (c) the plaintiff fails to give security for costs when properly required to do so. In cases (a) and (b) if the plaintiff shows cause why his action should not be dismissed, the magistrate may set aside such judgment and continue the matter before him or may dismiss the action without prejudice.

A magistrate shall dismiss a claim without prejudice if the summons is defective or erroneous and cannot properly be amended.

A magistrate may dismiss a claim without prejudice if the plaintiff requests such dismissal before trial.
The dismissal of a claim shall not affect the right of any party to proceed to trial upon a counterclaim.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-3. Representatives for infant, incompetent or convict; appointment of guardian ad litem.
§50-5-5. Privileged communications; persons incompetent to testify.
§50-5-7. Right to trial in criminal cases.
§50-5-8. Trial by jury.
§50-5-10. Setting aside judgment.
§50-5-12. Appeals in civil cases.


1 Except as the same may be inconsistent with the provisions of this chapter or with rules adopted by the supreme court of appeals, the provisions of law relating to trials and admissibility of evidence in circuit courts shall apply to trials in magistrate courts.


1 A magistrate shall continue the holding of a trial or hearing upon the motion of any party for a period of time not less than five nor more than ten days, and such mandatory continuance shall be available to each party once. A magistrate may continue the holding of a trial or hearing at any time upon his own motion or, if good cause is shown, upon the motion of any party. In criminal proceedings when the defendant is in custody, the state shall not have the right to a continuance but may be granted a continuance for no more than five days if good cause is shown. In criminal proceedings when the defendant is in custody, the magistrate may continue the matter no more than once on his own motion but such continuance shall not be for more than forty-eight hours.

§50-5-3. Representatives for infant, incompetent or convict; appointment of guardian ad litem.

1 No infant, incompetent person or convict shall proceed or
be proceeded against in a civil action in magistrate court unless
the provisions of this section are complied with.

Whenever an infant, incompetent person or convict has a
duly qualified representative, such as a guardian, curator, com-
mittee or other like fiduciary, such representative may sue or
defend on behalf of the infant, incompetent person or con-
vict. If a person under any disability does not have a duly
qualified representative he may sue by his next friend. The
magistrate shall appoint some suitable person who shall not be required to be an attorney at law as guardian ad litem for
an infant, incompetent person or convict not otherwise repre-


A magistrate or magistrate assistant shall, upon the request of any party, issue a subpoena compelling the attendance and testimony of a witness or a subpoena duces tecum compelling the production of some writing or other object. The court shall require the sheriff to enforce such subpoena or subpoena duces tecum and may punish the willful disregard thereof by finding such person in contempt in accordance with the provisions of section ten of this article. Witness fees and mileage shall be calculated and paid as in the circuit court.

§ 50-5-5. Privileged communications; persons incompetent to testify.

No person shall be compelled to testify at any proceeding in magistrate court as to any communication privileged by law. No person shall be compelled to testify as to any matter about which he is deemed incompetent by law to testify.


In a civil case the evidentiary deposition of any witness residing out of the county or unable to attend court may be taken by any party upon reasonable notice to all other parties.

§ 50-5-7. Right to trial in criminal cases.

Every defendant charged in a magistrate court in a criminal proceeding which is within the jurisdiction of the court shall have the right to a trial on the merits in the magistrate court.
§50-5-8. Trial by jury.

Any party to a civil action is entitled to a trial by jury when the amount in controversy exceeds twenty dollars or involves possession to real estate. Any defendant in any criminal action shall be entitled to a trial by jury, and any verdict must be unanimous. A defendant in a criminal proceeding may waive a jury trial so long as he is advised of his right to a jury trial and such waiver is made in writing. A magistrate court jury shall consist of six persons, to be selected from a panel of ten persons. The selection and summoning of jurors shall be conducted in accordance with the rules and regulations of the supreme court of appeals. Jurors shall be paid by the state in accordance with such rules.


In every criminal case in which the defendant is in custody, a magistrate shall enter judgment immediately upon the conclusion of the trial or hearing. In all other proceedings, a magistrate shall enter judgment within twenty-four hours of the conclusion of the trial or hearing.

§50-5-10. Setting aside judgment.

Upon motion made within twenty days after judgment by any party in a civil action or by the defendant in a criminal action, the magistrate who heard the matter may, upon good cause shown, set aside judgment and order a new trial. All parties shall be given notice of such motion and an opportunity to be heard.


A magistrate may punish for contempt of court a person guilty of any of the following acts, and in no other case:

(a) Contemptuous or insolent behavior toward such magistrate while engaged in the trial of a case or in any other judicial proceeding;

(b) Any breach of the peace, willful disturbance, or indecent conduct in the presence of such magistrate while so engaged, or so near as to obstruct or interrupt the proceedings;
9 (c) Violence or threats of violence to such magistrate, 10 or any officer, juror, witness, or party going to, attending, 11 or returning from, any judicial proceeding before the court 12 with respect to anything done or to be done in the course of 13 such proceeding;

14 (d) Misbehavior of any officer of the county acting in his 15 official capacity with respect to any action or judicial pro- 16 ceeding had or pending before the court, or any process, 17 judgment, order or notice therein; or

18 (e) Willful resistance, in the presence of the magistrate, by 19 an officer of the court, juror, witness, party or other person 20 to any lawful process or order of the court.

A magistrate may, if necessary, issue a warrant of arrest 21 for such person, who shall be given an opportunity to be 22 heard. In the event such person is adjudged guilty of con- 23 tempt, the person may be fined not more than fifty dollars for 24 the first offense. For a second offense occurring during the 25 same proceeding the person may be fined not more than one 26 hundred dollars. For the third or any subsequent offense oc- 27 curring during the same proceeding, the person may be fined 28 not more than one hundred dollars, or imprisoned in the county 29 jail not more than ten days, or both fined and imprisoned.

§50-5-12. Appeals in civil cases.

1 Any person may appeal the judgment of a magistrate court to 2 the circuit court as a matter of right by requesting such appeal 3 not later than twenty days after such judgment is rendered 4 or not later than twenty days after a decision is rendered 5 upon a motion to set aside such judgment. Such person shall be 6 required to post a bond with good security in a reasonable 7 amount not less than the reasonable court costs of the appeal 8 nor more than the sum of the judgment and the reasonable 9 court costs of the appeal, upon the condition that such person 10 will satisfy the judgment and any court costs which may be 11 rendered against him on any such appeal. No bond shall be 12 required of any governmental agency or authority or of a per- 13 son who has filed an affidavit pursuant to section one, article 14 two, chapter fifty-nine of this code. If no appeal is perfected 15 within such twenty-day period, the circuit court of the county
16 may, not later than ninety days after the date of judgment,
17 grant an appeal upon a showing of good cause why such appeal
18 was not perfected within such twenty-day period. The filing or
19 granting of an appeal shall automatically stay further proceed-
20 ings to enforce the judgment. Trial in circuit court shall be
21 de novo.


1 Any person convicted of an offense in a magistrate court
2 may appeal such conviction to circuit court by requesting such
3 appeal within twenty days of the sentencing for such con-
4 viction. The magistrate may require the posting of bond with
5 good security conditioned upon the appearance of the defen-
6 dant as required in circuit court, but such bond may not ex-
7 ceed the maximum amount of any fine which could be im-
8 posed for the offense. Such bond may be upon the defendant's
9 own recognizance. An appeal may be granted by a judge of
10 the circuit court of the county within ninety days from the date
11 of sentencing. The filing or granting of an appeal shall auto-
12 matically stay the sentence of the magistrate. Trial in circuit
13 court shall be de novo.

ARTICLE 6. ENFORCEMENT OF CIVIL JUDGMENTS.

§50-6-1. Enforcement of judgments.

§50-6-2. Filing of transcript in office of circuit clerk; entry on lien docket.

§50-6-1. Enforcement of judgments.

1 The provisions of articles three, four, five, five-a, five-b
2 and six, chapter thirty-eight of this code, except as the same
3 are in conflict with the provisions of this chapter or are clearly
4 applicable only to courts of record, shall apply to the enforce-
5 ment of judgments rendered in magistrate court and process
6 therefor shall issue from magistrate court. Process issued in
7 violation of such provisions shall be void. The form of all such
8 process shall be in accord with the rules of the supreme court
9 of appeals. No such process shall issue until after twenty days
10 after the judgment is rendered or, if a motion to set aside such
11 judgment is then pending, until after twenty days after the de-
12 termination of such motion.
§50-6-2. Filing of transcript in office of circuit clerk; entry on lien docket.

A certified transcript of judgment rendered by a magistrate court may be filed in the office of the circuit court upon payment of a fee of one dollar. The circuit clerk shall keep such records and indices as may be required by the rules of the supreme court of appeals. Such judgments may also be docketed in the judgment lien book kept in the office of the clerk of the county commission in the same manner and with the same effect as circuit court judgments.

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-39. Illegal voting; affidavit; arrest; procedure.

If at any time during the election any qualified voter shall make affidavit, before a commissioner of election, that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by any deputy sheriff or other person designated by the election commissioners to make the arrest, and by him delivered to the civil authorities. Any person desiring to make such affidavit shall be admitted to the election room for that purpose. Immediately after the close of the election, the commissioners of election shall deliver such affidavit to some justice of the peace in the magisterial district, or magistrate in the county, who shall proceed thereon as if the affidavit had been made before him.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.

§5A-1-2b. Security officers; appointment; oath; carrying weapons; powers and duties generally, etc.

In addition to the other powers given and assigned to the commissioner in this chapter, he 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 commissioner, subject to the conditions and restrictions hereinafter imposed. Before
entering upon the performance of his duties as such security
officer, each person so appointed shall qualify therefor in the
same manner as is required of county officers by taking and
filing an oath of office as required by article one, chapter
six of this code. No such person shall have authority to carry
a gun or any other dangerous weapon until he shall have ob-
tained a license therefor in the manner prescribed by section
two, article seven, chapter sixty-one of this code.

It shall be the duty of any person so appointed and qualified
to preserve law and order on any premises under the jurisdic-
tion of the commissioner to which he may be assigned by the
commissioner. For this purpose he shall as to offenses com-
mitt ed on such premises have and may exercise all the powers
and authority and shall be subject to all the responsibilities of
a deputy sheriff of the county. The assignment of security offi-
cers to any premises under the jurisdiction of the commissioner
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.

The commissioner may at his 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 weapon by notifying the clerk of the circuit
court of the county in which the license therefor was granted.

CHAPTER 8. MUNICIPAL LAW,
MUNICIPALITIES AND COUNTIES;
INTERGOVERNMENTAL RELATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-1. Powers and duties of mayor.
§8-10-2. Police court or municipal judge for municipalities.

§8-10-1. Powers and duties of mayor.

When not otherwise provided by charter provision or general
law, the mayor of every municipality shall be the chief execu-
tive officer of such municipality, shall have the powers and
authority granted in this section, and shall see that the or-
dinances, orders, bylaws, acts, resolutions, rules and regula-
tions of the governing body thereof are faithfully executed. He shall have jurisdiction to hear and determine any and all alleged violations thereof and to convict and sentence persons therefor. He shall also, until the first day of January, one thousand nine hundred seventy-seven, be ex officio a justice and conservator of the peace within the municipality, and shall, within the same, have and exercise all of the powers, both civil and criminal, and perform all duties vested by law in a justice of the peace, except that he shall have no jurisdiction in civil cases or causes of action arising without the corporate limits of the municipality. He shall have, until the first day of January, one thousand nine hundred seventy-seven, the same power to issue attachments in civil suits as a justice of his county has, though the cause of action arose without the corporate limits of his municipality, but he shall have no power to try the same and such attachments shall be returnable and be heard before some justice of his county. Upon complaint he shall have authority to issue a search warrant in connection with the violation of a municipal ordinance. Any search warrant, warrant of arrest or other process issued by him may be directed to the chief of police or any member of the police department or force of the municipality, and the same may be executed at any place within the county or counties in which the municipality is located. He shall have control of the police of the municipality and may appoint special police officers whenever he deems it necessary, except when otherwise provided by law, and subject to the police civil service provisions of article fourteen of this chapter if such civil service provisions are applicable to his municipality, and it shall be his duty especially to see that the peace and good order of the municipality are preserved, and that persons and property therein are protected; and to this end he may cause the arrest and detention of all riotous and disorderly individuals in the municipality before issuing his warrant therefor. He shall have power to issue executions for all fines, penalties and costs imposed by him, or he may require the immediate payment thereof, and in default of such payment, he may commit the party in default to the jail of the county or counties in which such municipality is located, or other place of imprisonment within the corporate limits of such municipality, if there be one, until the fine or penalty
and costs shall be paid, but the term of imprisonment in such case shall not exceed thirty days. He shall, from time to time, recommend to the governing body such measures as he may deem needful for the welfare of the municipality. The expense of maintaining any individual committed to a county jail by him, except it be to answer an indictment, or, until the first day of January, one thousand nine hundred seventy-seven, be under the provisions of sections eight and nine, article eighteen, chapter fifty of this code, shall be paid by the municipality and taxed as part of the costs of the proceeding.

§8-10-2. Police court or municipal judge for municipalities.

Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a police or municipal court, for the appointment or election of an officer to be known as police court judge or municipal court judge, and for his compensation, and authorize the exercise by such court or judge of such of the jurisdiction and the judicial powers, authority and duties set forth in section one of this article and similar or related judicial powers, authority and duties enumerated in any applicable charter provisions, as set forth in the charter or ordinance. Such court or judge shall in all events have the criminal jurisdiction of a justice of the peace or magistrate court, but such jurisdiction shall expire on the first day of January, one thousand nine hundred seventy-seven.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 9. OFFENSES GENERALLY.


Until the first day of January, one thousand nine hundred seventy-seven, justices of the peace and municipal judges shall have concurrent jurisdiction with the circuit courts of this state for violations under sections one to seven, both inclusive, of this article.

CHAPTER 18. EDUCATION.

Article

2. State Board of Education.

26. West Virginia Board of Regents.
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-13h. Acquisition and operation of college or university parking facilities.

The board of regents is hereby authorized to construct, maintain and operate automobile parking facilities upon any premises owned or leased at any college or university under its jurisdiction for use by students, faculty, staff and visitors. Such facilities shall be open to use on such terms and subject to such reasonable regulations as may be prescribed by the board of regents. A summary of the regulations shall be posted conspicuously in each parking area.

The board of regents shall have authority to charge fees for use of the parking facilities under its control. All moneys collected for such use shall be paid into a special fund which is hereby created in the state treasury. The moneys in such fund shall be used first to pay the cost of maintaining and operating such facilities, but any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereon of additional parking facilities. Any money in the fund not needed immediately for the acquisition, construction, maintenance or operation of such facilities may be temporarily invested by the institution in the state sinking fund.

Whenever a vehicle is parked on any college or university parking facility in violation of the posted regulations, the institution shall have authority to remove the vehicle, by towing or otherwise, to an established garage or parking lot for storage until called for by the owner or his agent. The owner shall be liable for the reasonable cost of such removal and storage, and until payment of such cost the garage or parking lot operator may retain possession of the vehicle subject to a lien for the amount due. Notice to this effect shall be posted conspicuously in each parking area. The garage or parking lot operator may enforce his lien for towing and storage in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code, for the enforcement of other liens.
The West Virginia 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 of regents, subject to the conditions and restrictions hereinafter imposed. 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 county officers by the taking and filing an oath of office as required by article one, chapter six of this code and by posting 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.

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 college or 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 a deputy sheriff of the county. The assignment of security officers 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 appointed under provisions of this section shall have authority 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 a state college or university.

The salary of all such security officers shall be paid by the board of regents. Each institution may furnish each such security officer with an official uniform to be worn while on duty.
36 and shall furnish and require each such officer while on duty
37 to wear a shield with an appropriate inscription and to carry
38 credentials certifying to his identity and to his authority as a
39 security officer.
40
41 The board of regents may at its pleasure revoke the authority
42 of any such officer and the president of the college or univer-
43 sity shall report the termination of employment of any such
44 security officer by filing a notice to that effect in the office of
45 the clerk of each county in which his oath of office was filed,
46 and in the case of officers licensed to carry a gun or other
dangerous weapon by notifying the clerk of the circuit court of
47 the county in which the license therefor was granted.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.
§59-1-28. Use and disposition of fees of sheriffs, clerks and prosecuting at-
torneys.

§59-1-14. Fees to be charged by sheriffs.

1 A sheriff shall charge and collect the following fees:

2 For serving on any person a declaration in ejectment,
3 or an order, notice, summons or other process where
4 the body is not taken, except a subpoena served
5 on a witness, and making return thereof $3.00

6 For summoning a witness .............................................. 3.00

7 For serving on any person an attachment or other
8 process under which the body is taken ...................... 3.00

9 For levying an attachment on real estate and making
10 the return ...................................................................... 3.00

11 For making any other levy ............................................ 3.00

12 For conveying a prisoner to or from jail, for each mile
13 of necessary travel either in going or returning ........ 0.15

14 For taking any bond ............................................... 1.00

15 When a jury is sworn in court, for summoning and
16 impaneling such jury ...................................................... 1.00
The county commission, giving due regard to the cost thereof, may from time to time prescribe the amount which the sheriff may charge for keeping any property or in removing any property. When, after distraining or levying, he neither sells nor receives payment, and either takes no bond or takes one which is not forfeited, he shall, if guilty of no default, have (in addition to the one dollar for a bond, if one was taken) a fee of three dollars, unless this be more than half of what his commission would have amounted to if he had received payment; in which case he shall (whether a bond was taken or not) have a fee of one dollar at the least, and so much more as is necessary to make the said half of his commission. The commission to be included in a forthcoming bond (when one is taken) shall be five percent on the first three hundred dollars of the money for which the distress or levy is made, and two percent on the residue of such money; but such commission shall not be received, in whole or in part, except as hereinbefore provided, unless the bond be forfeited, or the amount (including the commission) be paid to the plaintiff. An officer receiving payment in money, or selling property, shall have the like commission of five percent on the first three hundred dollars of the money paid or proceeds from such sale, and two percent on the residue, except that when such payment or sale is on an execution on a forthcoming bond, his commission shall be only half what it would be if the execution were not on such bond.


All fees, costs, percentages, penalties, commissions, allowances, compensation, income and all other perquisites of whatever kind which by law may now or hereafter be collected or received as compensation for services by any clerk of the county commission, sheriff, clerk of the circuit court or of any court of limited jurisdiction, and prosecuting attorney shall be collected and received by such officer for the sole use of the treasury of the county in which he is an officer,
and shall be held as public moneys belonging to the county
fund, and shall be accounted for and paid over as such
in the manner hereinafter provided. Nothing in this article
shall be construed to require any county officer to pay into
the county treasury any fees earned prior to the twenty-first
day of May, nineteen hundred and fifteen. Fees are held to
be earned at the time the service is rendered and not at the
time the matter is finally adjudicated.

Notwithstanding any provision of law to the contrary, all
fees collected by a sheriff for service of all manner of process
from magistrate court, in addition to such other funds as
may be provided by the county commission, shall be dedicated
by the county commission to the office of sheriff for providing
bailiff and service of process services for magistrate court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-41. Willful injury to railroad property; shooting or throwing
missiles into passenger car; misconduct of passenger;
employees conservators of the peace; special railroad
policemen; penalties.

Any person who shall willfully and unlawfully injure, impair,
weaken, destroy or misplace any building, bridge, rail, track,
sidetrack, switch, rail bonds, spur track, work engine, machine,
locomotive, handcar, depot, car, trestle, telegraph line, tele-
graph pole, telegraph wire, telegraph instrument, or any other
instrument, machine, invention, or mechanical or electrical
appliance whatever, which may be, or now is used by any
company operating or using any railroad or traction line or
system, or other line or work of internal improvement, in this
state; or who shall obstruct any corporation which is the owner
or lessee of any railroad or traction line or system, or other
work of internal improvement, in this state, in the use of any
such property, shall be guilty of a misdemeanor, and, upon con-
viction, shall be fined not exceeding one thousand dollars and
imprisoned not exceeding six months. If the death of any per-
son occur in consequence of any such unlawful act, the per-
son or persons committing the same shall be guilty of murder
and punished accordingly. Or if any person on a train, or locomotive, or passenger car, on any railroad or traction line or system, is maimed or disfigured by reason of any such unlawful act, the person convicted of causing the same shall be guilty of a felony, and shall be confined in the penitentiary not less than one nor more than twenty years.

If any person shall shoot or throw stones, or other dangerous missiles at or into any passenger car, or other railroad or traction car used for carrying passengers or other persons, while any such passenger or other person is within the same, he shall be guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years. And if any person, whether a passenger or not, shall, while on any passenger car or on any train of cars, behave in a riotous or disorderly manner, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five nor more than two hundred dollars, and may, in the discretion of the court, be confined in jail not less than one nor more than six months, and may be ejected from such car or train by the person or persons in charge thereof; and such force as is necessary for that purpose may be used by such person or persons in charge of such passenger car or train of cars, with such other persons as they may call to their aid.

The conductor of every passenger car and flagmen and brakemen employed on such car, as well as the conductor of every train of railroad or traction cars, shall have all the powers of a conservator of the peace while in charge of such car or train.

Any railroad company owning, or leasing and operating, or using any railroad or traction line or system lying wholly or partially within this state, whether such railroad be operated by steam or electric power, may apply to the governor to appoint such citizen or citizens of this state as such railroad company may designate, to act as special police officers for such railroad or traction company, with the consent of such citizen or citizens; and the governor may, upon such application, appoint and commission such person or persons, or so many of them as he may deem proper, as such special police officers.
Every police officer so appointed shall appear before some person authorized to administer oaths and take and subscribe the oath prescribed in the fifth section of the fourth article of the constitution, and shall file such oath with the clerk of the county commission, or other tribunal in lieu thereof, of the county in which he shall reside. He shall also file certified copies of such oath in the office of the secretary of state, and in the office of the clerk of the county commission, or other tribunal established in lieu thereof, of each county through which such railroad or any portion thereof may extend. Every police officer appointed under the provisions of this section shall be a conservator of the peace within each county in which any part of such railroad may be situated, and in which such oath or a certified copy thereof shall have been filed with the clerk of the county commission or other tribunal established in lieu thereof; and, in addition thereto, he shall possess and may exercise all the powers and authority, and shall be entitled to all the rights, privileges and immunities within such counties, as are now or hereafter may be vested in or conferred upon a deputy sheriff of such county. Any appointment made by the governor under the provisions of this section may be revoked by him for good cause shown, and such police officers may be removed from office for official misconduct, incompetence, habitual drunkenness, neglect of duty or gross immorality, in the same manner in which regularly elected or appointed county officers may be removed from office. Whenever any such railroad company shall desire to dispense with the services of any such police officer, it may file a notice to that effect, under its corporate seal, attested by its secretary, in each of the several offices in which such oath or certified copy thereof shall have been filed; and, thereupon, the powers of such police officer shall cease and determine. Such police officers may wear such uniform and badge of authority, or either, as the railroad company, upon whose application they were appointed, may designate, and such railroad company shall pay them for all services rendered by them pursuant to such appointment.
CHAPTER 34
(S. B. 90—Originating in the Senate Committee on the Judiciary)

[Passed January 28, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to extending the time for the filing of certificate of candidacy for the office of magistrate.

Be it enacted by the Legislature of West Virginia:

That article twenty, chapter fifty 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, to read as follows:

ARTICLE 20. MAGISTRATE COURTS.


1 For the purpose of the election to be held in the year one thousand nine hundred seventy-six, the last day for filing a certificate of candidacy for the office of magistrate is extended through the twenty-seventh day of February of that year.

CHAPTER 35
(Com. Sub. for H. B. 1096—By Mr. Speaker, Mr. McManus, and Mr. Seibert)

[Passed March 12, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of the justices of the supreme court of appeals.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 1. SUPREME COURT OF APPEALS.**

§51-1-10a. Salary of justices.

1 The salary of each of the justices of the supreme court of appeals shall be thirty-five thousand dollars per year.

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**CHAPTER 36**

(Com. Sub. for S. B. 491—By Mr. Willis, Mr. Steptoe and Miss Herndon)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-one 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 adoption of the uniform certification of questions of law act; setting forth power of supreme court of appeals of West Virginia to answer questions certified to it; method of invoking power; contents of certification order; preparation of certification order; costs of certification; briefs and arguments; providing for written opinion; power to certify; providing for procedure on certification; severability; construction; and providing a short title.

**Be it enacted by the Legislature of West Virginia:**

That chapter fifty-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 one-a, to read as follows:

**ARTICLE 1A. UNIFORM CERTIFICATION OF QUESTIONS OF LAW ACT.**

§51-1A-1. Power to answer.
§51-1A-3. Contents of certification order.
§51-1A-4. Preparation of certification order.
§51-1A-5. Costs of certification.
§51-1A-6. Briefs and arguments.
§51-IA-1. Power to answer.

1. The supreme court of appeals of West Virginia may answer questions of law certified to it by the supreme court of the United States, a court of appeals of the United States, a United States district court or the highest appellate court or the intermediate appellate court of any other state, when requested by the certifying court if there are involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of appeals of this state.


1. This article may be invoked by an order of any of the courts referred to in section one of this article upon the court's own motion or upon the motion of any party to the cause.

§51-IA-3. Contents of certification order.

1. A certification order shall set forth:
2. (1) The questions of law to be answered; and
3. (2) A statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

§51-IA-4. Preparation of certification order.

1. The certification order shall be prepared by the certifying court, signed by the judge presiding at the hearing, and forwarded to the supreme court of appeals of West Virginia by the clerk of the certifying court under its official seal. The supreme court of appeals of West Virginia may require the original or copies of all or of any portion of the record before the certifying court to be filed with the certification order, if, in the opinion of
§51-1A-5. Costs of certification.
1 Fees and costs shall be the same as in civil appeals
docketed before the supreme court of appeals and shall be
equally divided between the parties unless otherwise
ordered by the certifying court in its order of certifica-
tion.

§51-1A-6. Briefs and arguments.
1 Proceedings in the supreme court shall be those pro-
vided in the rules of the supreme court governing briefs
and arguments.

§51-1A-7. Opinion.
1 The written opinion of the supreme court stating the
law governing the questions certified shall be sent by the
clerk under the seal of the supreme court to the certify-
ing court and to the parties.

§51-1A-8. Power to certify.
1 The supreme court of appeals of West Virginia, on its
own motion or the motion of any party, may order
certification of questions of law to the highest court of
any state when it appears to the certifying court that
there is involved in any proceeding before the court a
question or questions of law of the receiving state which
may be determinative of the cause then pending in the
certifying court, and it appears to the certifying court
that there are no controlling precedents in the decisions
of the highest court or intermediate appellate courts of
the receiving state.

1 The procedures for certification from this state to the
receiving state shall be those provided in the laws of the
receiving state.

§51-1A-10. Severability.
1 If any provision of this article or the application thereof
to any person, court or circumstance is held invalid, the
3 invalidity does not affect other provisions or applica-
4 tions of the act which can be given effect without the
5 invalid provision or application, and to this end the
6 provisions of this act are severable.

§51-1A-11. Construction.
1 This article shall be construed as to effectuate its
2 general purpose to make uniform the law of those states
3 which enact it.

§51-1A-12. Short title.
1 This article may be cited as the uniform certification of
2 questions of law act.

CHAPTER 37
(Com. Sub. for S. B. 322—By Mr. Palumbo, Mr. Hamilton, Mr. Nelson,
Mr. Rogers, Mr. Williams and Mr. Willis)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one-ff and one-gg, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one of said article, relating to providing for thirty-one judicial circuits; establishing the number of judges of each judicial circuit; providing for additional circuit court judges; relating to the expiration of the terms of office of all circuit court judges; establishing terms of office for newly created circuit court judges; providing legislative findings and declarations; relating to the holding of elections for circuit court judges; extending the time permitted for the filing of certificates of candidacy for newly created circuit court judges; and relating to terms of court.

Be it enacted by the Legislature of West Virginia:

That sections one-ff and one-gg, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section one of said article be amended and reenacted to read as follows:
ARTICLE 2. CIRCUIT COURTS; JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

(a) The state shall be divided into the following judicial circuits with the following number of judges, which number shall include those judges of statutory courts of record of limited jurisdiction who became circuit court judges by virtue of the judicial reorganization amendment to the West Virginia constitution:

The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges; the counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges; the counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge; the counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges; the counties of Calhoun, Jackson and Roane shall constitute the fifth circuit and shall have one judge; the county of Cabell shall constitute the sixth circuit and shall have three judges; the county of Logan shall constitute the seventh circuit and shall have two judges; the county of McDowell shall constitute the eighth circuit and shall have two judges; the county of Mercer shall constitute the ninth circuit and shall have two judges; the counties of Greenbrier, Monroe, Pocahontas and Summers shall constitute the eleventh circuit and shall have one judge; the county of Fayette shall constitute the twelfth circuit and shall have two judges; the county of Kanawha shall constitute the thirteenth circuit and shall have seven judges; the counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges; the county of Harrison shall constitute the fifteenth circuit and shall have two judges; the county of Marion shall constitute the sixteenth circuit and shall have two judges; the county of Monongalia shall constitute the seventeenth circuit and shall have two judges; the county of
Preston shall constitute the eighteenth circuit and shall have one judge; the counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge; the county of Randolph shall constitute the twentieth circuit and shall have one judge; the counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges; the counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have one judge; the counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have one judge; the county of Wayne shall constitute the twenty-fourth circuit and shall have one judge; the counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges; the counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge; the county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge; the county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge; the counties of Mason and Putnam shall constitute the twenty-ninth circuit and shall have two judges; the county of Mingo shall constitute the thirtieth circuit and shall have one judge; and the counties of Berkeley, Jefferson and Morgan shall constitute the thirty-first circuit and shall have one judge.

(b) The term of office of the additional circuit court judge of each of the following judicial circuits created and established by the provisions of subsection (a) of this section, viz., the seventh, twelfth, thirteenth, fourteenth, seventeenth, twenty-first, twenty-fifth and twenty-ninth judicial circuits, shall commence on the first day of January, one thousand nine hundred seventy-seven, and shall end on the thirty-first day of December, one thousand nine hundred eighty-four.

(c) Except as provided in subsections (a), (d) and (e) of this section, the terms of office of all circuit court judges in office on the effective date of this section, including the terms of office of the judges of those statutory courts of record of limited jurisdiction who became
circuit court judges by virtue of the judicial reorga-

nization amendment to the West Virginia constitution,

shall expire on the thirty-first day of December, one
thousand nine hundred seventy-six. Thereafter, the
terms of office of such circuit court judges shall com-
mence on the first day of January, one thousand nine
hundred seventy-seven, and shall expire on the thirty-
first day of December, one thousand nine hundred eighty-
four.

(d) The terms of office of the judges of the first,
sixth, eighth, thirteenth and sixteenth judicial circuits
who became circuit court judges by virtue of the judicial
reorganization amendment to the West Virginia con-
stitution and who were, respectively, the judges of the
following statutory courts of record of limited juris-
diction, viz., intermediate court of Ohio county; domestic
relations court of Cabell county; intermediate court of
McDowell county; common pleas court of Kanawha
county (Division I); domestic relations court of Kanawha
county; and the criminal court of Marion county, shall
expire on the thirty-first day of December, one thousand
nine hundred eighty-four.

(e) The Legislature hereby finds and declares that
the purpose of this section is to implement the pro-
visions of the judicial reorganization amendment to the
West Virginia constitution; that the terms of office of
all circuit court judges, including the judges of statutory
courts of record of limited jurisdiction who became cir-
cuit court judges by virtue of the judicial reorganization
amendment to the West Virginia constitution, should
expire on the same date and such judges should be
elected at the same general election; that the legislative
intent in presenting said judicial reorganization amend-
ment to the voters of the state for ratification was that
no judge of a statutory court of record of limited juris-
diction who would become a circuit court judge by
virtue of said judicial reorganization amendment would
have his term of office decreased by the ratification of
said judicial reorganization amendment or be forced to
run for reelection any sooner than he otherwise would
have had to have run for reelection if said judicial reorganization amendment had not been ratified; and that said judicial reorganization amendment was ratified by the voters of the state at the same general election at which the judge of the former intermediate court of Raleigh county and the judge of the former intermediate court of Kanawha county were elected. Consistent with such findings and declarations, the terms of office of the judges of the tenth and thirteenth judicial circuits who became circuit court judges by virtue of the judicial reorganization amendment to the West Virginia constitution, and who were, respectively, the judges of the intermediate court of Raleigh county and the intermediate court of Kanawha county, which terms commenced the first day of January, one thousand nine hundred seventy-five, shall expire on the thirty-first day of December, one thousand nine hundred eighty-four.

(f) The election of every circuit court judge whose term of office begins on the first day of January, one thousand nine hundred seventy-seven, and ends on the thirty-first day of December, one thousand nine hundred eighty-four, shall be held on the Tuesday next after the first Monday in November, one thousand nine hundred seventy-six, and every eighth year thereafter. The election for all other circuit court judges shall be held on the Tuesday next after the first Monday in November, one thousand nine hundred eighty-four, and every eighth year thereafter.

Notwithstanding the provisions of article five, chapter three of this code, and in order to provide for the orderly nomination and election of circuit court judges, the time permitted for the filing of certificates of candidacy for nomination to the additional circuit court judgeships created and established by the provisions of subsection (a) of this section, viz., the seventh, twelfth, thirteenth, fourteenth, seventeenth, twenty-first, twenty-fifth and twenty-ninth judicial circuits, is hereby extended to the thirtieth day of March, solely for the year one thousand nine hundred seventy-six. Such certificate shall be filed
AN ACT to amend and reenact section one-dd, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to courts; and changing the terms of the thirtieth judicial circuit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.

§51-2-1dd. Thirtieth circuit.

1 For the county of Mingo, on the third Monday in January, April and September: Provided, That in the year one thousand nine hundred seventy-six, for the county of Mingo, on the third Monday in February, April and September.
AN ACT to amend and reenact section one-i, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the terms of court in the ninth judicial circuit.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.**

§51-2-1i. Ninth circuit.

1 For the county of Mercer, on the second Monday in February, June and October.

**CHAPTER 40**

(Com. Sub. for H. B. 1478—By Mr. Speaker, Mr. McManus, and Mr. Selbert)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of judges of the circuit courts.

*Be it enacted by the Legislature of West Virginia:*

That section thirteen, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. CIRCUIT COURTS AND CIRCUIT JUDGES.


1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the state treasury. No county, county
3 commission, board of commissioners or other political subdivi-
4 sion shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be thirty-one
6 thousand five hundred dollars per year.

CHAPTER 41

(Cam. Sub. for S. B. 220—By Mr. Galperin and Mr. Kusic)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-one of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated sec­
tion fifty, relating to crimes against property; prohibiting
the unauthorized transferral of recorded sounds; prohibi­
ting the sale or possession with intent to sell unauthorized
transferred recorded devices; providing criminal penalties;
granting civil cause of action with compensatory damages;
and providing definition.

Be it enacted by the Legislature of West Virginia:

That article three, 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
fifty, to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-50. Unauthorized transferral of recorded sounds; sale and
possession; penalties; civil action; definition.

1 No person shall knowingly and willfully transfer by
electronic or mechanical means or cause to be transferred
by electronic or mechanical means with intent to sell for
profit the recorded sounds contained on any phonograph
record, disc, tape, film or other device without the per-
mission of the owner of such recorded sounds or his
authorized representative, or to knowingly, or with
reasonable grounds to know, sell or possess with intent to
sell any phonograph record, disc, tape, film or other device
containing such unauthorized transferred recorded
sounds.

Any unauthorized recorded sounds produced in viola-
tion of this section, and any equipment used for such
purpose, shall be subject to confiscation and destruction
by the appropriate law-enforcement agency.

Any phonograph record, disc, tape, film or other device
offered for sale or resale shall clearly and conspicuously
disclose the actual name and address of the manufacturer
thereof, and the name of the actual performer or group.

Any person violating any provision of this section shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than one thousand dollars.

Any owner of such recorded sounds and any person
lawfully transferring such sounds by agreement with
such owner shall have a cause of action for the unau-
thorized transferral of such sounds and shall be entitled
to treble damages resulting therefrom.

For the purpose of this section, the term "owner" means
the person vested with the rights to and ownership of the
original fixation of sounds embodied in the master phono-
graph record, master disc, master tape, master film or
other device used for transferring sounds on phonograph
records, discs, tapes, films or other similar articles upon
which sound is recorded, and from which the transferred
recorded sounds are directly derived.
CHAPTER 42
(S. B. 205—By Mr. Palumbo and Mr. Rogerson)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal acts; obscene, anonymous, harassing, repeated and threatening telephone calls; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.

(a) It shall be unlawful for any person with intent to harass or abuse another by means of telephone to:

1. Make any comment, request, suggestion or proposal which is obscene; or

2. Make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to harass any person at the called number; or

3. Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

4. Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

5. Threaten to commit a crime against any person or property.

(b) It shall be unlawful for any person to knowingly permit any telephone under his control to be used for any purpose prohibited by this section.
(c) Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(d) 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 six months, or both fined and imprisoned.

CHAPTER 43

(Com. Sub. for S. B. 154—By Miss Herndon, Mr. Darby and Mr. Neeley)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections fifteen and fifteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections thirteen, twenty-eight and twenty-nine, article eight of said chapter sixty-one; to repeal section seven, article nine, chapter sixty-two of said code; and to amend said chapter sixty-one by adding thereto a new article, designated article eight-b, relating to sexual assault and sexual offenses; defining terms; lack of consent; various degrees of sexual assault; degrees of sexual abuse; sexual misconduct; public indecency; evidence and defenses; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and fifteen-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections thirteen, twenty-eight and twenty-nine, article eight of said chapter sixty-one be repealed; that section seven, article nine, chapter sixty-two of said code be repealed; and that said chapter sixty-one be amended by adding thereto a new article, designated article eight-b, to read as follows:
ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-1. Definition of terms.

In this article, unless a different meaning plainly is required:

1. "Forcible compulsion" means:

   (1) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

   (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or another person or in fear that he or another person will be kidnapped.

   For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.

2. "Marriage," for the purposes of this article in addition to its legal meaning, includes persons living together as man and wife regardless of the legal status of their relationship.

3. "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

4. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of a controlled
or intoxicating substance administered to him without
his consent or as a result of any other act committed
upon him without his consent.

(5) "Physically helpless" means that a person is un-
conscious or for any other reason is physically unable to
communicate unwillingness to an act.

(6) "Sexual contact" means any touching of the anus or
any part of the sex organs of another person, or the breasts
of a female eleven years old or older, where the victim is
not married to the actor and the touching is done for the
purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between per-
sons not married to each other involving penetration,
however slight, of the female sex organ by the male
sex organ or involving contact between the sex organs
of one person and the mouth or anus of another person.

(8) "Bodily injury" means substantial physical pain,
ilness or any impairment of physical condition.

(9) "Serious bodily injury" means bodily injury which
creates a substantial risk of death, which causes serious
and prolonged disfigurement, prolonged impairment of
health, or prolonged loss or impairment of the function of
any bodily organ.

(10) "He" includes any human being.

(11) "Deadly weapon" means any instrument, device,
or thing capable of inflicting death or serious bodily injury,
and designed or specially adapted for use as a weapon,
or possessed, carried or used as a weapon.

§61-8B-2. Lack of consent.

(a) Whether or not specifically stated, it is an element
of every offense defined in this article that the sexual act
was committed without consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion; or

(2) Incapacity to consent; or
(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not express-ly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when he is:

(1) Less than sixteen years old; or

(2) Mentally defective; or

(3) Mentally incapacitated; or

(4) Physically helpless.


(a) A person is guilty of sexual assault in the first degree when:

(1) He engages in sexual intercourse with another person by forcible compulsion; and

(ii) He inflicts serious bodily injury upon anyone; or

(iii) The victim was not a voluntary social companion of the actor on the occasion of the crime; or

(2) He engages in sexual intercourse with another person who is incapable of consent because he is physically helpless; or

(3) He, being fourteen years old or more, engages in sexual intercourse with another person who is incapable of consent because he is less than eleven years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned not less than ten nor more than twenty years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty years.

§61-8B-4. Sexual assault in the second degree.

(a) A person is guilty of sexual assault in the second degree when:
3 (1) He engages in sexual intercourse with another person by forcible compulsion; or

5 (2) By forcible compulsion, he causes penetration, however slight, of the female sex organ or of the anus of any person, by any inanimate object for the purpose of gratifying the sexual desire of either party.

9 (b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five nor more than ten years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than five nor more than ten years.

§61-8B-5. Sexual assault in the third degree.

1 (a) A person is guilty of sexual assault in the third degree when:

3 (1) He engages in sexual intercourse with another person who is incapable of consent because he is mentally defective or mentally incapacitated; or

5 (2) Being sixteen years old or more, he engages in sexual intercourse with another person who:

8 (i) Is incapable of consent because he is less than sixteen years old; and

10 (ii) Is at least four years younger than the defendant.

12 (b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in the penitentiary not less than one year nor more than five years.


1 (a) A person is guilty of sexual abuse in the first degree when:

3 (1) He subjects another person to sexual contact by forcible compulsion; or
(2) He subjects another person to sexual contact who
is incapable of consent because he is physically helpless;
or
(3) He, being fourteen years old or more, subjects
another person to sexual contact who is incapable of con-
sent because he is less than eleven years old.

(b) Any person who violates the provisions of this
section shall be guilty of a felony, and, upon conviction
thereof, shall be imprisoned in the penitentiary not less
than one year nor more than five years, or fined not more
than ten thousand dollars and imprisoned in the peniten-
tiary not less than one year nor more than five years.

§61-8B-7. Sexual abuse in the second degree.

(a) A person is guilty of sexual abuse in the second
degree when he subjects another person to sexual contact
who is incapable of consent because he is mentally de-
fective or mentally incapacitated.

(b) Any person who violates the provisions of this
section shall be guilty of a misdemeanor, and, upon con-
viction thereof, shall be confined in the county jail not
more than twelve months, or fined not more than five
hundred dollars and confined in the county jail not more
than twelve months.


(a) A person is guilty of sexual abuse in the third
degree when he subjects another person to sexual contact
without the latter's consent, when such lack of consent
is due to the victim's incapacity to consent by reason
of being less than sixteen years old.

(b) In any prosecution under this section it is a de-
fense that:

(1) The defendant was less than sixteen years old; or
(2) The defendant was less than four years older than
the victim.

(c) Any person who violates the provisions of this
section shall be guilty of a misdemeanor, and, upon con-

(a) A person is guilty of sexual misconduct when he engages in sexual intercourse with another person without the latter's consent or engages in sexual intercourse with another person knowing that such other person mistakenly supposes that he is a third person.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.

§61-8B-10. Indecent exposure.

(a) A person is guilty of indecent exposure when he intentionally exposes his sex organs or anus under circumstances in which he knows his conduct is likely to cause affront or alarm.

(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than two hundred fifty dollars and confined in the county jail not more than ninety days.


(a) A person is guilty of public indecency when, knowing his conduct is likely to be observed by others who would be affronted or alarmed:

(1) He engages in any overt act of sexual gratification; or

(2) He intentionally exposes the private or intimate parts of his body or the body of another person.

(a) In any prosecution under this article in which the victim's lack of consent is based solely on his incapacity to consent because he was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: Provided, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct and reputation evidence of the victim's sexual conduct shall not be admissible: Provided, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his previous sexual conduct an issue in the trial by introducing evidence with respect thereto.


(a) In any prosecution under this article in which the victim's lack of consent is based solely on his incapacity to consent because he was below a critical age, mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the time he engaged in the conduct constituting the offense did not know of the facts or conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to know such facts or conditions.

(b) The affirmative defense provided in subsection (a) of this section shall not be available in any prosecution
AN ACT to amend and reenact section ten, article twenty, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the county dog and kennel fund and disposition of the funds therefrom; mileage for dog wardens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.

§19-20-10. Dog and kennel fund; disposition thereof.

1 All registration fees, head taxes, and fees and costs for impounding and disposing of dogs, as provided in this article, and collected thereunder, shall be paid into the county treasury where they shall constitute and be set aside as a special fund to be designated the "dog and kennel fund."

6 The county commission shall expend such fund, and issue drafts payable therefrom, for the following purposes, and no others: To pay the actual expenses incurred by the county commission, the county assessor, and the sheriff in carrying out the provisions of this article; to pay for the services of the dog warden, his deputies, poundkeepers, and such other persons as may be employed, if any, or may render services, in actually carrying out the provisions of this article; to pay in its discretion to the dog warden and his deputies mileage at the rate up to fifteen cents per mile for the use of their privately owned vehicles actually used in carrying out the provisions of this article;
to pay for the purchase, procurement, rental, construction, operation, maintenance and repair of any property, devices or facilities reasonably necessary and required to carry out the provisions of this article; to compensate any department of the state government or any local board of health for any necessary service rendered in connection with this article; to pay the costs of any rabies control project or program authorized by law; to compensate any persons who have suffered loss or damage on account of the destruction, loss, or injury by dogs of any sheep, lamb, goat, kid or poultry, when such claims have been proved and allowed as provided in this article: *Provided, however,* that such compensation authorized by the county commission shall not exceed an amount double the assessed value of the destroyed or injured animals or poultry as shown on the assessor's records, and in the event such animals are not assessed, then compensation authorized by said court shall not exceed the average assessed value of like animals or poultry, or if no like animal or poultry is assessed, then not to exceed the fair market value as determined by the county commission.

In the event that the dog and kennel fund shall in any year be insufficient to pay the several items set forth in this section, then the county commission may be, and it is hereby, authorized and empowered to pay such items out of the county general fund. Any surplus of the dog and kennel fund remaining unexpended in the county treasury, and, in the opinion of the county commission, not needed for the payment and satisfaction of claims and expenses as herein provided, shall annually be paid into and credited to the county school fund, but the funds thus used shall be in an amount deemed proper and safe in the judgment and discretion of the county commission.

**CHAPTER 45**

*(Com. Sub. for S. B. 108—By Mr. Morland)*

[Passed March 10, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and six, article four, chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter forty-nine of said code, all relating to adoptions and persons to whom notice is required to be given or consent obtained; revocation of adoptions; and the relinquishment of children to child welfare agencies.

Be it enacted by the Legislature of West Virginia:

That sections one and six, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section one, article three, chapter forty-nine of said code be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.


CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-1. Definition; who may adopt; petition; consent required; when notice required.

§48-4-6. Revocation of adoption.

§48-4-1. Definition; who may adopt; petition; consent required; when notice required.

1 (a) As used in this article, the term "determined father" means any person who:

2 (1) Has been found guilty under the provisions of article seven, chapter forty-eight of this code; or

3 (2) Has acknowledged his parental status by contributing to the child's support, by living with the mother, at the time of conception, or by admitting paternity by any means.

9 (b) It shall be lawful for any person not married, or any husband with his wife's consent, or any wife with her husband's consent, or any husband and wife jointly, to petition the circuit court or any other court of record having jurisdiction of adoption proceedings of the county
wherein he, she or they may reside, or the judge of such
court in vacation, for permission to adopt any minor
child, and also to petition for a change of name of such
child. Consent to the adoption of a minor child shall
be required and obtained as follows:

(1) In the case of a child sought to be adopted, the
written consent, duly acknowledged, of the mother and
father (in the case of an illegitimate child, the mother
and the determined father) or the surviving parent of
such child sought to be adopted must be obtained and
presented with the petition: Provided, That, if the mother
and father (in the case of an illegitimate child, the
mother and the determined father) are living and one is
insane or has abandoned the child sought to be adopted,
only the consent of the other parent shall be required,
but the parent who is alleged to have abandoned the child
must be personally served, if the determined father res-
ides within the state, with a copy of the petition and
notice of the date, time and place of the hearing on said
petition at least twenty days prior to the date set for the
hearing; and if after due diligence personal service can-
not be obtained, or if the determined father resides outside
the state, then the copy of the petition and the notice of
the hearing may be sent by registered mail to the last
known address of such abandoning parent, such service
to be complete upon mailing. If both parents are either
dead, unknown, insane, have abandoned the child sought
to be adopted or have been deprived of the custody of the
person of such child by law, then and in such case, the
written consent, acknowledged as aforesaid, of the legal
 guardian of such child or those having at the time the
legal custody of the child shall be obtained and so
presented, and if there be no legal guardian nor any
person having the legal custody of the child, then such
consent must be obtained from some discreet and suitable
person appointed by the court or judge thereof to act as
the next friend of such child in the adoption proceedings.

(2) In addition to the consent required in subdivision
(1) of this subsection, in any case where the child sought
to be adopted is twelve years of age or over, the written
consent of such child to such adoption, given in the presence of the judge having jurisdiction thereof, must also be obtained and presented before the entry of any order of adoption, unless for extraordinary cause such is waived by court order.

(c) No petition for an adoption shall be made or presented until after the child sought to be adopted shall have lived in the home of the adopting parent or parents for a period of six months.

§48-4-6. Revocation of adoption.

(a) Except when the consent to such adoption has been properly given by the department of welfare or a licensed child welfare agency, as provided in section one, article three, chapter forty-nine of this code, a parent or guardian of a legitimate child, or the mother or determined father or guardian of an illegitimate child who did not consent to the adoption of such child, or any parent including the determined father of an illegitimate child entitled to notice as provided in subdivision (1), subsection (b), section one of this article who was not served with notice as provided in said subdivision (1), may, at any time within one year after learning of or having reasonable opportunity to learn of the adoption, apply by petition to the court in which the adoption was granted, praying that the adoption be vacated. The court to which such application is made shall fix a date and time for a hearing, shall cause notice thereof to be given to the person or persons who were permitted to adopt such minor, and, at the time so fixed, shall hear the petitioner and all parties interested, and may vacate or affirm the adoption in its discretion. Any party interested may appeal to the supreme court of appeals from the decision of the court in the matter, as in other civil cases.

(b) When any minor has been adopted, he may, within one year after becoming of age, sign, seal and acknowledge before proper authority, in the county in which the order of adoption was made, a dissent from such adoption, and file such instrument of dissent in the office of the clerk of the court which granted said adoption and the clerk of the
CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Private and public child welfare agencies; definition.

(a) Whenever a child welfare agency licensed to place children for adoption or the state department of welfare shall have been given the permanent care, custody and guardianship of any child and the rights of the parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the child welfare agency or department of welfare may consent to the adoption of such child pursuant to the statutes regulating adoption proceedings. The parents or the surviving parent of a legitimate child or the mother and the determined father of an illegitimate child or the survivor may relinquish the child to a child welfare agency licensed to place children for adoption, or to the department of welfare, by a written statement acknowledged as deeds are required to be acknowledged by law: Provided, That if either of the parents of such child is under eighteen years of age, such relinquishment shall not be valid unless and until the same shall have been approved in writing by a judge of a court having jurisdiction of adoption proceedings in the county in which such parent may reside or in which such relinquishment is made. Notwithstanding any other provision in this article, no minor parent or parents shall be required to go before any court in order to execute a consent to the adoption of his, her, or their child by an individual or individuals.

(b) As used in this article, the term "determined father" means any person who:

(1) Has been found guilty under the provisions of article seven, chapter forty-eight of this code;

(2) Has acknowledged his parental status by con-
32 tributing to the child’s support, by living with the mother
33 at the time of conception, or by admitting paternity by
34 any means.

CHAPTER 46

(Com. Sub. for H. B. 1147—By Mrs. Spears and Mrs. Pitzenberger)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article six of said chapter, all relating to elections; candidates who shall be affected by recounts to be notified by personal or substitute service; and providing manner and time for return of service.

Be it enacted by the Legislature of West Virginia:

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

Article

4. Voting Machines.

6. Conduct and Administration of Elections.

ARTICLE 4. VOTING MACHINES.

§3-4-26. Post-election custody and inspection of machines; canvass and recounts.

1 (1) The voting machines shall remain locked against voting
during the canvass of the returns of the election and for a
period of seven days after the canvass is finally concluded,
during which time any candidate or the chairman of any coun-
ty executive committee of any political party or their appointed
representatives shall be permitted to examine the voting
machines under the supervision of the county commission for
the purpose of determining the number of votes cast for any
candidate or for and against any question. After the expiration of the seven-day period as herein provided, the voting machines may be unlocked by the clerk of the county commission and the registering counters reset at zero (000) unless the board of canvassers or a court of competent jurisdiction by appropriate court order directs otherwise.

(2) During the period when such machine is required to be kept locked, the keys thereto shall remain in the possession of the county commission. After such period, it shall be the duty of the county commission to return such keys to the clerk of the county commission.

(3) In canvassing the returns of the election, the board of canvassers shall examine all of the voting machines used in such election and shall determine the number of votes cast for each candidate and for and against each question and by such examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his party representative may be present at such examination.

(4) If any candidate shall demand a recount of the votes cast at an election, the voting machines shall not be reexamined during such recount for the purpose of reascertaining the total number of votes registered on the voting machines for any candidate.

The provisions of section nine, article six of this chapter shall apply where a recount is demanded.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-9. Canvass of returns; public declaration of results; recounts; notice of recount; preservation and subsequent destruction of ballots, records, etc.

The commissioners of the county commission shall be ex officio a board of canvassers, and, as such, shall keep in a well-bound book, marked “election record,” a complete record of all their proceedings in ascertaining and declaring the results of every election in their respective counties. They shall convene as such canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district thereof, and the officers in whose
custody the ballots, pollbooks, registration records, tally
sheets and certificates have been placed shall lay the same be-
fore them for examination. They may, if deemed necessary,
require the attendance of any of the commissioners, poll clerks
or other persons present at the election, to appear and testify
respecting the same, and make such other orders as shall seem
proper, to procure correct returns and ascertain the true results
of the election in their county; but in such case all the ques-
tions to the witnesses and all the answers thereto, and evi-
dence, shall be taken down in writing and filed and preserved.
All orders made shall be entered upon the record. They may
adjourn from time to time, but no longer than absolutely nec-
sary, and, when a majority of the commissioners are not pre-
sent, their meeting shall stand adjourned until the next day,
and so from day to day, until a quorum be present. The board
shall proceed to open each sealed package of ballots so laid
before them, and, without unfolding them, count the number
in each package and enter the same upon their record. The
ballots shall then be again sealed up carefully in a new enve-
lope, and each member of the board shall write his name across
the place where such envelope is sealed. After canvassing the
returns of the election, the board shall publicly declare the
results of the election; however, they shall not enter an order
certifying such election results for a period of forty-eight hours
after such declaration. Within such forty-eight-hour period a
candidate voted for at such election may demand the board
to open and examine any one or more of the sealed packages
of ballots, and recount the same; but in such case they shall
seal the same again, along with the envelope above named,
and the clerk of the county commission and each member of
the board shall write his name across the place or places where
it is sealed, and endorse in ink, on the outside: "Ballots of
the election held at precinct No. ........, in the district of
.............................., and county of ..............................,
on the ................ day of ................." In computing
the aforesaid forty-eight hour period as hereinbefore used in
this section, Saturdays, Sundays and legal holidays shall be
excluded: Provided, That at the end of the forty-eight-hour
period, an order shall be entered certifying all election results
except for those offices in which a recount has been demanded.
Every candidate who demands such recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election be not changed by such recount; but the amount of such bond shall in no case exceed three hundred dollars.

In the event a recount has been demanded, the board shall have an additional twenty-four hours after the end of said forty-eight hour period, in which to send notice to all candidates who filed for the office in which a recount has been demanded, of the date, time and place where the board will convene to commence the recount. Said recount shall be set for no sooner than three days after the serving of said notice. Service of process shall occur in the following manner: Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to such candidate in person; or if such candidate be not found, by delivering such copy at the usual place of abode of such candidate, and giving information of its purport, to the spouse of such candidate or any other person found there who is a member of his family and above the age of sixteen years; or if neither the spouse of such candidate nor any such other person be found there, and such candidate be not found, by leaving such copy posted at the front door of such place of abode. Any sheriff, thereto required, shall serve a notice within his county and make return of the manner and time of service; for a failure so to do, he shall forfeit twenty dollars. Such return shall be evidence of the manner and time of service.

When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts from whom they were received, who shall carefully preserve the same for sixty days, and if there be no contest pending as to any such election, and their further preservation be not required by any order of a court, such ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there be such
88 contest pending, then they shall be so destroyed as soon as
89 the contest is ended: Provided, That the pollbooks shall be
90 preserved until such time as the clerk of the county commis-
91 sion has completed the duties imposed upon him by section
92 three, article two of this chapter. If the result of the election
93 be not changed by such recount, the costs and expenses there-
94 of shall be paid by the party at whose instance the same was
95 made.

CHAPTER 47

(Com. Sub. for H. B. 968—By Mrs. Spears and Mrs. Pitsenberger)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and six, article
eight, chapter three of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; and to further amend
said article by adding thereto four new sections, designated
sections five-a, five-b, five-c and five-d, all relating to elections;
providing for records of receipts and expenditures for political
purposes; requiring treasurers and financial agents to be
designated in writing and where the written designations are
to be filed; requiring detailed accounts and verified financial
statements; requiring an additional preelection financial state-
ment to be filed; changing the time for filing other preelection
financial statements; requiring information that must be in-
cluded in financial statements; requiring each contribution
totaling more than fifty dollars to be by check or money order;
providing full disclosure of all election campaign expenditures
and liabilities; prohibiting contributions from funds of another
unless full disclosure is made; providing where financial state-
ments are to be filed; defining the term "contribution"; pro-
viding penalties and civil liability for certain violations; extend-
ing statute of limitations to five years; and requiring preserva-
tion of financial statements for a period of five years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-2. Accounts for receipts and expenditures in elections.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5b. Where financial statement shall be filed.

§3-8-5c. "Contribution" defined.

§3-8-5d. Offenses and penalties.

§3-8-6. Financial statement forms; filing; disposition.

§3-8-2. Accounts for receipts and expenditures in elections.

1 Except candidates for party committee men and committee-women, in primary and other elections, all candidates for nomination or election and all persons or organizations of any kind advocating or opposing a nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, shall keep records of receipts and expenditures which are made for political purposes. All such receipts and expenditures shall be subject to regulation by the provisions of this article. Verified financial statements of such records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives, or any person acting for and on behalf of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and by the treasurers of all political party committees.

§3-8-4. Treasurers and financial agents; written designation requirements; "person" and "financial agent" defined.

1 No person shall act as the treasurer of any political party committee, or as financial agent for any candidate for nomination or election to any office to be filled by the voters of the entire state, delegates to a national convention, candidates for president of the United States, or candidates for nomination or election for any office, encompassing an election district larger than a county, or any person or organization advocating
or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, encompassing an election district larger than a county, unless a written statement designating him as such treasurer or financial agent shall be filed with the secretary of state, at least sixty days before the election at which he is to act. No person shall act as treasurer of any such committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, or as the treasurer or financial agent for a candidate for the nomination or election to any other office, or for the passage or defeat of any issue, thing or item to be voted upon not here-in mentioned, unless a written statement designating him as such treasurer or financial agent shall be filed with the clerk of the county commission at least sixty days before the election at which he is to act.

As used in this article:

The term “person” shall include an individual, partnership, committee, association, corporation, and any other organization or group of persons; and

The term “financial agent” shall include any person acting for and by himself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principle at any election, or any proposition submitted to a vote at a public election.

§3-8-5. Detailed accounts and verified financial statements required.

Every candidate, financial agent, person and association of persons, organization of any kind, including the treasurer or equivalent officer of such association or organization, advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, liabilities incurred, by such candidate, financial agent, person,
association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

Each person who files a certificate of candidacy for nomination or election in this state as provided for in article five of this chapter and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind supporting or opposing the candidacy of any such candidate, or any person or organization advocating or opposing the nomination, election, or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, shall, within fifteen days following the first Saturday of February next preceding the primary election day, file a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth all contributions and expenditures concerning the candidacy of that person or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon. Such statement shall include all contributions received or expenditures made which have taken place by the date of such report, subsequent to any previous report filed within the previous five years under this section or under the former provisions of this section, or if no report was filed, all contributions received or expenditures made within the preceding five years. The specific information required to be included in such statement is provided for in section five-a of this article.

Not less than five nor more than ten days before each primary or other election, and again within thirty days after each primary or other election, every candidate for nomination or election, and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind advocating or opposing the passage or defeat of any issue, thing or item to be voted upon or pertaining to the holding or conducting of any election, and the treasurer of every political party committee shall file with the officers hereinafter prescribed a detailed itemized financial statement
subscribed and sworn to before an officer authorized to administer oaths, setting forth all financial transactions which have taken place by the date of such report in connection with such primary or other election as provided for in section five-a of this article.

§3-8-5a. Information required in financial statement.

Each financial statement as required by this article shall show the following information:

(a) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(b) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(c) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is by money order or by check, and a violation of this provision is subject to section five-d of this article. As used herein, the term "check" shall have the meaning ascribed to that term in section one hundred four, article three, chapter forty-six of this code.

(d) The total amount of contributions received during the period covered by the financial statement.

(e) The first name, middle initial, if any, and the last name, residence and mailing address in the case of an individual, or the full name and mailing address of each firm, associa-
tion or committee to whom each expenditure was made or
liability incurred, together with the amount and purpose of
each expenditure or liability incurred and the date of each
transaction.

When any lump sum payment is made to any advertising
agency or other disbursing person who does not file a report
of detailed accounts and verified financial statements as
required herein, such lump sum expenditures shall be accounted
for in the same manner as provided herein.

(f) The total expenditure for the nomination, election
or defeat of a candidate or any person or organization ad-
vocating or opposing the nomination, election or defeat of
any candidate, or the passage or defeat of any issue, thing
or item to be voted upon, in whose behalf an expenditure was
made or a contribution was given for the primary or other
election.

(g) The total amount of expenditures made during the
period covered by the financial statement.

(h) Any unexpended balance at the time of making the
financial statements herein provided for, shall be properly
accounted for in that financial statement and shall appear
as a balance in the next following financial statement.

(i) Each financial statement required by this section shall
contain a separate section setting forth the following in-
formation for each fund raising event held during the period
covered by the financial statement:

(1) The type of event, date held, and address and name,
if any, of the place where the event was held.

(2) All of the information required by subdivision (c) of
this section.

(3) The total of all moneys received at the fund raising
event.

(4) The expenditures incident to the fund raising event.

(5) The net receipts of the fund raising event.

For the purpose of this section the term "fund raising event"
means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as purchase of a ticket, payment of an attendance fee or through purchase of goods or services.

(j) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate, or committee for a candidate for any public office in the same election shall comply with the provisions of this article.

(k) No person, firm, association or committee shall make any contribution except from his own funds, unless such person, firm, association or committee discloses in writing to the person required to report under this section the first name, middle initial, if any, and the last name in the case of an individual, or the full name in the case of a firm, association or committee; residence and mailing address; the major business affiliation and occupation of the person, firm, association or committee which furnished the funds to such contributor. All such disclosures shall be included in the statement required by this section.

§3-8-5b. Where financial statements shall be filed.

1 The sworn financial statements provided for in sections five and five-a shall be filed with the secretary of state by candidates for state and other offices to be nominated or elected by the voters of a political division greater than a county, and with the clerk of the county commission by all other candidates for offices to be nominated or elected.

§3-8-5c. "Contribution" defined.

1 The term "contribution," as used in this article, shall mean a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate, or for the passage or defeat of any issue, thing or item to be voted upon. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected
or returned. A contribution does not include volunteer personal services provided without compensation.

§3-8-5d. Offenses and penalties.

Any person who makes or receives a monetary contribution of fifty dollars or more in value, other than by check or money order, shall be guilty of a misdemeanor, and, upon conviction, shall be fined a sum equal to three times the amount or value of the contribution.

Notwithstanding the provision of section twenty-four, article nine of this chapter, a criminal prosecution or civil action for violation of this article shall be commenced within five years after the violation occurred.

No person required to report under this article shall be found in violation of this article if any person, firm, association or committee making a contribution has provided false information to such person: Provided, That any person, firm, association or committee who provides false information to a person required to report under this article shall be guilty of a misdemeanor, as provided for in section twenty-three, article nine of this chapter.

§3-8-6. Financial statement forms; filing; disposition.

Blank forms for all financial statements required under this article shall be prepared by the secretary of state, and copies thereof, together with a copy of this article, shall be furnished through the county clerk or otherwise, as the secretary of state may deem expedient, to all treasurers of political committees, to all political financial agents, and to all candidates for nomination or election to any office, upon the filing of a petition or announcement for nomination, and to all other persons required by law to file such statements who shall apply therefor. All statements filed in accordance with the provisions of this article shall be received, endorsed and filed by the secretary of state and county clerks, and shall be preserved for five years, after which time they may be destroyed, if not required to be further preserved by the order of any court.
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 five, relating to the granting of a cost-of-living, across-the-board salary increase for state employees; providing a short title; declaring legislative findings and policy; providing definitions; effective date; specifying that other increases are not prohibited; requiring executive heads of state spending units to file sworn statement of compliance; requiring attorney general to prepare and distribute forms for such statements; providing for written complaint to state auditor; requiring state auditor to decide questions as to eligibility to receive such salary increase; requiring state auditor to promulgate rules and regulations and to make reports to joint committee on government and finance; providing penalties for violations, including criminal penalty; and providing for severability.

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 five, to read as follows:

CHAPTER 5.

GENERAL POWERS AND DUTIES OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE; BOARD OF PUBLIC WORKS; SALARY INCREASE FOR STATE EMPLOYEES; 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 COM-
ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§ 5-5-1. Short title.

§ 5-5-2. Declaration of legislative findings and policy.

§ 5-5-3. Definitions.

§ 5-5-4. Granting of cost-of-living, across-the-board, salary increases; amount of increase; effective date.

§ 5-5-5. Sworn statement by department heads; complaint by eligible employee.

§ 5-5-6. Duties of state auditor; rules and regulations as to eligibility.

§ 5-5-7. Penalties for violations.

§ 5-5-8. Severability.

§ 5-5-1. Short title.

This article shall be known as the "State Employees Cost-of-Living Salary Increase Act."

§ 5-5-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares:

(a) That due to the long continuing effects of inflation, the salaries of state employees have been seriously eroded to the detriment of such employees, their families, their morale and ultimately to the detriment of the rendition of good service to the citizens of this state by vital governmental agencies of the state;

(b) That the granting of salary increases to certain state employees on a merit basis is sound practice and conducive to the encouragement of state employees in upgrading their skills and performing their duties well; that while such practice should continue, it is nevertheless not an adequate basis on which the state can or should attempt to respond to the problem of the erosion of state employees' salaries, because the greatest number of state employees are not covered by the merit, civil service system of this state;

(c) That the state clearly has a duty and it is its policy to respond to the fundamental needs of its employees and ought to do so through the granting of a cost-of-living, across-the-
The provisions of this article are to be liberally construed to accomplish this manifest purpose.

§5-5-3. Definitions.

As used in this article:

(1) "Eligible employee" shall include any regular full-time employee of the state or any spending unit thereof who is eligible for membership in any state retirement system of the state of West Virginia or other retirement plan authorized by the state: Provided, That an eligible employee shall also meet the requirement set forth in section four of this article relative to previous period of employment: Provided, however, That the mandatory salary increase required by this article shall not apply to employees of the Legislature and the judiciary, or to any employee of the state whose compensation is fixed by statute or by statutory schedule, nor shall this article be construed to mandate an increase in the salary of any elected or appointed officer of the state.

(2) "Spending unit" shall include any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.

§5-5-4. Granting of cost-of-living, across-the-board, salary increases; amount of increase; effective date.

Effective for the fiscal year beginning the first day of July, one thousand nine hundred seventy-six, every eligible employee who was an employee of the state on the first day of January, one thousand nine hundred seventy-six, and who has been continuously employed thereafter, shall receive a cost-of-living increase of one thousand dollars in the annual rate of compensation which he was receiving as of the thirtieth day of June, one thousand nine hundred seventy-six, such increase to be prorated over the employee's normal pay period. This article shall not be construed to prohibit other pay increases based on merit, seniority, promotion or other reason, if funds are available for such other pay increases: Provided, That the executive head of each spending unit shall first grant the herein mandated increase in rate of compensation to all eligible em-
employees prior to the consideration of any increases based on
merit, seniority, promotion or other reason.

The executive head of every spending unit shall cause the
rate of compensation for each eligible employee to be increased,
effective as of the earliest applicable pay period in such fiscal
year, by at least the amount required by this section. Such
increases shall be reflected in the expenditure schedule sub-
mitted to the commissioner of finance and administration by
each such spending unit for such fiscal year.

§5-5-5. Sworn statement by department heads; complaint by eligible
employee.

On or before the thirty-first day of August, one thousand
nine hundred seventy-six, every executive head of a spending
unit shall file in duplicate with the state auditor and legislative
auditor a sworn statement, on a form to be prescribed by the
attorney general, certifying that the expenditure schedule sub-
mitted by such executive head to the commissioner of finance
and administration provides for the increases mandated by
this article, and that the rate of compensation for each eligible
employee has in fact been increased by at least such amount.
The attorney general shall prepare and distribute such form
to the affected spending units on or before the first day of July,
one thousand nine hundred seventy-six.

Any eligible employee who has not received the herein
mandated increase in his rate of compensation after his first
pay period has elapsed shall make written complaint of such
fact to the state auditor who shall transmit a copy thereof to the
joint committee on government and finance of the Legislature.

§5-5-6. Duties of state auditor; rules and regulations as to eligibility.

In any case of doubt as to who is an eligible employee within
the meaning of this article, the state auditor shall resolve and
decide the question. For such purpose, he is hereby authorized
and it shall be his duty to promulgate and enforce all rules and
regulations necessary for determining the eligibility of em-
ployees. Such rules and regulations may provide for a hearing
on the question. The state auditor is further empowered to
obtain from any state officer or employee any and all informa-
tion which he shall deem necessary for making such deter-
minations. Rules and regulations promulgated hereunder shall take effect immediately, notwithstanding any provisions of this code to the contrary.

In any case where the state auditor finds that an eligible employee has failed to receive the increase mandated by this article, he shall make written report of the particulars of the case to the joint committee on government and finance.

§§5-5-7. Penalties for violations.

Any executive head of a spending unit other than a constitutional officer, who shall fail or refuse to file a sworn statement as required by section five of this article, shall by operation of law have his pay suspended until such statement is filed.

In addition, any person, including a constitutional officer, who shall willfully fail or refuse to perform the duties and obligations placed upon him by the provisions of this article, or who shall willfully hinder, delay or prevent the carrying out of the purposes as set forth in this article and the receipt of the salary increase by eligible employees hereunder, shall be guilty of a misdemeanor, and shall be fined not less than one thousand dollars nor more than five thousand dollars and shall forfeit the office, position or employment he holds at the time of such offense. The foregoing penalties shall not be deemed exclusive but shall be in addition to other penalties and remedies provided by law.

§§5-5-8. Severability.

If any provision or application of this article is held invalid, the invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 49

(58, 409—By Mr. Regerson)

[Passed March 12, 1976; in effect July 1, 1976. Approved by the Governor.]

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 minimum and maximum annual salary of the director of the purchasing division of said department.

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 and office of commissioner continued; commissioner; divisions; directors.

1 The department of finance and administration and the office of commissioner of finance and administration are hereby continued in the executive branch of state government. 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. The annual compensation of the commissioner shall be as specified in section two-a, article seven, chapter six of this code. 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. The office of director of the purchasing division is hereby abolished, and a new office of director of the purchasing division is hereby created. No person shall be appointed director of the purchasing division unless such person is at the time of appointment a graduate of an accredited college or university and shall have spent a minimum of ten of the fifteen years immediately preceding his appointment employed in an executive capacity in purchasing for any unit of government or for any business, commercial or industrial enterprise. The director
26 of the purchasing division shall receive an annual salary
27 of not less than eighteen thousand dollars nor more than
28 twenty-three thousand dollars. Any person appointed
29 as director of the division shall after such appointment
30 be subject to the provisions of article six, chapter twenty-
31 nine of this code.

CHAPTER 50
(Com. Sub. for H. B. 1069—By Mr. Bird and Mr. Albright)

[Passed March 8, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter five-a of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section forty-four,
relating to preference to resident vendors doing business with
the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.
§5A-3-44. Preference for resident vendors.

1 Other provisions of this article notwithstanding, in any
2 instance that a purchase of commodities or printing by the
3 director or by a state department is required under the
4 provisions of this article to be made upon competitive bids,
5 such purchase shall be made from a vendor resident in West
6 Virginia, if such bid does not exceed the lowest qualified
7 bid from a nonresident vendor by more than two percent of
8 the latter bid, and if such resident vendor has made written
9 claim for such preference at the time the bid was submitted.

10 A vendor shall be deemed to be a resident of this state
11 if such vendor be an individual, partnership, association or
corporation that maintains an active bona fide place of business within the state and maintains therein a representative inventory of the commodities on which the bid is submitted, and, in the case of a corporation, is duly qualified to do business and is in good standing under the laws of the state.

CHAPTER 51

(S. B. 146—By Mr. Sharpe, Mr. Davis and Mr. Hinkle)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the creation of a state fire commission; prescribing a method of appointing members; providing for the election of a chairman and vice chairman; requiring the commission to meet at least six times a year; quorum required; establishing the duties of the commission to promulgate regulations and adopt a state fire code; creating the office of state fire administrator and providing for his appointment, term of office, salary, qualifications, responsibilities and removal; providing for public hearing; annual reports; removing fire marshal's office from the office of the insurance commissioner; establishing the state fire marshal's office under the state fire commission; changing the appointment, term of office, qualifications, responsibilities and removal of the state fire marshal; providing that employees are to be members of the state civil service system; establishing a state master plan for fire service; removing requirement that tax on insurance companies be used for maintenance of state fire marshal's office; prohibiting construction of a fire hazard; authorizing fire marshal to order removal of fire hazard and providing that removal is to be done by the fire marshal at expense of owner upon failure to comply with fire marshal's order; providing other remedies to abate fire hazard; providing for the
transfer of certain state employees and the perpetuation of rules and regulations; providing penalties and procedures for appeal; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.
§29-3-2. Legislative findings and declaration of policy.
§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.
§29-3-4. Chairman; vice chairman; meetings; quorum.
§29-3-5. Promulgation of regulations and state fire code.
§29-3-6. Public hearings and notice.
§29-3-7. Commission's powers in conduct of public hearing.
§29-3-8. Office of state fire administrator created; appointment; term of office; removal; compensation; employees; equipment.
§29-3-9. Powers, duties and authority of state fire commission and state fire administrator.
§29-3-10. State fire marshal's office transferred to state fire commission; powers and duties of state insurance commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.
§29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.
§29-3-12. Powers and duties of state fire marshal.
§29-3-13. Annual reports.
§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.
§29-3-15. Service of repair or demolition order.
§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.
§29-3-17. Additional remedies to abate, etc., fire hazards.
§29-3-18. Appellate procedure generally.
§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.
§29-3-20. Allowance for reporting fires; when allowance not granted.
§29-3-21. False alarm of fire; penalties.
§29-3-22. Tax on insurance companies.
§29-3-23. “Fireworks” defined; labels required.
§29-3-24. Unlawful sale, possession or use of fireworks; permit for public display.
§29-3-25. Interstate sale and shipment; permitted uses.
§29-3-26. Seizures by fire marshal; enforcement of law.
§29-3-27. Penalties.
§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.
§29-3-29. Construction.
§29-3-30. Severability.

§29-3-1. Short title.

1 This article shall be known and may be cited as the
2 "Fire Prevention and Control Act."

§29-3-2. Legislative findings and declaration of policy.

1 The Legislature hereby finds and declares that:
2 (a) A significant part of the population of this state
3 needs improved fire prevention and control;
4 (b) The establishment and maintenance of a coordi-
5 nation program for fire prevention and control for
6 the entire state is necessary to promulgate the safety
7 and well-being of the citizens and residents of this
8 state;
9 (c) Adequate fire prevention and control are not
10 likely to become a reality unless certain administrative
11 functions and procedures are enacted by law; and
12 (d) Fire prevention and control are a public purpose
13 and a responsibility of government for which public
14 money may be spent.

§29-3-3. State fire commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

1 (a) There is hereby created a state fire commission,
2 which shall consist of eleven members, qualified by
3 experience and training to deal with the matters which
4 are the responsibilities of the commission. The officers
5 of the West Virginia fire chiefs association, the West
6 Virginia firemen's association, the West Virginia profes-
7 sional fire fighters association, the West Virginia manu-
8 facturers association, the West Virginia mutual insurance
9 association and the West Virginia association of indepen-
10 dent insurors shall submit a list of names of persons rec-
ommended by each of these associations to the governor for consideration in appointing the state fire commission. The West Virginia professional fire fighters association shall recommend the names of six persons from full-time paid fire departments. The West Virginia fire chiefs association and the West Virginia firemen’s association shall each recommend the names of three persons from volunteer fire departments. The West Virginia manufacturers association shall recommend the names of three persons to represent business and industry and the West Virginia association of independent insurers shall recommend the name of one person, and the West Virginia mutual insurance association shall recommend the name of one person, to represent the fire insurance industry. Appointments to the commission shall be made by the governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Four members shall be appointed to represent full-time paid fire departments and four members shall be appointed to represent volunteer fire departments. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. The term of office of the members shall be staggered five-year terms. The terms of members first appointed shall expire as designated by the governor at the time of appointment, two at the end of one year, two at the end of two years, three at the end of three years, two at the end of four years and two at the end of five years. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. Any member is subject to removal by the governor at any time for neglect of his duties or other conduct unbecoming his office. The governor shall make the appointments within ninety days after this section takes effect.

(b) The members of the state fire commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.
§29-3-4. Chairman; vice chairman; meetings; quorum.

(a) The state fire commission shall select a chairman and vice chairman from among its members and shall hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the state fire commission in the absence of a quorum which shall be six members, one of whom must be the chairman or vice chairman.

§29-3-5. Promulgation of regulations and state fire code.

(a) The state fire commission shall have the power to promulgate, amend and repeal regulations for the safeguarding of life and property from the hazards of fire and explosion pursuant to the provisions of chapter twenty-nine-a of this code. Such regulations, amendments or repeals thereof shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(b) Pursuant to the provisions of chapter twenty-nine-a of this code, the state fire commission, by the first day of January, one thousand nine hundred seventy-seven, shall promulgate comprehensive regulations for the safeguarding of life and property from the hazards of fire and explosion known as the state fire code. Regulations embodied in the state fire code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and shall have the force and effect of law in the several counties, municipalities and political subdivisions of the state.

(c) In interpretation and application, the state fire code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards
of fire and explosion. Whenever any other state law, county or municipal ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the state fire code, the provisions of such state law, county or municipal ordinance or regulation of any agency thereof shall govern, provided they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the state fire commission determines the relative priority of any such state law, county or municipal ordinance or regulation of any agency thereof and determines compliance with state fire regulations by officials of the state, counties, municipalities and political subdivisions of the state.

(d) A copy of the state fire code and any amendments thereto, upon promulgation by the state fire commission, shall be filed with the county clerk and shall be made available for public information in each county courthouse in the state.

§29-3-6. Public hearings and notice.

(a) Prior to the promulgation of a state fire code as provided in section five of this article, the state fire commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine-a of this code.

(b) After the adoption of a state fire code, prior to the promulgation of any additional regulation, amendment to or repeal of a current regulation, the state fire commission shall hold at least one hearing on each new regulation, each amendment to and each repeal of a current regulation to be separately submitted, notice of which shall be the same as the notice for a hearing as provided in the administrative procedure act, chapter twenty-nine-a of this code.

§29-3-7. Commission's powers in conduct of public hearing.

For the purposes of any public hearing under this
article, the state fire commission is empowered and au-

thorized to issue subpoenas and subpoenas duces tecum, to
take testimony and to administer oaths to any witness in
any proceeding or examination instituted before it or
conducted by it with reference to any matter within its
jurisdiction. In all hearings or proceedings before the state
fire commission the evidence of witnesses and the pro-
duction of documentary evidence may be required at any
designated place of hearing; and in case of disobedience to
a subpoena or other process the state fire commission or
any party to the proceedings before the commission may
invoke the aid of any circuit court in requiring the evi-
dence and testimony of witnesses and the production of
papers, books and documents. And such court, in case of
refusal to obey the subpoena issued to any person subject
to the provisions of this chapter, shall issue an order re-
quiring such person to appear before the state fire com-
mission and produce all books and papers, if so ordered,
and give evidence touching the matter in question.

§29-3-8. Office of state fire administrator created; appointment;
term of office; removal; compensation; employees;
equipment.

(a) There is hereby created a state fire administrator
who shall be appointed by the governor from a list of
names submitted by the state fire commission.

(b) The state fire administrator shall serve for a
six-year term after which time reappointment shall be
discretionary with the governor. In cases where a re-
appointment is not made, the governor shall make the
appointment from a list of names submitted by the state
fire commission. The state fire administrator can be re-
moved by the governor, on recommendation by the state
fire commission for neglect of duty or other conduct
unbecoming his office. Prior to removal he shall be given
timely notice by the commission, along with a statement
of the charges against him. He shall be provided an op-
portunity to appear in person or by counsel for a public
hearing thereon.

(c) The annual salary of the state fire administrator
shall be twenty thousand dollars. He may employ such technical, clerical, stenographic and other personnel and fix their compensation, and may incur such expenses as may be necessary in the performance of the duties of his office within the appropriation therefor. Employees of the state fire administrator’s office shall be members of the state civil service system, and all appointments of the office shall be a part of the classified service under the civil service system.

(d) The state fire administrator and other personnel of the state fire administrator’s office shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as provided for other state agencies.

§29-3-9. Powers, duties and authority of state fire commission and state fire administrator.

(a) The state fire commission is responsible for fire programs within this state, including the state fire administrator, state fire marshal’s office, training, uniform standards and certification, finance and planning and fire prevention.

(b) All state and area training and education in fire service shall be coordinated by the state fire commission. The state fire administrator shall insure that these programs are operated throughout the state at a level consistent with needs identified by the commissioner.

(c) The state fire commission shall develop minimum training levels for fire fighters, minimum levels of equipment needed to protect life and property within fire service areas, minimum performance standards the departments must meet in response times, communications, minimum levels of water flow and pressure and other performance measures as deemed necessary to meet the overall goals of improved fire prevention and control.

(d) The formation of any new fire department, including volunteer fire departments, shall require the concurrence of the state fire commission. The state fire commission shall develop a method of certification which
can be applied to all fire departments and volunteer fire departments.

(e) The state fire commission shall develop a plan for fire prevention and control which shall include but not be limited to the following areas: Manpower needs; location of training centers; location of fire prevention and control units; communications; fire fighting facilities; water sources; vehicular needs; public education and information; public participation; standardization in record keeping; evaluation of personnel; reporting of fire hazards; programs on mutual aid; location of public safety agencies; outline of fire prevention programs; and accessibility of fire prevention information.

(f) The state fire commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning and certification.

§29-3-10. State fire marshal’s office transferred to state fire commission; powers and duties of state insurance commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.

The state fire marshal and the state fire marshal’s office, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the state insurance commissioner with respect to the state fire marshal and the state fire marshal’s office are terminated and all such powers and duties are hereby transferred to and vested in the state fire commission except as provided otherwise in this article. Until the adoption of a state fire code by the state fire commission, the state fire marshal shall operate under the authority of this article and the authority of the rules and regulations heretofore promulgated by the state fire marshal.

§29-3-11. Appointment of state fire marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The state fire commission shall appoint a state
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2 fire marshal in accordance with the qualifications ap-
3 proved by the state civil service commission as provided
4 in article six, chapter twenty-nine of this code. He can
5 be removed by the commission at any time for neglect
6 of duty or other conduct unbecoming his office as
7 provided in article six, chapter twenty-nine of this
8 code.

9 (b) The state fire marshal, within policy established
10 by the state fire commission, shall have all responsi-
11 bility for the implementation of fire safety programs in
12 this state designated to minimize fire hazards and dis-
13 asters and loss of life and property from these causes.
14 These responsibilities include, but are not limited to,
15 the establishment and enforcement of fire safety prac-
16 tices throughout the state, preventive inspection and
17 correction activities, coordination of fire safety programs
18 with volunteer and paid fire departments and critical
19 analysis and evaluation of West Virginia's fire loss sta-
20 tistics for determination of problems and solutions.

21 (c) The state fire marshal may employ such tech-
22 nical, clerical, stenographic and other personnel and fix
23 their compensation and may incur such expenses as may
24 be necessary in the performance of the duties of his
25 office within the appropriation therefor. Employees of
26 the fire marshal's office shall be members of the state
27 civil service system, and all appointments of the office
28 shall be a part of the classified service under the civil
29 service system.

30 (d) The state fire marshal and other personnel of the
31 state fire marshal's office shall be provided with appro-
32 priate office space, furniture, equipment, supplies, sta-
33 tionery and printing in the same manner as provided for
34 other state agencies.

§29-3-12. Powers and duties of state fire marshal.

1 (a) Enforcement of laws. The state fire marshal shall
2 enforce all laws of the state having to do with:
3 (1) Prevention of fire.
4 (2) The storage, sale and use of any explosive, com-
(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect and control fires.

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live or congregate from time to time for any purpose, except buildings used wholly as dwelling houses for no more than two families.

(5) The suppression of arson.

(b) Assistance upon request. Upon request, the state fire marshal shall immediately assist any chief of any recognized fire company or department.

(c) Enforcement of regulations. The state fire marshal shall enforce the regulations promulgated by the state fire commission as authorized by section three of this article.

(d) Inspections generally. The state fire marshal shall inspect all state, county and municipally owned institutions, all public and private schools, theaters, churches and other places of public assembly as to fire exits and reasonable safety standards and report his findings and recommendations to the proper administrative heads.

(e) Right of entry. The state fire marshal may at all reasonable hours enter any building or premises, except those actually occupied for single family dwelling purposes, for the purpose of making an inspection, which he may deem necessary to be made under the provisions of this article.

(f) Investigations. The state fire marshal may at any time investigate as to the origin or circumstances of any fire or explosion or attempt to cause fire or explosion occurring in the state. The state fire marshal shall have the authority at all times of the day or night, in performance of the duties imposed by the provisions of this article, to investigate where any fires or attempt to cause...
(g) **Testimony and arrests.** The state fire marshal, in making an inspection or investigation, when in his judgment such proceedings are necessary, may take the testimony under oath of all persons who may be cognizant of any facts, or have any knowledge about the matter to be examined and inquired into, and may have the testimony reduced to writing; and, when in his judgment such examination discloses that the fire or explosion or attempt to cause a fire or explosion was of incendiary origin, the state fire marshal may arrest the supposed incendiary or have him arrested and charged with the crime: *Provided,* That if the state fire marshal suspects that a person is an incendiary, he shall not interrogate the supposed incendiary before the suspect shall have appeared before a magistrate or other judge; and shall transmit a copy of the testimony so taken to the prosecuting attorney for the county wherein the fire or explosion or attempt to cause a fire or explosion occurred.

(h) **Witnesses and oaths.** The state fire marshal is empowered and authorized to issue subpoenas and subpoenas duces tecum, to compel the attendance of persons before him to testify in relation to any matter which is, by the provision of this article, a subject of inquiry and investigation by the state fire marshal and cause to be produced before him such papers as he may require in making such examination. The state fire marshal is hereby authorized to administer oaths and affirmations to persons appearing as witnesses before him. False swearing in any matter or proceeding aforesaid shall be deemed perjury and shall be punishable as such.

(ii) **Deputizing members of fire departments in this state.** The state fire marshal may deputize a member of any fire department, duly organized and operating in this state, who is approved by the chief of his department and who is properly qualified, to act as his assistants for the purpose of making such inspections and investigations and carrying out such orders as may be prescribed by him, to enforce and make effective the provisions of this
article and any and all regulations promulgated by the state fire commission under authority of this article.

(j) Written report of examinations. The state fire marshal shall, at the request of the county commission of any county or the municipal authorities of any incorporated municipality in this state, make to them a written report of the examination made by him regarding any fire happening within their respective jurisdictions.

(k) Report of losses by insurance companies. It shall be the duty of each fire insurance company or association doing business in this state, within ten days after the adjustment of any loss sustained by it that exceeds fifteen hundred dollars, to report to the state fire marshal, upon forms furnished by him, such information regarding the amount of insurance, the value of the property insured and the amount of claim as adjusted, as in the judgment of the state fire marshal it is necessary for him to know. This report is in addition to any such information required by the state insurance commissioner. Upon the request of the owner or insurer of any property destroyed or injured by fire or explosion, or in which an attempt to cause a fire or explosion may have occurred, the state fire marshal shall make a written report to the person requesting the same of the result of the examination made by him regarding the property.

(l) Issuance of permits and licenses. The state fire marshal is authorized to issue permits and licenses as required in this article.

§29-3-13. Annual reports.

The state fire commission shall transmit annually to the governor by October thirty-first of each year, an annual report of its activities for the preceding fiscal year. The annual reports shall include documents pertaining to the function and operation of the state fire administrator's office and the state fire marshal's office for the preceding fiscal year.
§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain or use any building, structure or equipment or use any land in such a way to endanger life or property from the hazards of fire or explosion, or in violation of any regulation, or any provision or any change thereof promulgated by the state fire commission under the authority of this article.

(b) Whenever the state fire marshal determines that any building or structure has been constructed, altered or repaired in a manner violating any regulation lawfully promulgated by the state fire commission prior to the commencement of such construction, alteration or repairs; or whenever he may determine that any building or structure constitutes a fire hazard by reason of want of repair, age or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he may find in any building or upon any premises any combustible, flammable or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he may make reasonable orders in writing, directed to the owner of such building, structure or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the state fire marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.
A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the state fire commission or the attorney general.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of thirty days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the state fire commission and then to the circuit court in the county where the premises are totally or partially located as provided in section eighteen of this article.

§29-3-15. Service of repair or demolition order.

The written order of the state fire marshal made pursuant to section fourteen of this article shall be served by delivering a true copy thereof to such owner, or, if the owner is absent from the state or his whereabouts be unknown to the state fire marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the post office serving the community in which said premises lie; the delivering or mailing of such order to be accomplished within five days from the date of the issuance of such order. And in the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days from the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as provided in sections
fifteen of this article shall fail substantially to comply with such order within thirty days from
the date of issuance thereof, or within thirty days after any appeal from such order has been affirmed by the
state fire commission or by the court, the state fire marshal may enter into and upon the premises affected
by such order and cause the building, structure or premises to be repaired, torn down, materials removed and
all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any ad-
ministrative charges as established by the commission also being borne by the owner, and if such person shall
fail or neglect to repay the state fire marshal the expense and administrative charge thereby incurred by him,
within thirty days after written demand shall have been delivered or mailed to the said owner as provided in
section fifteen of this article, the state fire marshal is hereby authorized to bring an action in the name of
the state to recover such expenses, with interest, and any administrative charge as established by the commis-
sion, in any court of competent jurisdiction.

§29-3-17. Additional remedies to abate, etc., fire hazards.
In case any building, structure or equipment is or is proposed to be erected, constructed, reconstructed, al-
tered, maintained or used, or any land is or is proposed to be used in such a way to endanger life or property
from the hazards of fire or explosion or in violation of this article or of any regulation or provision of any regu-
lation, or change thereof promulgated by the state fire commission under the authority granted by this article,
the state fire commission, the state fire marshal or the attorney general may, in addition to other remedies
provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, pro-
ceedings to prevent, enjoin, abate or remove such unlawful erection, construction, reconstruction, alteration,
maintenance or use.

§29-3-18. Appellate procedure generally.
(a) Appeals to the state fire commission may be taken
by any person aggrieved by an order or decision of the
state fire marshal based upon or made in the course of
the administration or enforcement of the provisions of
this article. Appeals to the state fire commission may
be taken by any officer, department, board or agency
of the state and political subdivisions thereof adversely
affected by an order or decision of the state fire marshal
in the course of the administration or enforcement of
the provisions of this article.

(b) The time within which such appeal must be
made, and the effect, form or other procedure relating
thereto, including the appointment and function of a
hearing examiner, shall be as specified in regulations
promulgated by the state fire commission in accordance
with provisions of the administrative procedure act,
chapter twenty-nine-a of this code.

(c) Any party aggrieved by a final decision of the
state fire commission is entitled to judicial review as
provided in the administrative procedure act, chapter
twenty-nine-a of this code. The state fire marshal is
hereby determined to be a party aggrieved as to any
decision of the state fire commission reversing or alter-
ing the prior order of the state fire marshal and the state
fire marshal shall be a necessary party to any judicial
review involving a state fire marshal order.

§29-3-19. Establishment of demonstration buildings and equip-
ment for educational instruction in fire prevention
and protection; payment therefor.

The state fire marshal is authorized to establish for
educational purposes in public and private schools and
state educational institutions demonstration buildings
and equipment for fire prevention and protection, and
such expenditures therefor shall be made from the funds
appropriated therefor to the office of the state fire
marshal.

§29-3-20. Allowance for reporting fires; when allowance not
granted.

There shall be paid to the fire department making the
report the sum of ten dollars for each fire reported to, and in compliance with regulations of, the state fire marshal.

All chiefs of fire departments who receive a stated salary or are paid a stated sum for each fire fought, and mayors of municipalities who receive a stated salary exceeding twenty dollars per year, shall be precluded from receiving any extra allowance for the reports mentioned in this section.

§29-3-21. False alarm of fire; penalties.

No person shall make, turn in or telephone, or by use of any means or methods of communication aid or abet in the making or turning in of, any alarm of fire which he knows to be false at the time of making or turning in the alarm.

§29-3-22. Tax on insurance companies.

Every insurance company doing business in this state, except farmers' mutual fire insurance companies, shall pay to the state insurance commissioner annually on or before the first day of March, in addition to the taxes now required by law to be paid by such companies, one half of one percent of the net direct premium receipts of such companies on insurance against the hazard of fire and on that portion of all other net direct premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the state insurance commissioner shall be paid by him into the treasury and credited to the state general revenue fund.

In the event of a controversy as to the proper determination of the premium base on which this tax is to be computed, a hearing may be had by the state insurance commissioner on the application of any interested person, corporation or association, which hearing shall be held after reasonable notice. Any party aggrieved by a final
23 decision of the state insurance commissioner is entitled to
24 judicial review as provided in the administrative proce-
25 dure act, chapter twenty-nine-a of this code.

§29-3-23. "Fireworks" defined; labels required.

The term "fireworks" means and includes any com-
2 bustible or explosive composition, or any substance or
3 combination of substances, or article prepared for the pur-
4 pose of producing a visible or an audible effect by com-
5 bustion, explosion, deflagration or detonation, and shall
6 include blank cartridges, toy pistols, toy cannons, toy
7 canes or toy guns in which explosives are used, the type
8 of unmanned balloons which require fire underneath to
9 propel the same, firecrackers, torpedoes, skyrockets, ro-
10 man candles, daygo bombs, sparklers or other fireworks
11 of like construction and any fireworks containing any
12 explosive or flammable compound, or any tablets or other
13 device containing any explosive substance, except that
14 the term "fireworks" shall not include model rockets and
15 model rocket engines, designed, sold and used for the
16 purpose of propelling recoverable acro models and shall
17 not include toy pistols, toy canes, toy guns or other de-
18 vices in which paper or plastic caps manufactured in ac-
19 cordance with the United States department of trans-
20 portation regulations for packing and shipping of toy
21 paper or plastic caps are used and toy paper or plastic
22 caps manufactured as provided therein, the sale and use
23 of which shall be permitted at all times. Each package
24 containing toy paper or plastic caps offered for retail sale
25 shall be labeled to indicate the maximum explosive con-
26 tent per cap.

§29-3-24. Unlawful sale, possession or use of fireworks; permit
for public display.

Except as hereinafter provided, no person, firm, co-
2 partnership or corporation shall offer for sale, expose
3 for sale, sell at retail, keep with intent to sell at retail,
4 or use or explode any fireworks: Provided, That the state
5 fire marshal may adopt reasonable rules and regulations
6 for the granting of permits for supervised displays of
Such permits may be granted upon application to said state fire marshal and after approval of the local police and fire authorities of the community wherein the display is proposed to be held as provided herein and the filing of a bond by the applicant as provided hereinafter. Every such display shall be handled by a competent operator licensed or certificated as to competency by the state fire marshal and shall be of such composition, character, and so located, discharged or fired as in the opinion of the chief of the fire department, after proper inspection, and of the chief of police shall not be hazardous to property or endanger any person or persons. After such privilege shall have been granted, sales, possessions, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit granted hereunder shall be transferable.

The governing body or chief executive authority of the municipality shall require a bond from the licensee in a sum not less than one thousand dollars conditioned on compliance with the provisions of this article and the regulations of the state fire commission, provided no municipality shall be required to file such bond.

Before any permit for a pyrotechnic display shall be issued, the person, firm or corporation making application therefor shall furnish proof of financial responsibility to satisfy claims for damages to property or personal injuries arising out of any act or omission on the part of such person, firm or corporation or any agent or employee thereof, in such amount, character and form as the state fire marshal determines to be necessary for the protection of the public.

§29-3-25. Interstate sale and shipment; permitted uses.

No permit shall be issued under the provisions of this article to a nonresident person, firm or corporation for conduct of a pyrotechnic display in this state until such person, firm or corporation shall have appointed in writing a member of the bar of this state and re-
siding therein to be his attorney upon whom all process
in any action or proceeding against him may be served.

Nothing in this article shall be construed to prohibit
any resident wholesaler, dealer or jobber to sell at
wholesale such fireworks as are not herein prohibited
or the sale of any kind of fireworks provided the same
are to be shipped directly out of state in accordance
with regulations of the United States department of
transportation covering the transportation of explosives
and other dangerous articles by motor, rail and water,
or the use of fireworks by railroads or other transporta-
tion agencies for signal purposes or illumination, or the
sale or use of blank cartridges for a show or theater,
or for signal or ceremonial purposes in athletics or
sports, or for use by military organizations, or the use
of fireworks for agricultural purposes under conditions
approved by the local authority.

§29-3-26. Seizures by fire marshal; enforcement of law.

1 The state fire marshal shall seize, take, remove and
destroy, or cause to be seized, taken or removed and
destroyed, at the expense of the owner, all stocks of
fireworks or combustibles offered or exposed for sale,
stored or held in violation of this article. It shall be
the duty of the department of public safety, sheriffs,
municipal policemen and other law-enforcement officers
to assist in the enforcement of this article.

§29-3-27. Penalties.

1 (a) Any person who violates any regulations pro-
mulgated by the state fire commission as provided in
section five of this article, shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
more than one hundred dollars or imprisoned in the
county jail not more than ninety days, or both fined and
imprisoned.

Each and every day during which any illegal erection,
construction, reconstruction, alteration, maintenance or
use continues after knowledge or official notice that same
is illegal shall be deemed a separate offense.
(b) Any person who violates the provisions of section twenty-one of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for a first offense not more than one hundred dollars or imprisoned in the county jail for not more than thirty days, or both fined and imprisoned, and for a second and each subsequent offense fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for not less than ninety days nor more than one year, or both fined and imprisoned.

(c) Any officer who shall fail to perform any duty required of him by this article or who shall violate any of its provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than fifty dollars for each failure or violation.

(d) Any person who violates any other provision of this article 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 ninety days, or both fined and imprisoned.

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

(a) All employees, agents or officers of any state agency, department or commission, the functions of which are transferred to the state fire commission by the provisions of this article, and whose employment is covered and protected by the provisions of article six, chapter twenty-nine of this code and the rules and regulations promulgated by the civil service commission, and whose service is classified by such provisions, rules and regulations, shall continue in their employment in all respects and in the same classification, coverage and protection upon the transfer of such functions from the agency, department or commission by which they were employed to the state fire commission.

(b) All rules and regulations promulgated and all orders in effect and all proceedings pending on the effec-
AN ACT to amend and reenact section two, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the state board of health; its membership, appointment, removal and qualifications of members; per diem compensation of members, and reimbursement for travel expenses.

Be it enacted by the Legislature of West Virginia:

That section two, article one, 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 1. STATE DEPARTMENT OF HEALTH.

§16-1-2. Board of health—Body corporate, etc.; membership; appointment and removal of members; compensation.

There shall be a state board of health, to be known as the West Virginia board of health, which shall be a corporation and as such may contract and be contracted with, plead and be impleaded, sue and be sued, and have and use a common seal. The state board of health shall consist of nine members, who shall be appointed by the governor, by and with the advice and consent of the Senate. Three members of the board shall be physicians or surgeons holding the degree of doctor of medicine, one shall be a dentist, one shall be an osteopathic physician, one shall be a registered nurse, one shall be a pharmacist, one shall be chosen as the representative of the hospitals licensed in the state of West Virginia and one shall be a representative citizen, who shall not be an employee of, or connected in any way with, any hospital licensed in this state, and who shall not be a member of any of the professions named above. The registered nurse representative shall first be appointed at the next expiration of a term of a representative citizen, or, in the event of a vacancy in the term of a representative citizen, to fill his unexpired term. Until a vacancy occurs, or until the expiration of the term of a representative citizen, whichever shall occur first, two representative citizens shall remain on the board.

All persons appointed to membership on the state board of health shall be citizens of this state and shall have been such citizens and residents of the state for at least five years prior to the date of their appointment. Every professional member of the said board shall be duly licensed to practice the profession of such person in this state on the date of appointment and shall have been so licensed and have been actively practicing his profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request the state professional society of the profession practiced by any proposed appointee to furnish to the governor a full and complete report concerning the qualifications and suitability of the proposed appointee. All members of the board shall be appointed for terms of nine years each. Any vacancy
on the board shall be filled by the governor by appointment for
the unexpired term.

No more than five of the members of the board shall belong
to the same political party. Not less than one nor more
than three members shall be appointed from the same con-
gressional district. No person shall be eligible for appoint-
ment to membership on the state board who is a member of
any political party executive committee, or who holds any
public office or public employment under the federal govern-
ment or under the government of this state or any of its
political subdivisions, or who is an appointee or employee of
the board. All members shall be eligible for reappointment.

No member 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: Provided, That the expiration or revocation of the
professional license of any professional member of the board
shall be cause for his removal.

The members of the board shall be paid the sum of thirty-
five dollars for each day actually served in attendance at
official meetings of the board. Each member shall be reim-
brursed for travel at the rate of fifteen cents per mile if by
private automobile and actual cost if travel is by common
carrier. Each member shall also be reimbursed for other actual
expenses incurred in the performance of the duties of his office.

CHAPTER 53
(S. B. 523—By Mr. Rogerson and Mr. Huffman)
[Passed March 17, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four-c,
chapter sixteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended; and to further
amend said chapter by adding thereto a new article,
designated article four-d, all relating to the "Emergency Medical Services Act of 1976"; emergency medical services advisory council; duties, composition, appointment, meetings and expenses thereof; legislative findings and declaration of policy; definitions; office of emergency medical services, director, staffing; powers and duties; and powers to promulgate rules and regulations.

Be it enacted by the Legislature of West Virginia:

That section seven, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article four-d, all to read as follows:

Article

4C. Emergency Medical Service.

4D. Emergency Medical Services Act.

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-7. Emergency medical service advisory council; duties, composition, appointment, meetings, compensation and expenses.

1. The emergency medical service advisory council, hereafter created and established, shall be continued for the purpose of assisting the state board in developing standards for emergency medical service attendants; and for the purpose of providing advice to the office of emergency medical services and the director thereof, as established by article four-d of this chapter, with respect to reviewing and making recommendations for and providing assistance to the establishment and maintenance of adequate emergency medical services for all areas of this state.

12. The council shall be composed of ten members appointed by the governor. The governor shall appoint one representative each from the West Virginia association of county officials, West Virginia council of towns and cities, West Virginia state firemen's association, American red cross, West Virginia hospital association, West Virginia state medical association,
West Virginia funeral directors association, governor's
highway safety administration, one person to rep-esent private commercial ambulance services within
the state and one person to represent emergency rescue
squads operating within the state. The person ap-
pointed from the West Virginia funeral directors as-
sociation shall be a person who provides ambulance
service at the time of his appointment and throughout
his term.

Initially, the governor shall appoint four members
of the council for terms of two years and five for terms
of four years. Thereafter, appointments shall be for
terms of four years and made in a manner to preserve
the representation of the council as it was originally
comprised.

The council shall choose its own chairman and meet
at the call of the director of the state department of
health or the director of the office of emergency med-
ical services. The council shall not meet more than
five times in any one year, nor more than four times
with only one of the above-mentioned agencies.

The members of such council shall be compensated
at the rate of fifty dollars per day for the attendance
of council meetings. The members of such council may
be reimbursed for any and all reasonable and necessary
expenses actually incurred in the performance of their
duties: Provided, That the total compensation and ex-
 pense allowances to any member of such council for
any fiscal year shall not exceed in the aggregate the
sum of six hundred dollars.

ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.

§16-4D-1. Short title.
§16-4D-2. Legislative findings and declaration of policy.
§16-4D-3. Definitions.
§16-4D-4. Office of emergency medical services created; appointment, etc.,
of director; staffing.
§16-4D-5. Advisory function of council; powers and duties of director.
§16-4D-6. Rules and regulations.
§16-4D-1. Short title.

1 This article shall be known as the "Emergency Medical Services Act of 1976."

§16-4D-2. Legislative findings and declaration of policy.

1 The Legislature hereby finds and declares that:

2 (a) Emergency medical services in this state are not uniformly available to all of the citizens and residents of this state;

3 (b) The establishment and maintenance of adequate emergency medical service systems for the entire state is necessary to promote the health and welfare of the citizens and residents of this state;

4 (c) By coordinating the efforts of all emergency medical service providers a more efficient system of emergency medical services can be effected;

5 (d) Emergency medical services is a public purpose and a responsibility of government for which public money may be spent; and

6 (e) It is the policy of this state that an effective effort be made to make emergency medical services available to all of its citizens and residents in the most efficient manner practicable and that it is necessary that an agency of this state be created and maintained for the purpose of providing and coordinating emergency medical services, and that such agency be delegated such powers and duties as may be necessary and appropriate to effectuate the public purposes and policy of this state as herein declared. This article is, accordingly, enacted in view of those findings and declarations of policy and shall be liberally construed in order to effectuate the public policy of this state as herein stated.

§16-4D-3. Definitions.

1 For the purposes of this article:

2 (a) The term "director" shall mean the director of the office of emergency medical services as defined in section four of this article;
(b) The term "council" shall mean the emergency medical services advisory council created pursuant to article four-c of this chapter;

(c) The term "emergency medical services" shall mean all services which are included in and made a part of the emergency medical services plan as herein provided for and shall include attending, caring for and giving lifesaving or life preserving treatment to a patient transported in an ambulance; and

(d) The term "patient" means any sick, injured, wounded, or otherwise incapacitated person or an expectant mother who needs medical, hospital or clinical services under existing or imminent emergency situation.

§16-4D-4. Office of emergency medical services created; appointment, etc., of director; staffing.

There is hereby created within state government an office to be known as the office of emergency medical services. A director of the office of emergency medical services hereinafter called the "director" shall be appointed by the governor in accordance with the provisions of section two-a, article seven, chapter six of this code. The director shall be qualified by both training and experience to perform the duties of his office. The director may be a licensed physician within the state of West Virginia.

The director may employ such technical, clerical, stenographic and other personnel as may be necessary to carry out the purposes of this article. The director and such other personnel may be paid from funds appropriated therefor or from such other funds as may be made available for carrying out the purposes of this article.

The annual salary of the director shall be established by the council subject to approval by the governor.

§16-4D-5. Advisory function of council; powers and duties of director.

The council shall have the duty to advise the director in all matters pertaining to his duties and
functions in relation to carrying out the purposes of this article.

The director shall have the following powers and duties:

(a) To apply for, receive, and expend advances, grants, contributions and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article.

(b) To design, develop and review annually a comprehensive statewide emergency medical services plan. Such plan shall be limited to recommendations, aid, assistance and all such acts as shall be necessary:

(1) To encourage local participation by area, county and community officials and regional councils established under chapter eight of this code, and

(2) To encourage or provide for the development of a system for monitoring and evaluating emergency medical services programs throughout the state.

(c) To provide professional and technical assistance and to make information available to regional inter-agency councils and other potential applicants or program sponsors of emergency medical services.

(d) To assist local government agencies or regional interagency councils and other public bodies in obtaining federal, state or other available funds and services.

(e) To cooperate and work with federal, state and local governmental agencies and private organizations and persons in the promotion and implementation of the state plan.

(f) To enter into such contracts with persons and other entities as may be necessary and expedient to carry out the stated purposes of this article.

(g) To acquire in the name of the state by grant, purchase, gift, devise or any other methods such ap-
propriate real and personal property as may be reason-
able and necessary to carry out the purposes of this
article.

(h) To make grants and allocations of funds and
property so acquired or which may have been appro-
 priated to such agency to other agencies of state and
local government as may be appropriate to carry out the
purposes of this article.

(i) To expend and distribute by grant or bailment
such funds and property to all such state and local
agencies for the purpose of performing the duties and
responsibilities of such agency all such funds which it
may have so acquired or which may have been appro-
priated by the Legislature of this state.

(j) To develop a program to inform the public con-
cerning emergency medical services programs.

(k) To review and disseminate information regard-
ing federal grant assistance relating to emergency med-
ical services.

(l) To prepare and submit to the governor and
Legislature recommendations for legislation in the area
of emergency medical services.

(m) To review and make recommendations for and
to assist or aid in all projects and programs which pro-
vide for emergency medical services regardless of
whether or not such projects or programs are funded
through the office of emergency medical services. Such
review and approval shall be required for all emer-
gency medical services projects, programs or services
which are eligible to receive state, federal, local or
private funds for their operation after the effective date
of this article.

(n) To take all necessary and appropriate action to
encourage and foster the cooperation of all emergency
medical service facilities with this state.

§16-4D-6. Rules and regulations.

1 The office of emergency medical services shall make
and publish such rules and regulations, not inconsistent with the provisions of this article, as it finds necessary or appropriate to the efficient administration of the functions with which it is charged under this article.

CHAPTER 54
(Com. Sub. for H. B. 1541—By Mr. Shiflet and Mr. Artrip)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to suspension or revocation of dairy operations; hearings required; deficiencies to be corrected; and clear and present health hazard may result in immediate suspension.

Be it enacted by the Legislature of West Virginia:

That section five, article seven, 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 7. PURE FOOD AND DRUGS.
§16-7-5. Regulations by state board of health as to milk and milk products.

1 The West Virginia board of health shall adopt regulations to provide clean and safe milk and fresh milk products, and, when promulgated, these regulations shall be the minimum requirements to be enforced by local health authorities throughout the state: Provided, That except in any case where the milk or milk product involved creates, or appears to create, an imminent hazard to the public health, or in any case of a willful refusal to permit an authorized inspection, that any regulations promulgated by the board of health shall provide that prior to any suspension or revocation of a permit issued to any dairy farm, milk plant, receiving station, transfer station and distribution station, the holder of such permit shall be
served with a written notice to suspend or revoke such permit, which notice shall specify with particularity the violations in question and afford the holder reasonable opportunity to correct such violations: Provided, however, That the proposed order to deny, suspend or revoke a permit shall not be effective until notice in writing has been delivered to the holder of such permit who shall have forty-eight hours therefrom in which to make application to the county health officer for a hearing thereon. The county health officer shall, within seventy-two hours of receipt of such application, give a notice in writing to the holder of such permit setting forth the time and place of the hearing and proceed to a hearing to ascertain the facts of such violation and upon evidence presented at such hearing shall affirm, modify or rescind the proposed order to suspend. A copy of such regulations shall be furnished to the commissioner of agriculture for his guidance in performing any duties with relation to milk and milk products imposed on him by law.

CHAPTER 55
(S. B. 387—By Mr. Darby)

[Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code, all relating to anatomical gifts; definitions; persons who may execute anatomical gift; certification of death; the West Virginia anatomical board and its powers, authority, duties, notices and requisition of unclaimed bodies, and bond; expense of delivery of body; rules and regulations governing the use, disposition and control of donated bodies and parts thereof; manner of executing anatomical gifts.
Be it enacted by the Legislature of West Virginia:

That sections one, two, three and four, article nineteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twelve, fourteen, fifteen, sixteen and seventeen, article eleven, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter
18. Education.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.


§16-19-3. Persons who may become donees; purposes for which anatomical gifts may be made; compliance with rules and regulations of board.


§16-19-1. Definitions.

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

5 (b) "Certification of death" means a written pronouncement of death by the attending physician. Such certification shall be required before the attending physician shall allow removal of any bodily organs of the decedent for transplant purposes.

10 (c) "Death" means that a person will be considered dead if in the announced opinion of the attending physician, based on ordinary standards of medical practice, the patient has experienced an irreversible cessation of spontaneous respiratory and circulatory functions; or, in the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of a physician, based on ordinary standards of
19 medical practice, the patient has experienced an irreversible cessation of spontaneous brain functions.
20 Death will have occurred at the time when the relevant functions ceased.
21 (d) "Decedent" means a deceased individual and includes a stillborn infant or fetus.
22 (e) "Donor" means an individual who makes a gift of all or part of his body.
23 (f) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.
24 (g) "Part" means organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.
25 (h) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association, or any other legal entity.
26 (i) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.
27 (j) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.


1 (a) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purpose specified in section three of this article, the gift to take effect upon certification of death.
2 (b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of certification of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same
or a prior class, may give all or any part of the
decedent's body for any purpose specified in section
three of this article:

(1) The spouse;
(2) An adult son or daughter;
(3) Either parent;
(4) An adult brother or sister;
(5) A guardian of the person of the decedent at the
time of the certification of his death;
(6) Any other person authorized or under obligation
to dispose of the body.

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

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

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

§16-19-3. Persons who may become donees; purposes for which
anatomical gifts may be made; compliance with
rules and regulations of board.

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

(1) The West Virginia anatomical board for the scien-
tific purposes of educational institutions for which it
may receive or requisition dead bodies; or
(2) Any hospital, surgeon or physician, for medical
or dental education, research, advancement of medical or
dental science, therapy or transplantation; or
(3) Any accredited medical or dental school, college or
university for education, research, advancement of medical or dental science or therapy; or

(4) Any person operating a bank or storage facility for blood, arteries, eyes, pituitaries, or other human parts, for use in medical or dental education, advancement of medical or dental science, research, therapy or transplantation to individuals; or

(5) Any specified individual for therapy or transplantation needed by him.

The use, disposition and control of any such donated bodies or parts thereof by any such donee shall be in accordance with rules and regulations prescribed by the West Virginia anatomical board.


(a) A gift of all or part of the body under subsection (a), section two of this article may be made by will. The gift becomes effective upon certification of death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) A gift of all or part of the body under subsection (a), section two of this article may also be made by document other than a will. The gift becomes effective upon certification of death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the West Virginia anatomical board will be considered to be the donee unless it declines to accept the gift, or unless there
is urgent immediate need for a part of the body for transplant or other purposes in which case the gift may be accepted by the attending physician as donee upon or following certification of death. In case the anatomical board is considered the donee it shall be the duty of the person who has charge or control of the body, if he or she has knowledge of the gift, to give notice thereof to the anatomical board within twenty-four hours after such body comes under his or her control. Thereafter, he or she shall hold the body subject to the order of the anatomical board for at least twenty-four hours after the sending of such notice. If the anatomical board makes a requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to West Virginia University or any other educational institution which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body. If the anatomical board shall not so act within the twenty-four hour period, the gift may be accepted by the attending physician as donee upon or following certification of death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following certification of death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part, except that this prohibition shall not apply to the removing or transplanting of an eye or eyes.

(d) Notwithstanding subsection (b), section seven of this article, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures, or in the case of a gift of an eye or eyes, the surgeon or physician or the technician properly trained in the surgical removal of eyes to carry out the appropriate procedures. In the event of the nonavailability of such designee, or in the absence of a designation, the donee or other person
authorized to accept the gift may employ or authorize
for the purpose any surgeon or physician or in the case
of a gift of an eye or eyes, any surgeon or physician or
technician properly trained in the surgical removal of
eyes.

(e) Any gift by a person designated in subsection (b),
section two of this article shall be made by a document
signed by him or made by his telegraphic, recorded tele-
phonic, or other recorded message.

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

"UNIFORM DONOR CARD

of

Print or type name of donor

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

I give: (a) _______________ any needed organs or parts
(b) _________ only the following organs or
parts

Specify the organ(s) or part(s)

for the purposes of transplantation, therapy, medical re-
search or education;

(c) _______________ my body for anatomical study
if needed.

Limitations or special wishes, if any: ________________
Signed by the donor and the following two witnesses in
the presence of each other:

Signature of Donor Date of Birth of Donor
ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-12. Anatomical board.
§18-11-14. Notice of unclaimed body; requisition for body.
§18-11-15. Transportation of dead bodies.
§18-11-16. Expense of preservation, delivery, etc.
§18-11-17. Bond of anatomical board.

§18-11-12. Anatomical board.

1 The governor shall appoint one dean of a school of
2 medicine, one dean of a school of dentistry and two
3 chairmen of departments of anatomy of schools of medi-
4 cine, all of whom shall constitute a board to be known
5 as the "West Virginia Anatomical Board". No more
6 than one member of such board shall be from the same
7 school. The board shall be responsible for making requi-
8 sition for, receiving, and making disposition of the dead
9 human bodies for the scientific uses and purposes of
10 the West Virginia University schools of medicine,
11 dentistry, nursing and the similar uses and pur-
12 poses of other reputable educational institutions having
13 medical, osteopathy, dentistry or nursing schools. The
14 board shall have full power to establish rules and reg-
15 ulations for its own government, and for the requisition,
16 use, disposition and control of such bodies as may
17 come under its authority by way of gift, pursuant to
18 this article or pursuant to section four, article nineteen,
19 chapter sixteen of this code. The board shall have au-
20 thority to appoint such officers, employees, and agents
21 as may be necessary to carry out the purposes for which
22 the board is organized. It shall keep a full and com-
23 plete record of its transactions, showing, among other
24 things, every dead human body coming under its au-
25 thority, giving name, sex, age, date of death, place from
which received, when and from whom received, which record shall be open at all times to the inspection of the attorney general and any prosecuting attorney in the state.

§18-11-14. Notice of unclaimed body; requisition for body.

1 It shall be the duty of any person who has charge or control of any unclaimed body, subject to requisition by the anatomical board, to give notice to the board of that fact by telephone or telegraph within twenty-four hours after such body comes under his control. Thereafter he shall hold the body subject to the order of the anatomical board for at least twenty-four hours after the sending of such notice. If the anatomical board makes requisition for the body within the twenty-four hour period, it shall be delivered, pursuant to the order of the board, to the board or its authorized agent for transportation to West Virginia University or to any other educational institution described in section twelve of this article which the board deems to be in bona fide need thereof and able to adequately control, use and dispose of the body.

§18-11-15. Transportation of dead bodies.

1 The anatomical board shall make suitable arrangements for the transportation of any body, or part or parts thereof, which may come under its authority to West Virginia University or any other educational institution as described in the preceding section.

§18-11-16. Expense of preservation, delivery, etc.

1 All expenses incurred in connection with the preservation, delivery and transportation of any such body delivered pursuant to the order of the anatomical board shall be paid by the educational institution receiving the body.

§18-11-17. Bond of anatomical board.

1 No dead body shall be received or requisitioned by the anatomical board until the members of the board have filed a bond with the clerk of the circuit court of
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-five, relating to detection of tuberculosis, high blood pressure and diabetes; legislative findings; establishing a program for early detection of tuberculosis and mobile x-ray facilities to be used in select areas of the state; reporting cases of tuberculosis and penalties for noncompliance; creating a program for early detection of high blood pressure and diabetes; mobile testing facilities.

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-five, to read as follows:

ARTICLE 25. DETECTION OF TUBERCULOSIS, HIGH BLOOD PRESSURE AND DIABETES.

§16-25-1. Legislative findings.

§16-25-2. Program for early detection of tuberculosis; mobile x-ray facilities used in select areas of the state.

§16-25-3. Reporting cases of tuberculosis; penalty for noncompliance.

§16-25-4. Program for detection of high blood pressure and diabetes; mobile testing facilities.
§16-25-1. Legislative findings.

1 The Legislature finds that tuberculosis, diabetes and the condition of high blood pressure are diseases which are latent in nature and have symptoms and effects which are not easily recognizable by the members of the public, while at the same time these diseases and conditions are very serious and often fatal if not diagnosed and treated in their early stages. The Legislature also finds that if mobile laboratory testing were to be made readily available to the public, the hazards created by such diseases to the health of those suffering therefrom may be lessened or prevented by early detection or treatment. The legislative purpose of this article is to provide for adequate testing facilities for the detection of such diseases.

§16-25-2. Program for early detection of tuberculosis; mobile x-ray facilities used in select areas of the state.

1 The state department of health may establish and implement a program designed to detect tuberculosis in its early stages in members of the public and may promulgate reasonable rules and regulations necessary to carry out such a program. The department of health is to establish and maintain mobile x-ray facilities for use in detection of tuberculosis to be used in select areas in the state where the director finds that tuberculosis is most likely to be present. Such select areas shall be determined by the director at his discretion.

§16-25-3. Reporting cases of tuberculosis; penalty for noncompliance.

1 Any physician, nurse, physician's assistant or any other person who detects or diagnoses a case of tuberculosis shall report within seventy-two hours excluding Sundays and holidays such to the state department of health. Any such person reporting such case shall also obtain from the person afflicted with tuberculosis, the name, age, present street address and the name and address of such person's nearest living relative.
Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty dollars nor more than one hundred dollars.

§16-25-4. Program for detection of high blood pressure and diabetes; mobile testing facilities.

The state department of health is hereby authorized to establish and implement a program designed to detect high blood pressure and diabetes in members of the public and may promulgate reasonable rules and regulations necessary to carry out such a program. The director is to establish and maintain adequate testing facilities for the detection of such diseases at its state hygienic laboratories and shall establish mobile testing facilities for the detection of such diseases in members of the public as the director finds is necessary to carry out the legislative purpose as is defined in section one of this article.

CHAPTER 57

(5. B. 206—By Mr. Harman and Mr. Hinkle)

[Passed February 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal holidays; and redesignating the thirtieth day of May, the traditional date, for observing Memorial Day.

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.

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 thirtieth day 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 eleventh day of November, hereafter referred to as "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 which 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 the succeeding Monday shall be regarded, treated and observed as such legal holiday. When the return day of any summons or other court proceeding or any notice or time fixed for holding any court or doing any official act shall fall on any of said holidays, the ensuing day which is not a Saturday, Sunday or legal holiday shall be taken as meant and intended: Provided, That nothing herein contained shall increase nor diminish the legal school holidays provided for in section two, article five, chapter eighteen-a of this code.

CHAPTER 58
(Com. Sub. for H. B. 1457—By Mr. Seibert)

[Passed February 28, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eighteen, 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 six-a,
relating to the West Virginia housing development fund; and
providing that loans in a principal amount of more than one
hundred thousand dollars, and additions to and refinancings of
such loans, made by the housing development fund shall not be
subject to any law limiting interest rates or imposing forfeiture,
penalties or other loss or liability because of interest rate
charged.

Be it enacted by the Legislature of West Virginia:

That article eighteen, chapter thirty-one of the code of West Vir­
ginia, one thousand nine hundred thirty-one, as amended, be amend­
ed by adding thereto a new section, designated section six-a, to read
as follows:

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.
§31-18-6a. Certain loans exempt from laws limiting interest rates
or providing forfeitures, etc.

1 Notwithstanding any other provision to the contrary, no
2 law limiting interest rates or providing for forfeiture, penalty
3 or other loss or liability because of rate of interest charged
4 shall apply to any loan in a principal amount of more than
5 one hundred thousand dollars on loans made by the housing
6 development fund in the furtherance of its corporate purposes
7 or to any addition to or refinancing of a loan in the original
8 principal amount of more than one hundred thousand dollars,
9 made by the housing development fund for such purposes.

CHAPTER 59

[P. L. 494—By Mr. Brotherton, Mr. President]

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

An ACT to amend and reenact section eight, article two-c,
chapter thirteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the statu­
tory mortgage lien and other security for industrial de­
velopment revenue bonds and commercial development
revenue bonds.
Be it enacted by the Legislature of West Virginia:

That section eight, 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:

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


1 Unless the governmental body shall otherwise determine in the resolution authorizing the issuance of the revenue bonds under the authority of this article, there is hereby created a statutory mortgage lien upon all real estate, buildings, structures, improvements and personal property included as a part of an industrial project or commercial project which was acquired, purchased, constructed, or built or improved, or financed with the proceeds of said bonds, for the purpose of securing the principal of said bonds and the interest thereon. The principal of and interest on any bonds issued under the authority of this article shall be secured by a pledge of the income and revenues derived from the lease, sale, financing or other disposition of the industrial project or commercial project, by the governmental body issuing such bonds. In the discretion and at the option of the county commission or municipality, such revenue bonds may also be secured by a trust indenture by and between the county commission or the municipality and a corporate trustee, which may be a trust company or bank having trust powers, within or without the state of West Virginia.

The governing body may authorize the issuance of such revenue bonds by resolution. The resolution authorizing the revenue bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for the protection and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the county commission or the municipality in relation to the construction, acquisition or financ-
ing of an industrial project or commercial project, or part thereof, or an addition thereto, and the improvement, repair, maintenance and insurance thereof, and for the custody, safeguarding and application of all moneys, and may provide that the industrial project or commercial project shall be constructed and paid for under the supervision and approval of the consulting engineers or architects employed and designated by the governing body and satisfactory to the purchasers of the bonds, their successors, assigns or nominees, and the entity which leases, purchases or will own the project or either thereof, who may require the security given by any contractor or any depository of the proceeds of the bonds or the revenues received from the lease, sale, financing or other disposition of the industrial project or commercial project be satisfactory to such purchasers, their successors, assigns or nominees, or be satisfactory to the entity which leases, purchases or will own the industrial project or commercial project. Such indenture may set forth the rights and remedies of the bondholders, the county or municipality or such trustee, and said indenture may provide for accelerating the maturity of the revenue bonds, at the option of the bondholders or the governmental body issuing the same, upon default in the payment of rentals, or amounts due from the entity which leases, purchases, or will own the project or for other cause. The governing body may also provide by resolution and in such trust indenture for the payment of the proceeds of the sale of the bonds and the revenues from the industrial project or commercial project to such depository as it may determine, for the custody and investment thereof and for the method of distribution thereof, with such safeguards and restrictions as it may determine to be necessary or advisable for the protection thereof and upon the filing of a certified copy of such resolution or of the indenture for record in the office of the clerk of the county commission of the county in which an industrial project or commercial project is located, the same shall have the same effect, as to notice, as the recordation of a deed of trust or other recordable instrument.
In lieu of the indenture provided for hereinabove the principal of and interest on said bonds may be secured by a mortgage or deed of trust covering all or any part of the industrial project or commercial project from which the revenues so pledged may be derived, and the same may be secured by an assignment of the lease on or sale or financing agreement with respect to said industrial project or commercial project and by assignment or pledge of the income received by virtue of said lease, sale or financing agreement. The proceedings under which such bonds are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided for herein when an indenture is entered into between the governing body and a trustee and any such mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of rental, purchase or other payments for any industrial project or commercial project covered by such proceedings or mortgage, the terms to be incorporated in the lease, sale or financing agreement with respect to such industrial project or commercial project, the improvement, repair, maintenance and insurance of such industrial project or commercial project, the creation and maintenance of special funds from the revenues received from the lease, sale or financing of such industrial project or commercial project and the rights and remedies available in event of default to the bondholders, the governmental body, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any such agreements or provisions a county or municipality shall not have the power to obligate itself by indenture, ordinance, resolution, mortgage or deed of trust, except with respect to the industrial project or commercial project and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or
against its taxing powers. The proceedings authorizing any bonds hereunder and any indenture, mortgage or deed of trust securing such bonds may provide that, in the event of default in payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings, indenture, mortgage or deed of trust, such payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the industrial project or commercial project in accordance with such proceedings or the provisions of such agreement, indenture, mortgage or deed of trust. Any such agreement, indenture, mortgage or deed of trust may provide also that in the event of default in such payment or the violation of any agreement contained in the mortgage or deed of trust, the agreement, indenture, mortgage or deed of trust may be foreclosed either by sale at public outcry or by proceedings in equity and may provide that the holder or holders of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if the highest bidder therefor. No breach of any such agreement, indenture, mortgage or deed of trust shall impose any pecuniary liability upon a county or municipality or any charge upon its general credit or against its taxing powers.

CHAPTER 60
(H. B. 1227—By Mr. Allen)

[Passed February 27, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-three, relating to requiring insurance companies to use the most recent publication of the “official used car guide” of the national automobile dealers association as a guide for setting the minimum
value of a motor vehicle involved in a claim arising from an accident.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-33. Value of motor vehicle involved in claim.

1 Insurance companies doing business in this state shall use the most recent publication of the “official used car guide” published by the national automobile dealers association as a guide for setting the minimum value of any motor vehicle involved in a claim settlement arising from a motor vehicle accident.

CHAPTER 61

(H. B. 1337—By Mr. Shiflet and Mr. Singleton)

[Passed February 25, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article twenty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to insurance; rates and rating organizations; and providing for the establishment of at least seven territorial rate areas within the state as a basis for setting rates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-3. Rate making.

§33-20-4. Rate filings.
§33-20-3. Rate making.

All rates shall be made in accordance with the following provisions:

(a) Due consideration shall be given to past and prospective loss experience within and outside this state, to catastrophe hazards, if any, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, to past and prospective expenses both countrywide and those specially applicable to this state, and to all other relevant factors within and outside this state.

(b) Rates shall not be excessive, inadequate or unfairly discriminatory.

(c) Rates for casualty and surety insurance to which this article applies shall also be subject to the following provisions:

(1) The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.

(2) Risks shall be grouped by classifications and by territorial areas for the establishment of rates and minimum premiums. Classification of rates shall be modified to produce rates for individual risks in a territorial area in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses: Provided, That such standards shall include the establishment of at least seven territorial rate areas within the state: Provided further, That such territorial rate established by any insurer or group of insurers may differ from those of other insurers or group of insurers.
(3) Due consideration shall be given to such factors as expense, management, individual experience, underwriting judgment, degree or nature of hazard or any other reasonable considerations, provided such factors apply to all risks under the same or substantially the same circumstances or conditions.

(d) Rates for fire and marine insurance to which this article applies shall also be subject to the following provisions:

(1) Manual, minimum, class rates, rating schedules or rating plans shall be made and adopted, except in the case of specific inland marine rates on risks specially rated.

(2) Due consideration shall be given to the conflagration hazard, and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

(e) Except to the extent necessary to meet the provisions of subdivisions (b) and (c) of this section, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.

(f) Rates made in accordance with this section may be used subject to the provisions of this article.

§33-20-4. Rate filings.

(a) (1) Every insurer shall file with the commissioner every manual of classifications, territorial rate areas established pursuant to subdivision (c) (2), section three of this article, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

(2) Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for fire and marine insurance to which this article applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.
(b) Every such filing shall state the proposed effective date thereof and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the commissioner does not have sufficient information to determine whether such filing meets the requirements of this article, he shall require such insurer to furnish the information upon which it supports such filing and in such event the waiting period shall commence as of the date such information is furnished. The information furnished in support of a filing may include (1) the experience or judgment of the insurer or rating organization making the filing, (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by subdivision (c) (2), section three of this article, (3) its interpretation of any statistical data it relies upon, (4) the experience of other insurers or rating organizations or (5) any other relevant factors. A filing and any supporting information shall be open to public inspection as soon as the filing is received by the commissioner. Any interested party may file a brief with the commissioner supporting his position concerning the filing. Any person or organization may file with the commissioner a signed statement declaring and supporting his or its position concerning the filing. Upon receipt of such statement prior to the effective date of the filing, the commissioner shall mail or deliver a copy of such statement to the filer, which may file such reply as it may desire to make. This section shall not be applicable to any memorandum or statement of any kind by any employee of the commissioner.

(c) An insurer may satisfy its obligation to make such filing by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings, and by authorizing the commissioner to accept such filings on its behalf: Provided, That nothing contained in this article shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization.

(d) The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this article.

(e) Subject to the exceptions specified in subsections (f)
and (g) of this section, each filing shall be on file for a waiting period of thirty days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he gives written notice within such waiting period to the insurer or rating organization which made the filing that he needs such additional time for the consideration of such filing. Upon written application by such insurer or rating organization, the commissioner may authorize a filing which he has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this article unless disapproved by the commissioner within the waiting period or any extension thereof.

(f) Any special filing with respect to a surety bond required by law or by court or executive order or by order, rule or regulation of a public body, not covered by a previous filing, shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(g) Specific inland marine rates on risks specially rated by a rating organization shall become effective when filed and shall be deemed to meet the requirements of this article until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.

(h) Under such rules and regulations as he shall adopt the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, the rates for which cannot practicably be filed before they are used. Such orders, rules and regulations shall be made known to insurers and rating organizations affected thereby. The commissioner may make such examination as he may deem advisable to ascertain whether any rates affected by such order meet the standards set forth in subdivision (b), section three of this article.

(i) Upon the written application of the insured, stating his reasons therefor, filed with and approved by the com-
missioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risks.

(j) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for said insurer as provided in this article or in accordance with subsection (h) or (i) of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

CHAPTER 62

(H. B. 1139—By Mr. Morasco)

[Passed March 4, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen and thirty-two, article twenty-three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to references for nonforfeiture benefits and cash surrender values of fraternal benefit society certificates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.


§33-23-32. Reports and synopses of annual statements; valuations.


1 (a) A society may grant paid-up nonforfeiture benefits, cash surrender values, certificate loans and such other options as its laws may permit. As to certificates issued on and after the effective date of this article, a society shall grant at least one paid-up nonforfeiture benefit.

6 (b) In the case of certificates other than those for which
reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table or the 1941 Standard Industrial Table, or any more recent table made applicable to life insurance companies and duly approved by the commissioner, the value of every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the excess, if any, of (1) over (2) as follows:

(1) The reserve under the certificate determined on the basis specified in the certificate; and

(2) The sum of any indebtedness to the society on the certificate, including interest due and accrued, and a surrender charge equal to two and one-half percent of the face amount of the certificate, which, in the case of insurance on the lives of children, shall be the ultimate face amount of the certificate, if death benefits provided therein are graded.

(c) However, in the case of certificates issued on a substandard basis or in the case of certificates, the reserves for which are computed upon the American Men Ultimate Table of Mortality, the term of any extended insurance benefit granted including accompanying pure endowment, if any, may be computed upon the rates of mortality not greater than one hundred thirty percent of those shown by the mortality table specified in the certificate for the computation of the reserve.

(d) In the case of certificates for which reserves are computed on the Commissioners 1941 Standard Ordinary Mortality Table or the 1941 Standard Industrial Table, or any more recent table made applicable to life insurance companies and duly approved by the commissioner, every paid-up nonforfeiture benefit and the amount of any cash surrender value, loan or other option granted shall not be less than the corresponding amount ascertained in accordance with the provisions of the laws of this state applicable to life insurance companies issuing policies containing like insurance benefits based upon such tables.

§33-23-32. Reports and synopses of annual statements; valuations.

In addition to the annual statement required by section fourteen, article four of this chapter, reports shall be filed
and synopses of annual statements shall be published in accordance with the provisions of this section as follows:

(a) A synopsis of its annual statement providing an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each benefit member of the society not later than the first day of June of each year, or, in lieu thereof, such synopsis may be published in the society's official publication.

(b) As a part of the annual statement required of each society, it shall, on or before the first day of March, file with the commissioner a valuation of its certificates in force on December thirty-first last preceding: Provided, That the commissioner may, in his discretion for cause shown, extend the time for filing such valuation for not more than two calendar months. Such report of valuation shall show, as reserve liabilities, the differences between the present mid-year value of the promised benefits provided in the certificates of such society in force and the present midyear value of the future net premiums as the same are in practice actually collected, not including therein any value for the right to make extra assessments and not including any amount by which the present midyear value of future net premiums exceeds the present midyear value of promised benefits on individual certificates. At the option of any society, in lieu of the above, the valuation may show the net tabular value. Such net tabular value as to certificates issued prior to one year after the effective date of this article shall be determined in accordance with the provisions of law applicable prior to the effective date of this article and as to certificates issued on or after one year from the effective date of this article shall not be less than the reserves determined according to the commissioner's reserve valuation method as hereinafter defined. If the premium charged is less than the tabular net premium according to the basis of valuation used, an additional reserve equal to the present value of the deficiency in such premiums shall be set up and maintained as a liability. The reserve liabilities shall be properly adjusted in the event that the midyear or tabular values are not appropriate.

(c) Reserves according to the commissioner's reserve val-
valuation method for the life insurance and endowment benefits of certificates providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such certificates, over the then present value of any future modified net premiums therefor. The modified net premiums for any such certificate shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the certificate, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the certificate and the excess of (1) over (2), as follows:

(1) A net level premium equal to the present value, at the date of issue, of such benefits provided for after the first certificate year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such certificate on which a premium falls due: Provided, however, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such certificate; and

(2) A net one-year term premium for such benefits provided for in the first certificate year.

(d) Reserves according to the commissioner's reserve valuation method for (1) life insurance benefits for varying amounts of benefits or requiring the payment of varying premiums, (2) annuity and pure endowment benefits, (3) disability and accidental death benefits in all certificates and contracts, and (4) all other benefits except life insurance and endowment benefits, shall be calculated by a method consistent with the principles of subdivision (c) of this section.

(e) The present value of deferred payments due under incurred claims or matured certificates shall be deemed a liability of the society and shall be computed upon mortality and interest standards prescribed in the following subdivision.

(f) Such valuation and underlying data shall be certified
by a competent actuary or, at the expense of the society,
verified by the actuary of the department of insurance of the
state of domicile of the society.

(g) The minimum standards of valuation for certificates
issued prior to one year from the effective date of this article
shall be those provided by the law applicable immediately prior
to the effective date of this article but not lower than the
standards used in the calculating of rates for such certificates.

(h) The minimum standard of valuation for certificates is-
issued after one year from the effective date of this article shall
be three and one-half percent interest and the following tables:

(1) For certificates of life insurance—American Men Ulti-
mate Table of Mortality, with Bowerman’s or Davis’ Extension
thereof or with the consent of the commissioner, the Commis-
ioners 1941 Standard Ordinary Mortality Table or the Com-
missioners 1941 Standard Industrial Table of Mortality;

(2) For annuity certificates, including life annuities pro-
vided or available under optional modes of settlement in such
certificates—the 1937 Standard Annuity Table;

(3) For disability benefits issued in connection with life
benefit certificates—Hunter’s Disability Table, which for
active lives shall be combined with a mortality table permitted
for calculating the reserves on life insurance certificates, ex-
cept that the table known as Class III Disability Table (1926),
modified to conform to the contractual waiting period, shall
be used in computing reserves for disability benefits under a
contract which presumes that total disability shall be con-
sidered to be permanent after a specified period;

(4) For accidental death benefits issued in connection with
life benefit certificates—the Inter-Company Double Indem-
nity Mortality Table combined with a mortality table permitted
for calculating the reserves for life insurance certificates; and

(5) For noncancellable accident and sickness benefits—
the Class III Disability Table (1926) with conference modifica-
tions or, with the consent of the commissioner, tables based
upon the society's own experience: Provided, That any society
may value its certificates in accordance with valuation stan-
sary authorized by the laws of this state for the valuation
of policies issued by life insurance companies.

(i) The commissioner may, in his discretion, accept other
standards for valuation if he finds that the reserves produced
thereby will not be less in the aggregate than reserves com-
puted in accordance with the minimum valuation standard
herein prescribed. The commissioner may, in his discretion,
vary the standards of mortality applicable to all certificates
of insurance on substandard lives or other extra hazardous
lives by any society authorized to do business in this state.
Whenever the mortality experience under all certificates valued
on the same mortality table is in excess of the expected mor-
tality according to such table for a period of three consecutive
years, the commissioner may require additional reserves when
deemed necessary in his judgment on account of such certifi-
cates.

(j) Any society, with the consent of the insurance super-
visory official of the state of domicile of the society and under
such conditions, if any, which he may impose, may establish
and maintain reserves on its certificates in excess of the reserves
required thereunder, but the contractual rights of any insured
member shall not be affected thereby.

CHAPTER 63

(H. B. 819—By Mr. Speaker, Mr. McManus)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-four, article twenty-
three, chapter thirty-three of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
raising the maximum death benefit allowable for domestic so-
cieties or associations of a purely religious, charitable or bene-
volent description to exempt them from the provisions of article
twenty-three of chapter thirty-three of the code.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-34. Exemption of certain societies.

1. (a) Nothing contained in this article shall be so construed as to affect or apply to:

   (1) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;

   (2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business insuring only their own members, their families and descendants of members and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

   (3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than three hundred fifty dollars to any person in any one year, or both;

   (4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than one thousand dollars or for disability benefits of not more than three hundred fifty dollars to any one person in any one year, or both.

(b) Any such society or association described in subdivision (3) or (4), subsection (a) of this section which provides for death or disability benefits for which benefit certificates are issued, and any such society or association included in subdivision (4) which has more than one thousand members, shall not be exempted from the provisions of this article but shall comply with all requirements thereof.

(c) No society which, by the provisions of this section, is
exempt from the requirements of this article, except any society described in subdivision (2), subsection (a) of this section, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.

(d) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits shall have all of the privileges and be subject to all the applicable provisions and regulations of this article except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to such society.

(e) The commissioner may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this article.

(f) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of this chapter.

CHAPTER 64

(Com. Sub. for H. B. 1307—By Mr. Kopp)

(Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.)

AN ACT to amend and reenact sections two and three, 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; and overtime compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-3. Maximum hours; overtime compensation.

1. On and after the first day of July, one thousand nine hundred seventy-six, every employer shall pay to each of his employees wages at a rate not less than two dollars and twenty cents per hour.

§21-SC-3. Maximum hours; overtime compensation.

1. (a) On and after the first day of July, one thousand nine hundred seventy-six, no employer shall employ any of his employees for a workweek longer than forty-two hours, unless such employee receives compensation for his employment in excess of the hours above specified at a rate of 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 agree-
ment made as a result of collective bargaining by repre-
sentatives of employees, if the duties of such employee neces-
sitate irregular hours of work, and the contract or agree-
ment (1) specifies a regular rate of pay of not less than
the minimum hourly rate provided in section two and com-
ensation 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 sub-
section (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 under-
standing 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 under-
standing as the basic rate to be used in computing overtime
compensation thereunder: Provided, That the rate so estab-
lished 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 com-
pensation 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.

CHAPTER 65
(S. B. 270—By Mr. Gainer and Mr. Benson)

[Passed March 11, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections five, five-a, six and eleven, article thirteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state board of examiners of land surveyors; the manner of appointment of members of such board; increasing the fees to be charged by such board; providing for payment of a fee for certificate to engage in underground surveying; use of seal or stamp; and making it unlawful to use stamp or seal if not properly licensed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. LAND SURVEYORS.

§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

§30-13A-5a. Underground surveying; additional requirements.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

§30-13A-11. Seal or stamp.
§30-13A-5. Qualifications of applicants for licenses; exceptions; applications; fees; examinations.

1 (a) To be eligible for a license to engage in the practice of land surveying, the applicant must:

2 (1) Be at least eighteen years of age;

3 (2) Be of good moral character;

4 (3) Have been a resident of the United States for one year immediately preceding the date of application;

5 (4) Not have been convicted of a crime involving moral turpitude;

6 (5) Have four years or more experience in the practice of land surveying under the supervision of a licensee, or a person eligible for a license hereunder, or a person authorized in another state or country to engage in the practice of land surveying; and each year of satisfactory study in an accredited surveying curriculum may be substituted for one year of experience, but only two years of such experience requirement may be fulfilled by such study; and

7 (6) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of land surveying and land surveying skills and techniques.

8 (b) The following persons shall be eligible for a license to engage in the practice of land surveying without examination:

9 (1) Any applicant who is licensed, certificated or registered to engage in the practice of land surveying in any other state or country, if the requirements to obtain a license or certificate or to become registered in such other state or country are found by the board to be at least as great as those prescribed in this article.

10 (2) Any applicant who is a graduate of an accredited surveying curriculum and has at least two years of experience in the practice of land surveying under the
supervision of a licensee, or a person eligible for a license hereunder, or a person authorized in another state or country to engage in the practice of land surveying, if such applicant meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(3) Any applicant who has been engaged in the practice of land surveying in West Virginia for at least six years prior to the filing of such application, if such application for a license is made within three years after the effective date of this article and if such person meets the requirements of subdivisions (1), (2), (3) and (4), subsection (a) of this section. Such applicant must also furnish the names and addresses of ten persons who have engaged such applicant as a land surveyor, together with satisfactory records of such land surveying work.

(c) Any applicant for any such license shall submit an application therefor on forms provided by the board. Such application shall be verified and shall contain a statement of the applicant’s education and experience, the names of five persons for reference (at least three of whom shall be licensees, or persons eligible for a license hereunder, or persons authorized in another state or country to engage in the practice of land surveying, who have knowledge of his work) and such other information as the board may from time to time by reasonable rule and regulation prescribe.

(d) An applicant shall pay to the board with his application a license fee of thirty dollars.

(e) Examinations shall be held at least once each year at such time and place as the board shall determine. The scope of the examination and methods of procedure shall be determined by the board. An applicant who fails to pass an examination may reapply at any time and shall furnish additional information as requested by the board. Each such application shall be accompanied by a license fee of thirty dollars.

(f) A licensee who obtained his license under the
provisions of subdivisions (2) and (3), subsection (b) of this section may, in addition, apply for licensing under the provisions of subsection (a) of this section, if such licensee pays the fee otherwise required to be paid by other applicants and if such licensee meets the qualifications of subsection (a). Any applicant may apply for a separate license under subsection (a), or subdivisions (2) or (3), subsection (b) of this section upon the payment of the required fee for each license, and he may receive a license for each subsection for which such person makes application and is qualified. If any person fails to qualify for a license under any subsection of this section, such failure to qualify shall not prevent such person's licensure under any other subsection of this section for which such person is otherwise qualified.

§30-13A-5a. Underground surveying; additional requirements.

1 After the first day of July, one thousand nine hundred seventy, no person required to be licensed under the provisions of this article shall engage in underground surveying until he shall have first obtained a license under the provisions of this article and in addition shall have received from the board, after application therefor and payment of a ten dollar fee, a certificate to engage in underground surveying, which certificate shall remain valid so long and only so long as the license issued to such person under the provisions of this article remains unexpired, unsuspended and unrevoked. In order to be eligible for such certificate such person shall, in addition to the requirements for a license, have three years or more experience in the practice of underground surveying. In the event an application for any such certificate is denied, all of the provisions of sections nine and ten of this article shall be as fully applicable as if the application denied were an application for a license under the provisions of this article.

§30-13A-6. Issuance of license; notice of expiration; renewal; renewal fee; display.

1 Whenever the board finds that an applicant meets all
of the requirements of this article for a license to engage in the practice of land surveying, it shall forthwith issue to him such license; and otherwise the board shall deny the same. All licenses, whether original or renewal, shall expire on the thirtieth day of June following the date of issuance or renewal. The secretary-treasurer of the board shall mail to every licensee, at least thirty days prior to the expiration of such license, notice of the expiration date and the amount of the renewal fee. A license may be renewed without examination upon application for a renewal on a form prescribed by the board and payment to the board of an annual renewal fee of twenty dollars. If a license is not renewed when due, the fee shall increase one dollar per month for each month or fraction thereof that such renewal fee is not paid, up to a maximum of thirty-six months. No license shall be renewed after expiration of said period of thirty-six months, and the fact that a license cannot be renewed because of the expiration of said period of thirty-six months shall not prevent such person from making application for a new license. The board may deny any application for renewal for any reason which would justify the denial of an original application for a license. The board shall prescribe the form of licenses and each such license shall be conspicuously displayed by the licensee at his principal place of practice. A duplicate license may be issued upon payment of a fee of five dollars.

§30-13A-11. Seal or stamp.

Each licensee shall obtain a seal or stamp of the design authorized by the board, bearing his name and the legend, "Licensed Land Surveyor." Plans, plats, maps, drawings and reports issued by a licensee shall be stamped with the seal or stamp. It shall be unlawful for anyone to stamp or seal any document with such seal or stamp unless the license of the licensee named thereon remains unsuspended, unrevoked and unexpired.
AN ACT to amend and reenact section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; relating to senatorial redistricting; providing a short title for such section; defining the terms “county,” “enumeration district,” “incumbent senator” and “magisterial district” for the purposes of such section; setting forth certain legislative findings and declarations; dividing the state into seventeen senatorial districts for the purpose of electing thirty-four senators; declaring such senatorial districts as of the first day of January, one thousand nine hundred seventy-seven; establishing residency dispersal requirements for the election of senators in furtherance of the rationale of the residency dispersal provisions of the West Virginia constitution relating to the election of senators; relating to nomination and election procedures with respect to candidates for the Senate; providing that members of the Senate elected at the general election held in the year one thousand nine hundred seventy-four and at the general election held in the year one thousand nine hundred seventy-six, and persons elected or appointed to fill vacancies in the Senate, shall continue to serve as members of the Senate for the term, and as representatives of the senatorial district for which each thereof, respectively, was elected or appointed; requiring county commissions to alter the boundary lines of any election precinct which contains territory included within more than one non-superimposed senatorial district so that no election precinct contains territory included within more than one non-superimposed senatorial district; extending the terms of members of senatorial executive committees; relating to the duties of such committees; providing for new and additional senatorial executive committees; specifying the duties, qualifications and terms of such committees and of the members thereof; relating to vacancies in and officers of
such committees; and authorizing the secretary of state to promulgate rules and regulations implementing the provisions of such section.

Be it enacted by the Legislature of West Virginia:

That section one, 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.

§1-2-1. Senatorial districts.

(a) This section shall be known and may be cited as "The Senate Redistricting Act."

(b) As used in this section:

(1) "County" means the territory comprising a county of this state as such county existed on the first day of January, one thousand nine hundred seventy, notwithstanding any boundary changes thereof made subsequent thereto;

(2) "Enumeration district" means that geographic area so designated and defined by the bureau of the census of the United States department of commerce for the taking of the one thousand nine hundred seventy census of population and described on census maps prepared by the bureau of the census, copies of which maps are on file in the office of the secretary of state;

(3) "Incumbent senator" means a senator elected at the general election held in the year one thousand nine hundred seventy-six, or at any general election thereafter, with an unexpired term of at least two years in duration;

(4) "Magisterial district" means the territory comprising a magisterial district as such magisterial district existed on the first day of January, one thousand nine hundred seventy (except that for the county of Ohio, "magisterial district" means the territory comprising a magisterial district of Ohio county as such magisterial district existed on the first day of July, one thousand
nine hundred sixty-nine), as shown and described on
census maps prepared by the bureau of the census,
copies of which maps are on file in the office of the sec-
retary of state; and

(5) "Census tract" means that geographic area so
designated and defined by the bureau of the census
of the United States department of commerce for the
taking of the one thousand nine hundred seventy census
of population and described on census maps prepared
by the bureau of the census, copies of which maps
are on file in the office of the secretary of state.

(c) The Legislature recognizes that in dividing the
state into senatorial districts, the Legislature is bound
not only by the United States constitution but also by
the West Virginia constitution; that in any instance
where the West Virginia constitution conflicts with the
United States constitution, the United States consti-
tution must govern and control, as recognized in section
one, article one of the West Virginia constitution; that
the United States constitution, as interpreted by the
United States supreme court and other federal courts,
requires state legislatures to be apportioned so as to
achieve equality of population as near as is practicable,
population disparities being permissible where justified by
rational state policies; and that the West Virginia con-
stitution requires two senators to be elected from each
senatorial district for terms of four years each, one
such senator being elected every two years, with one
half of the senators being elected biennially, and re-
quires senatorial districts to be compact, formed of
contiguous territory and bounded by county lines. The
Legislature finds and declares that it is not possible to
divide the state into senatorial districts so as to achieve
equality of population as near as is practicable as re-
quired by the United States supreme court and other
federal courts and at the same time adhere to all of
these provisions of the West Virginia constitution; but
that, in an effort to adhere as closely as possible to all
of these provisions of the West Virginia constitution,
the Legislature, in dividing the state into senatorial
districts, as described and constituted in subsection (d) hereof, has:

(1) Adhered to the equality of population concept, while at the same time recognizing that from the formation of this state in the year one thousand eight hundred sixty-three, each constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of "contiguous territory" as that term has been construed and applied by the West Virginia supreme court of appeals;

(4) Deviated from the long-established state policy, recognized in (1) above, by crossing county lines only when necessary to insure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population;

(5) When crossing county lines, adhered, whenever possible, in furtherance of the long-established state policy, recognized in (1) above, to the boundary lines of magisterial districts, tax districts or municipal corporations; and

(6) Also taken into account in crossing county lines, to the extent feasible, the community of interests of the people involved.

(d) In view of the fact that persons have already filed their certificates of candidacy for nomination and election to the Senate at the primary and general elections to be held in the year one thousand nine hundred seventy-six, from the senatorial districts described and constituted by chapter one, acts of the
Legislature, first extraordinary session, one thousand nine hundred sixty-four, and in view of the fact that it was not possible to declare the new senatorial districts prior to the closing date for the filing of certificates of candidacy with respect to such elections or in time for the holding of such elections without interruption of the orderly procedures established therefor, the senatorial districts hereinafter in this subsection described and constituted are hereby declared as of the first day of January, one thousand nine hundred seventy-seven. On and after that date, the Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the year one thousand nine hundred seventy-eight and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

(1) The counties of Brooke and Hancock and the magisterial districts of Liberty, Richland and Triadelphia of the county of Ohio and census tract nineteen of the magisterial district of Ritchie of the county of Ohio shall constitute the first senatorial district;

(2) The counties of Doddridge, Marshall, Ritchie, Tyler and Wetzel and that portion of the county of Ohio not included in the first senatorial district shall constitute the second senatorial district;

(3) The counties of Calhoun, Pleasants, Wirt and Wood shall constitute the third senatorial district;

(4) The counties of Jackson, Mason, Putnam and Roane and the magisterial district of Grant of the county of Cabell shall constitute the fourth senatorial district;

(5) That portion of the county of Cabell not included in the fourth senatorial district, enumeration districts one, two, three, four and five of the magisterial district of Westmoreland of the county of Wayne, and enumeration districts fifteen, sixteen, seventeen, eighteen, nineteen, twenty and twenty-one of the mag-
isterial district of Ceredo of the county of Wayne shall constitute the fifth senatorial district;

(6) The county of Mingo, that portion of the county of Wayne not included in the fifth or seventh senatorial districts, and that portion of the county of McDowell not included in the tenth senatorial district shall constitute the sixth senatorial district;

(7) The counties of Boone, Lincoln and Logan and the magisterial districts of Stonewall and Union of the county of Wayne shall constitute the seventh senatorial district;

(8) The county of Kanawha shall constitute the eighth senatorial district;

(9) The counties of Raleigh and Wyoming shall constitute the ninth senatorial district;

(10) The counties of Mercer, Monroe and Summers, and the magisterial districts of Elkhorn and Northfork of the county of McDowell shall constitute the tenth senatorial district;

(11) The counties of Clay, Fayette and Greenbrier and the magisterial district of Jefferson of the county of Nicholas shall constitute the eleventh senatorial district;

(12) The counties of Braxton, Gilmer, Pendleton, Pocahontas, Randolph and Webster and that portion of the county of Nicholas not included in the eleventh senatorial district shall constitute the twelfth senatorial district;

(13) The counties of Harrison and Lewis and the magisterial district of Mannington of the county of Marion shall constitute the thirteenth senatorial district;

(14) That portion of the county of Marion not included in the thirteenth senatorial district and that portion of the county of Monongalia not included in the fifteenth senatorial district shall constitute the fourteenth senatorial district;
(15) The counties of Barbour, Grant, Preston, Taylor, Tucker and Upshur, and the magisterial district of Clinton of the county of Monongalia and enumeration districts thirty-three, thirty-four, thirty-five-a, thirty-five-b, thirty-six and thirty-seven of the magisterial district of Morgan of the county of Monongalia shall constitute the fifteenth senatorial district;

(16) The counties of Berkeley, Hampshire, Hardy, Jefferson, Mineral and Morgan shall constitute the sixteenth senatorial district; and

(17) The county of Kanawha shall constitute the seventeenth senatorial district.

(e) The West Virginia constitution further provides, in section four, article six thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and
(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code, except that such candidates shall be nominated in accordance with the residency dispersal provisions specified in section four, article six of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof. Candidates for the Senate shall also be elected in accordance with the residency dispersal provisions specified in said section four, article six of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof. In furtherance of the foregoing provisions of this subsection (f), no person may file a certificate of candidacy for election from a senatorial district described and constituted in subsection (d) hereof if he resides in the same county and the same such senatorial district wherein also resides an incumbent senator, whether the senatorial district wherein such incumbent senator resides was described and constituted by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred sixty-four or was described and constituted in subsection (d) hereof. Any vacancy in a nomination shall be filled, any appointment to fill a vacancy in the Senate shall be made, and any candidates in an election to fill a vacancy in the Senate shall be chosen, so as to be consistent with the residency dispersal provisions specified in section four, article six of the West Virginia constitution and the additional residency dispersal provisions specified in subsection (e) hereof.

(g) Regardless of the changes in senatorial district boundaries made by the provisions of subsection (d) hereof, all senators elected at the general election held in the year one thousand nine hundred seventy-four and at the general election held in the year one thou-
sand nine hundred seventy-six shall continue to hold
their seats as members of the Senate for the term,
and as representatives of the senatorial district, for
which each thereof, respectively, was elected. Any
appointment made or election held to fill a vacancy
in the Senate shall be for the remainder of the term,
and as a representative of the senatorial district, for
which the vacating senator was elected or appointed,
and any such election shall be held in the district as
the same was described and constituted at the time the
vacating senator was elected or appointed.

(h) Notwithstanding the provisions of sections five
and seven, article one, chapter three of this code, if
an election precinct of this state contains territory in-
cluded within more than one senatorial district (other
than a superimposed senatorial district), as such sen-
atorial districts are described and constituted by
subsection (d) hereof, it shall be the duty of the county
commission of the county in which such precinct is
located to alter the boundary lines of the county's elec-
tion precincts prior to the first day of January, one
thousand nine hundred seventy-eight, so that no elec-
tion precinct contains territory which is included within
more than one such senatorial district.

(i) Notwithstanding the provisions of section nine,
article one, chapter three of this code, persons elected
to senatorial district political party executive commit-
tees at the primary election held in the year one thou-
sand nine hundred seventy-four, as well as persons
appointed to fill vacancies in such committees, shall
continue to hold such positions until the first day of
December, one thousand nine hundred seventy-eight,
for the purpose of filling vacancies in nomination for
senator and for the purpose of submitting names to
the governor to fill vacancies in the Senate, when such
vacancies exist with respect to senatorial districts de-
scribed and constituted by chapter one, acts of the
Legislature, first extraordinary session, one thousand
nine hundred sixty-four. For the purpose of filling
vacancies in nomination and vacancies in office when
such vacancies exist with respect to senatorial districts described and constituted by subsection (d) hereof, new and additional senatorial district political party executive committees are constituted as follows: At the primary election to be held in the year one thousand nine hundred seventy-eight and in every fourth year subsequent to that primary election, the voters of each political party in each senatorial district, as such districts are described and constituted by subsection (d) hereof, shall elect two male and two female persons to membership in the senatorial district executive committee created pursuant to this subsection. All members of such executive committees so elected shall reside within the senatorial district from which they are chosen, and the terms of such members shall begin on the first day of June, following the primary election at which they are chosen, and shall continue for four years and until their successors are elected or appointed and qualified. Vacancies in senatorial district executive committees shall be filled by the state chairman of the political party executive committee concerned, but the person filling the vacancy must be a resident of the senatorial district involved. As soon as possible after the first day of June, following the election of the new executive committees, as herein provided, such committees shall convene within their respective senatorial districts on the call of any member of the new executive committee and proceed to select a chairman, a secretary, and such other officers as they may desire, each of which officers shall, for their respective committees, perform the duties which usually appertain to such positions. The provisions of this subsection (i) shall govern and control notwithstanding the provisions of section nine, article one, chapter three of this code.

(j) The secretary of state may promulgate rules and regulations to implement the provisions of this section, including emergency rules and regulations promulgated pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.
Chapter 67

(S. B. 521—By Mr. Brotherton, Mr. President)

[Passed March 7, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Legislature; joint committee on government and finance; access by committee to records of state agencies and departments; compelling attendance of witnesses and production of evidence at hearings or meetings of the committee; and authorizing the committee to enforce subpoenas by attachment, fine or imprisonment, or, in the alternative, by petitioning a court of competent jurisdiction to compel obedience thereto.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§4-3-4. Access to records of state agency or department; public hearings; meetings; administering oaths to persons testifying; compelling access to records and attendance of witnesses; production of evidence.

1 For the purpose of obtaining information in conjunction with the formulation of new laws or the revision of existing laws or in conjunction with any investigation or survey, the committee, or an employee duly authorized by the committee, shall have access to any and all records of every agency or department of the state.

7 In addition to its regular and special meetings, the committee, or any employee duly authorized by the committee, is empowered to hold public hearings in furtherance of the purposes authorized by this article, at such times and places within the state as may be desirable, and either cochairman or any member of the committee
shall have the power to administer oaths to persons testifying at such hearings or meetings.

By subpoena, issued over the signature of either co-chairman of the committee and served in the manner provided by law, the committee may summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties. If any witness subpoenaed to appear at any hearing or meeting shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, papers, documents or records within his or her control when the same are demanded, the committee in its discretion may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in section five, article one of this chapter; or it may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

Witnesses subpoenaed to attend such hearings or meetings, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

CHAPTER 68
(Com. Sub. for H. B. 714—By Mr. Chafin and Mr. Shaffer)

[Passed February 24, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article one-a, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to changing the director of the department of mental health to the commissioner of the department of mental health; relating
to the appointment of a deputy commissioner for clinical services; prescribing qualifications of the commissioner; and prescribing certain powers and duties of the commissioner.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, 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-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

§27-1A-4. Powers and duties of the commissioner; power of eminent domain.

§27-1A-5. Division of administration; deputy; deputy commissioner; deputy commissioner's qualifications, powers and duties.

§27-1A-3. Appointment of commissioner; qualifications; term; oath; bond; salary and expenses.

1 The governor shall appoint the commissioner of the department of mental health by and with the consent of the Senate; be shall be known as the commissioner of mental health. Before entering upon the duties of his office, the commissioner shall take and subscribe the oath of office prescribed by section five, article four of the constitution of this state, the certificate whereof shall be filed in the office of the secretary of state, and he shall give bond in the penalty of ten thousand dollars, conditioned as required by law. The commissioner shall serve at the will and pleasure of the governor. The salary of the commissioner shall be the salary specified in section two-a, article seven, chapter six of this code and in addition thereto he shall be reimbursed for all necessary travel and other expenses incurred in the performance of his duties. The commissioner shall be either a qualified psychiatrist or physician with both clinical and administrative experience, or, a qualified administrator who has at least a masters degree in business administration, hospital administration, or a related field, and not less than four years' experience in health services administration or hospital administration, and with general knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services: Provided, That if the
commissioner is other than a psychiatrist or physician there shall be appointed by the commissioner a deputy commissioner for clinical services who shall be a psychiatrist.

Notwithstanding any other provision of this code to the contrary, whenever in this code there is a reference to the director of the department of mental health, it shall be construed to mean and shall be a reference to the commissioner of the department of mental health.

§27-1A-4. Powers and duties of the commissioner; power of eminent domain.

The commissioner shall be the executive head of the department, and as such shall have the following powers and duties:

(a) To develop and maintain a state plan which sets forth needs of the state in the areas of mental health and mental retardation; goals and objectives for meeting those needs; plan of operation for achieving the stated goals and objectives, including organizational structure; and statement of requirements in personnel funds and authority for achieving the goals and objectives.

(b) To appoint deputies and assistants to supervise the departmental programs, including hospital and residential services, and such other assistants and employees as may be necessary for the efficient operation of the department and all its programs.

(c) To promulgate rules and regulations clearly specifying the respective duties and responsibilities of program directors and fiscal administrators, making a clear distinction between the respective functions of these officials.

(d) To delegate to any of his appointees, assistants or employees all powers and duties vested in the commissioner, including the power to execute contracts and agreements in the name of the department as provided in this article, but the commissioner shall be responsible for the acts of such appointees, assistants and employees.

(e) To supervise and coordinate the operation of the state hospitals named in article two of this chapter and any other state hospitals, centers or institutions hereafter created for
the care and treatment of the mentally ill or mentally retarded, or both.

(f) To transfer a patient from any state hospital to any other state hospital or clinic under his control and, by agreement with the state commissioner of public institutions, transfer a patient from a state hospital to an institution, other than correctional, under the supervision of the state commissioner of public institutions.

(g) To make periodic reports to the governor and to the Legislature on the condition of the state hospitals, centers and institutions or on other matters within his authority, which shall include recommendations for improvement of any mental health facility and any other matters affecting the mental health of the people of the state.

The commissioner of mental health shall have all of the authority vested in the divisions of the department, as hereinafter provided.

The commissioner is hereby authorized and empowered to accept and use for the benefit of a state hospital, center or institution, or for any other mental health purpose specified in this chapter, any gift or devise of any property or thing which lawfully may be given. If such a gift or devise is for a specific purpose or for a particular state hospital, center or institution, it shall be used as specified. Any gift or devise of any property or thing which lawfully may be given and whatever profit may arise from its use or investment shall be deposited in a special revenue fund with the state treasurer, and shall be used only as specified by the donor or donors.

Whenever it shall become necessary, the department of mental health may condemn any interest, right or privilege, land or improvement, which in its opinion may be necessary, in the manner provided by law, for the acquisition by this state of property for public purposes.

§27-1A-5. Division of administration; deputy; deputy commissioner; deputy commissioner's qualifications, powers and duties.

There shall be a division of administration in the department
MENTALLY ILL PERSONS

of mental health. The chief executive of this division shall be
the deputy commissioner for administration. The deputy
commissioner shall be a college graduate with not less than
two years’ experience in business administration, health services
administration or hospital administration, with broad knowl-
edge of accounting, purchasing and personnel practices as
related to the rendition of health and health related services.
He shall have the following duties:

(a) To keep the records in the department.

(b) To receive and disburse funds for the department as
the agent of the commissioner of the department.

(c) To assemble and analyze departmental budget estimates,
review requests for transfer of funds and maintain depart-
mental appropriation and fiscal records.

(d) To make rules and regulations governing the administra-
tion and business management of the state hospitals, formulate
standard fiscal procedures, and make recommendations for
improvement; to make regulations concerning any superin-
tendent’s trustee funds heretofore established by authority of
section three-a, article one, chapter twenty-five of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended.

(e) To have the responsibility for the maintenance of the
land, buildings and equipment of state hospitals.

(f) To review requisitions for supplies and equipment, and
cooperate with the division of purchases in development and
drafting of specifications.

(g) To handle the personnel records of the department
and to process payrolls.

(h) To enter into contracts for the department consistent
with his assigned duties.

(i) To develop job classifications and standards for em-
ployees of the department.

(j) To perform any other duties assigned to the division by
the commissioner.
AN ACT to amend and reenact section seven, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to qualifications of an underground mine foreman—fire boss or an assistant underground mine foreman—fire boss.

Be it enacted by the Legislature of West Virginia:

That section seven, article 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 2. COAL MINES.

§22-2-7. When underground mine foreman—fire boss required; assistants; certification.

(a) In every underground mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article six-a of this chapter as a mine foreman—fire boss. Each applicant for certification as a mine foreman—fire boss shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least five years' experience in the underground working, ventilation and drainage of a coal mine, which shall include at least eighteen months' experience on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical or mechanical engineering; and have had at least two years' practical experience in an underground
mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology or mechanical engineering and have had at least four years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under article six-a of this chapter.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman—fire boss cannot be discharged by one man, one or more assistant mine foremen—fire bosses may be designated. Such persons shall act under the instruction of the mine foreman—fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article six-a of this chapter. Each applicant for certification as assistant mine foreman—fire boss shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman—fire boss: Provided, That he shall at the time he is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical or mechanical engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been
on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology or mechanical engineering and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine.

(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman—fire boss 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—fire boss' instructions and the mine foreman—fire boss shall be responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman—fire boss in any mine in this state until the next regular mine foreman—fire boss examination held by the department, but not to exceed a maximum of ninety days.

(e) After the effective date of this act, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman—fire boss or an assistant underground mine foreman—fire boss.

After the effective date of this act, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman—fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman—fire boss.
AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to coal mines; requiring reclamation bond of five thousand dollars per acre; using bond for reclamation of disturbed land not resulting in an operational deep mine; preventing new opening within three hundred feet of existing opening without reclamation; and providing for all reclamation to be under control of department of natural resources.

Be it enacted by the Legislature of West Virginia:

That section sixty-three, article 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 2. COAL MINES.

§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.

1 (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 the first day of July, one thousand nine hundred seventy-six, no mine shall be opened or reopened unless a surface disturbed reclamation bond in the amount of five thousand dollars per acre is submitted to the department of mines for the removal of unused surface structures, the sealing of abandoned mine openings, and the reclamation of any land disturbed that does not result in an operational deep mine. 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.

(f) On or after the first day of July, one thousand nine hundred seventy-four, no mine shall be opened or reopened where the total area of surface disturbance at the outcrop of the coal seam is greater than four hundred lineal feet and where coal is removed or to be removed commercially or for commercial purposes
from this area unless a surface-mine reclamation bond as required in articles six and six-a, chapter twenty of the code be first obtained covering the area to be disturbed.

(g) On or after the first day of July, one thousand nine hundred seventy-six, no new opening approval shall be issued in any mining operation for an opening within three hundred feet of any existing active opening by any operator unless reclamation of any disturbed land is completed as required in article six of chapter twenty of the code, if such opening is first approved by the department of mines. All such restoration and reclamation of disturbed lands resulting from a deep-mine operation shall be under the jurisdiction and control, and subject to the provisions of the reclamation division of the department of natural resources in accordance with the requirements of article six of chapter twenty of the code.

CHAPTER 71

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-k, two, nine, twelve and twelve-a, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve-b, all relating to requirements for the reclamation of lands affected by oil and gas drilling; changes in drilling permit requirements; penalty under drilling permit requirements; and bond to assure that such reclamation is carried out.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

§22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.

§22-4-12a. Special reclamation fund; fees.

§22-4-12b. Reclamation requirements.

§22-4-1k. Permits required; application for permit; information; responsible agent; drilling permit number; when permits not to be issued; penalty.

1 It shall be unlawful for any well to be drilled, re-drilled, deepened, fractured, stimulated, plugged, pressured, converted, combined or physically changed to allow the migration of fluid from one formation to another unless a permit therefor has been issued by the department. An application for any such permit shall be filed with the deputy director and shall contain the following:

8 (a) The name and address of the well operator;

9 (b) The name and address of the owner of the surface lands upon which the well is or may be located;

11 (c) The name and address of the agent of the well operator, if any such agent is required to be designated under the provisions of this section;

14 (d) The approximate depth to which the well is to be drilled;

16 (e) The proposed casing program of such well including the sizes of all such casing, the depth to which
all casing is to be run and the extent to which such casing
is to be cemented;

(f) The proposed method of reclamation which shall
comply with the requirements of section twelve-b of this
article; and

(g) Any other information which the deputy director
by rule or regulation may require.

If the well operator named in such application is a
corporation, partnership or a nonresident of the state of
West Virginia, then there shall be designated the name and
address of an agent for such operator who shall be the
attorney-in-fact for the operator and who shall be a
resident of the state of West Virginia upon whom notices,
orders or other communications issued pursuant to this
article or article five-a, chapter twenty, may be served,
and upon whom process may be served. Every well opera-
tor required to designate an agent under this section shall
within five days after the termination of such designation
notify the department of such termination and designate a
new agent.

The well owner or operator shall install the permit
number as issued by the deputy director in a legible and
permanent manner to the well upon completion of any
permitted work. The dimensions, specifications and man-
nner of installation shall be in accordance with the ad-
ministrative rules and regulations of the department.

For the purpose of ascertaining whether or not issuance
of any permit to drill, redrill, deepen, case, fracture,
stimulate, pressure, operate, plug, abandon, convert or
combine any well, or physically change any well to allow
the migration of fluid from one formation to another, will
contribute to an existing pollution problem, the deputy
director shall have the right and it shall be his duty to
consult with the director of the department of natural
resources. In the event the issuance of any such permit
may reasonably be expected to contribute to any such
existing pollution then the deputy director will not issue
such permit.
Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisonment in jail for not exceeding twelve months, or both such fine and imprisonment.

§22-4-2. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered mail a copy of the plat to the department of mines. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more workable beds of coal, copies of the plat shall be forwarded by registered mail to each and every coal operator, if any, operating said beds of coal beneath said tract of land, or within five hundred feet of the boundaries of the same, who has mapped the same and filed his maps as required by law. With each of such plats there shall be enclosed a notice (form for which shall be furnished on request by the department of mines) addressed to the department of mines and to each such coal operator, if any, at their respective addresses, informing them that such plat and notice are being mailed to them respectively by registered mail, pursuant to the requirements of this article. If no objections are made, or are found by the department, to such proposed location or proposed fracturing within ten days from receipt
of such plat and notice by the department of mines, the
same shall be filed and become a permanent record of
such location or fracturing subject to inspection at any
time by any interested person, and the department may
forthwith issue to the well operator a permit reciting
the filing of such plat, that no objections have been made
by the coal operators, if any, or found thereto by the
department, and authorizing the well operator to drill
at such location, or to fracture the well. Unless the de-
partment has objections to such proposed location or
proposed fracturing or stimulating, such permit may be
issued prior to the expiration of such ten-day period upon
the obtaining by the well operator of the consent in
writing of the coal operator or operators to whom copies
of the plat and notice shall have been mailed as herein
required, and upon presentation of such written consent
to the department. The notice above provided for may be
given to the coal operator by delivering or mailing it as
above to any agent or superintendent in actual charge of
mines.

A permit to drill, or to fracture or stimulate an oil
or gas well, shall not be issued unless the application
therefor is accompanied by a bond of the operator in the
sum of two thousand five hundred dollars, payable to
the state of West Virginia, with a corporate bonding or
surety company authorized to do business in this state
as surety thereon, conditioned on full compliance with all
laws, rules and regulations relating to the drilling, re-
drilling, deepening, casing, plugging, abandonment and
reclamation of wells and for furnishing such reports and
information as may be required by the department:
Provided, That when such operator makes or has made
application for permits to drill a number of wells or
fracture or stimulate a well or wells the operator may
in lieu of furnishing a separate bond furnish a blanket
bond in the sum of fifteen thousand dollars, payable to
the state of West Virginia, with a corporate bonding or
surety company authorized to do business in this state
as surety thereon, and conditioned as aforesaid: Provided,
however, That in lieu of corporate surety on a separate
or blanket bond, as the case may be, the operator may
elect to deposit with the deputy director for oil and gas cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency thereof is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such securities, and if at the time of the deposit such other state, territory, or the District of Columbia is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; (3) direct general obligation bonds of any county, district, city, town, village, school district or other political subdivision of this state issued pursuant to law and payable from ad valorem taxes levied on all the taxable property located therein, that the total indebtedness after deducting sinking funds and all debts incurred for self-sustaining public works does not exceed five percent of the assessed value of all taxable property therein at the time of the last assessment made before the date of such deposit, and that the issuer has not, within five years prior to the making thereof, been in default for more than ninety days in the payment of any part of the principal or interest on any debt evidenced by its bonds; (4) revenue bonds issued by this state or any agency of this state when such bonds are payable from revenues or earnings specifically pledged for the payment of principal and interest, and a lawful sinking fund or reserve fund has been established and is being maintained for the payment of such bonds; (5) revenue bonds issued by a municipality in this state for the acquisition, construction, improvement or extension of a waterworks system, or a sewerage system, or a combined waterworks and sewerage system, when such bonds are payable from revenue or earnings specifically pledged for
the payment of principal and interest, and a lawful
sinking fund or reserve fund has been established and
is being maintained for the payment of such bonds;
(6) revenue bonds issued by a public service board of
a public service district in this state for the acquisition,
construction, improvement or extension of any public
service properties, or for the reimbursement or payment
of the costs and expenses of creating the district, when
such bonds are payable from revenue or earnings spe-
cifically pledged for the payment of principal and interest,
and a lawful sinking fund or reserve fund has been
established and is being maintained for the payment of
such bonds; (7) revenue bonds issued by a board of
trustees of a sanitary district in this state for the cor-
porate purposes of such district, when such bonds are
payable from revenue or earnings specifically pledged
for the payment of principal and interest, and a lawful
sinking fund or reserve fund has been established and
is being maintained for the payment of such bonds; and
(8) bonds issued by a federal land bank or home owners'
loan corporation. The cash deposit or market value, or
both, of the collateral securities shall be equal to or
greater than the penalty of the separate or blanket bond,
as the case may be. Upon receipt of any such deposit
or cash or collateral securities, the deputy director for
oil and gas shall immediately deliver the same to the
treasurer of the state of West Virginia. The treasurer
determine whether any such securities satisfy the
requirements of this section. If the securities are ap-
proved they shall be accepted by the treasurer. If the
securities are not approved, they shall be rejected and
returned to the operator and no permit shall be issued
until a corporate surety bond is filed or cash or proper
collateral securities are filed in lieu of such surety. The
treasurer shall hold any cash or securities in the name
of the state in trust for the purposes for which the de-
posit was made. The operator shall be entitled to all
interest and income earned on the collateral securities
filed by such operator so long as the operator is in full
compliance with all laws, rules and regulations relating
to the drilling, redrilling, deepening, casing, plugging,
abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. The operator making the deposit shall be entitled from time to time to receive from the treasurer, upon the written order of the deputy director for oil and gas, the whole or any portion of such securities upon depositing with the treasurer in lieu thereof cash equal to or greater than the penalty of the bond, or other approved securities of the classes herein specified having a market value equal to or greater than the penalty of the bond, or a corporate surety bond.

Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the deputy director for oil and gas to the operator who deposited same.

If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the deputy director for oil and gas have not been complied with within the time limit set by the violation notice as defined in sections one-g, one-h and one-i, article four, chapter twenty-two of this code the performance bond shall then be forfeited.

When any bond is forfeited pursuant to the provisions of this article or rules and regulations promulgated pursuant thereto the deputy director shall give notice to the attorney general who shall collect the forfeiture without delay.

All forfeitures shall be deposited in the treasury of the state of West Virginia in the special reclamation fund as defined in section twelve-a, article four, chapter twenty-two of this code.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section seven of this
article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the deputy director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the department of mines and the coal operator or operators, if any, to whom notices are required to be given by section two of this article and the coal operator or operators to whom notices are required to be given by section two-a of this article of its intention to plug and abandon any such well (using such form of notice as the department may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the department of mines, in order that a representative or representatives of the department and the coal operator or operators, if any, or of both, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the department of mines and the coal operator or operators, if any, to whom notices are required to be given by section two of this article and the coal operator or operators to whom notices are required to be given by section two-a of this article, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the department, first obtain the verbal permission of the deputy director for oil and gas or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plug-
ging operations, give the written notices required by subdivision (a) above.

No well shall be plugged or abandoned unless prior to the commencement of plugging operations and the abandonment of any well the department is furnished a bond of the operator in the sum of two thousand five hundred dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, conditioned on full compliance with all laws, rules and regulations relating to the casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. When a number of wells are involved, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifteen thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business in this state as surety thereon, and conditioned as aforesaid. In lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the deputy director for oil and gas cash or collateral securities as specified in section two of this article. All of the provisions of section two dealing with cash or collateral securities in lieu of corporate surety shall be fully applicable hereto except for the condition of the bond with respect to which the operator must be in full compliance in order to be entitled to the interest and income earned on such securities. The operator shall be entitled to such interest and income under this section so long as the operator is in full compliance with all laws, rules and regulations relating to the casing, plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the department. Any such bond shall remain in force until released by the department and the department shall release the same when it is satisfied the conditions thereof have been fully performed. Notwithstanding the foregoing provisions, any operator who, in accordance with section two of this article, has furnished a separate bond, which has
not been released by the department, for the drilling, converting or drilling for the introduction of liquids, for the disposal of sewage, industrial waste or other waste or the effluent therefrom, or introducing pressure, whether liquid or gas, or introducing liquid for the purposes provided for in section ten-a of this article or fracturing of the well it is now proposed be plugged and abandoned, or who, in accordance with the provisions of said section two of this article, has furnished a blanket bond which has not been released by the department shall not be required by this section to furnish any other bond. When the plugging, filling and reclamation of a well have been completed, an affidavit, in triplicate, shall be made (on a form to be furnished by the department) by two experienced men who participated in the work, the deputy director for oil and gas or his designated representative, in which affidavit shall be set forth the time and manner in which the well was plugged and filled and the land reclaimed. One copy of this affidavit shall be retained by the well operator, another (or true copies of same) shall be mailed to the coal operator or operators, if any, and the third to the department of mines.

§22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.

The department shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and of all mining operations in close proximity to any well and shall have such access to the plans, maps and other records and to the properties of the well operators and coal operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the department may itself enter, or shall permit any aggrieved person to file before it, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or charging any coal operator with conducting mining operations in
proximity to any well contrary to the provisions of this
article, or to the order of the department. True copies of
any such complaints shall be served upon or mailed by
registered mail to any person so charged, with notice of the
time and place of hearing, of which the operator or
operators so charged shall be given at least five days'
notice. At the time and place fixed for hearing, full
opportunity shall be given any person so charged or
complaining to be heard and to offer such evidence as
desired, and after a full hearing, at which the department
may offer in evidence the results of such investigations as
it may have made, the department shall make its findings
of fact and enter such order as in its judgment is just and
right and necessary to secure the proper administration
of this article, and, if it deems necessary, restraining the
well operator from continuing to drill or case any well or
from further plugging, filling or reclaiming the same,
except under such conditions as the department may im-
pose in order to insure a strict compliance with the provi-
sions of this article relating to such matters, or restraining
further mining operations in proximity to any well, except
under such conditions as the department may impose.
From any such order an appeal, naming the department
as a respondent, may be taken by the operator or opera-
tors so restrained, within ten days of notice of entry of the
same, to the circuit court of the county in which the well
involved is located, and the department or complainant or
complainants, or both, may, in case such order is disobey-
ed, apply at any time to such circuit court for a decree
enforcing the same.

§22-4-12a. Special reclamation fund; fees.

In addition to any other fees required by the provisions
of this article, every applicant for a permit to drill a
well shall, before the permit is issued, pay to the deputy
director for oil and gas a special reclamation fee of one
hundred dollars for each well to be drilled. Such special
reclamation fee shall be paid at the time the application
for a drilling permit is filed with the deputy director
and the payment of such reclamation fee shall be a con-
dition precedent to the issuance of said permit.
10 There is hereby created within the treasury of the
11 state of West Virginia a special fund to be known as the
12 oil and gas reclamation fund, and the deputy director shall
13 deposit with the state treasurer to the credit of such
14 special fund all special reclamation fees collected. The
15 proceeds of any bond forfeited under the provisions of
16 this article shall inure to the benefit of and shall be
17 deposited in such oil and gas reclamation fund.

18 The oil and gas reclamation fund shall be administered
19 by the director of the department of mines. The deputy
20 director for oil and gas shall cause to be prepared plans
21 for the reclaiming and plugging of abandoned wells which
22 have not been reclaimed or plugged or which have been
23 improperly reclaimed or plugged. The director of the
24 department of mines, as funds become available in the oil
25 and gas reclamation fund, shall reclaim and properly plug
26 wells in accordance with said plans and specifications and
27 in accordance with the provisions of this article relating
28 to the reclaiming and plugging of wells and all rules and
29 regulations promulgated thereunder. Such funds may also
30 be utilized for the purchase of abandoned wells, where
31 such purchase is necessary, and for the reclamation of
32 such abandoned wells, and for any engineering, adminis-
33 trative and research costs as may be necessary to properly
34 effectuate the reclaiming and plugging of all wells,
35 abandoned or otherwise.

36 The director may avail himself of any federal funds
37 provided on a matching basis that may be made available
38 for the purpose of reclaiming or plugging any wells.

39 The director shall make an annual report to the gov-
40 ernor and to the Legislature setting forth the number of
41 wells reclaimed or plugged through the use of the oil and
42 gas reclamation fund provided for herein. Such report
43 shall identify each such reclamation and plugging project,
44 state the number of wells reclaimed or plugged thereby,
45 show the county wherein such wells are located and shall
46 make a detailed accounting of all expenditures from the
47 oil and gas reclamation fund.

48 All wells shall be reclaimed or plugged by contract
entered into by the director on a competitive bid basis as
provided for under the provisions of article three, chapter
five-a of this code and the rules and regulations promul-
gated thereunder.

§22-4-12b. Reclamation requirements.

1 The operator of a well shall reclaim the land surface
within the area disturbed in siting, drilling, completing or
producing the well in accordance with the following
requirements:

(a) Within six months after the completion of a
producing well, the operator shall fill all the pits for
containing muds, cuttings, salt water and oil that are not
needed for production purposes, or are not required or
allowed by state or federal law or rule or regulation, and
remove all concrete bases, drilling supplies and drilling
equipment. Within such period, the operator shall grade
or terrace and plant, seed or sod the area disturbed that is
not required in production of the well where necessary to
bind the soil and prevent substantial erosion and sedi-
mentation. No pit may be used for the ultimate disposal
of salt water. Salt water and oil shall be periodically
drained or removed, and properly disposed of, from any pit
that is retained so the pit is kept reasonably free of salt
water and oil.

(b) Within six months after a well that has produced
oil or gas is plugged, or after the plugging of a dry hole,
the operator shall remove all production and storage
structures, supplies and equipment, and any oil, salt water
and debris, and fill any remaining excavations. Within
such period, the operator shall grade or terrace and plant,
seed or sod the area disturbed where necessary to bind the
soil and prevent substantial erosion and sedimentation.

The deputy director may, upon written application by
an operator showing reasonable cause, extend the period
within which reclamation shall be completed, but not to
exceed a further six-month period.

If the deputy director refuses to approve a request for
extension, he shall do so by order.
CHAPTER 72
(H. B. 1518—By Mr. Teets)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eleven and twelve, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motorboating; requiring licensing of motorboats propelled by motors of less than three horsepower; fee for agents issuing motorboat licenses; period licenses shall be valid; date of report to assessor of persons owning vessels; authorizing director to issue six months license; fee.

Be it enacted by the Legislature of West Virginia:

That sections eleven and twelve, 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 II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

PART II. MOTORBOATING.

§20-7-11. Motorboats and other terms defined.

1 As used in this section and subsequent sections of this article, unless the context clearly requires a different meaning:

3 (1) “Vessel” means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water;

6 (2) “Motorboat” means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor,
whether or not such motor is the principal source of propulsion, but shall not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto; and

(3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; issuing agents; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as herein defined, operating upon public waters within the territorial limits of this state, shall be numbered as herein provided:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the director on forms approved by him. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of five dollars if propelled by a motor of three or more horsepower. There shall be no fee for motorboats propelled by motors of less than three horsepower. All such fees shall be deposited in the state treasury and shall be credited to the department of natural resources and shall be used and paid out, upon order of the director, solely for the state boating program. Upon receipt of the application in approved form, the director shall enter the same upon the records of his office and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in such manner as may be prescribed by rules and
regulations of the director in order that it may be clearly visible. The number shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which issued, whenever such motorboat is in operation.

(b) The owner of any motorboat already covered by a number in full force and effect which has been awarded to it pursuant to then operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the sixty-day reciprocity period provided for in section fourteen of this article. Such recordation shall be in the manner and pursuant to procedure required for the award of a number under subdivision (a) of this section, except that no additional or substitute number shall be issued.

(c) Should the ownership of a motorboat change, a new application form with fee shall be filed with the director and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(d) In the event that an agency of the United States government shall have in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the commission shall be in conformity therewith.

(e) The director may designate as issuing agent the clerk of any county commission and such other persons in each county as he deems advantageous to provide for the issuance of certificates of number in accordance with the provisions of this article. For services rendered in issuing such certificates, and collecting and paying over such numbering fees, each issuing agent, other than a state or county official, shall charge and retain an additional fee of fifty cents from the person obtaining the certificate of number. Every such issuing agent, unless already under bond with the director as an agent for the collection of its moneys, shall file a bond with the director, payable to the state of West Virginia, in an amount to be fixed by the director at not more than one thousand dollars, before the supply of certificates of number.
is delivered to him, conditioned upon the faithful performance of his obligation to issue certificates only in conformance with the provisions of this article and the regulation of the director. Each issuing agent, on the first day of each month, shall remit to the director all moneys collected for the director during the preceding month, and shall accompany his remittance with a report showing the name of the county, the names and addresses of the persons paying the same, and the date of receipt thereof.

(f) All records of the director made or kept pursuant to this section shall be public records.

(g) Such license shall be valid only until the last day of December. If at the expiration of that date ownership has remained unchanged, such owner shall, upon application and payment of the proper annual fee, be granted a renewal of such certificate of number for an additional one-year period.

(h) The owner shall furnish the director notice of the transfer of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section, or of the destruction or abandonment of such motorboat, within fifteen days thereof. Such transfer, destruction or abandonment shall terminate the certificate of number for such motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such motorboat, such transfer shall not terminate the certificate of number.

(i) Any holder of a certificate of number shall notify the director within fifteen days if his address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the director with his new address. The director may provide in his rules and regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of an outstanding certificate to show the new address of the holder.

(j) No number other than the number awarded to a motorboat or granted reciprocity pursuant to this article
shall be painted, attached or otherwise displayed on either side of the bow of such motorboat.

(k) It shall be the duty of the director on or before February twenty-eight of each year, commencing with the year one thousand nine hundred seventy-seven, to forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the same or other boats registered with the director under the provisions of this article. In furnishing this information to each county assessor, the director shall include in his report such information as is made available to him in the reports and registrations he receives as to make, model, value and cost price of such vessels and other equipment required to be registered for use by said owner or operator thereof under the provisions of this article: Provided, That the director need not furnish such information to the assessor if the cost price of such vessel does not exceed two hundred dollars or the cost of the motor does not exceed one hundred seventy-five dollars. In order to deal equitably with overlapping license periods, the director may issue a six months' license from the period July, one thousand nine hundred seventy-six through December, one thousand nine hundred seventy-six. The fee shall be one half of the annual fee.

(l) No person shall operate an unlicensed motorboat upon any waters of this state without first acquiring such certificate of number or license as required by law.

CHAPTER 73
(S. B. 44—By Mr. Beall)

[Passed March 12, 1976; in effect July 1, 1976. Disapproved by the Governor, and repassed notwithstanding his objections.]

AN ACT to amend and reenact section seventeen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing sheriffs to issue renewals of Class A and G
vehicle registrations; the procedures for their issuance; and providing for a service fee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-17. Application for and renewal of registration; sheriffs authorized to issue renewals of registration for certain vehicles.

Application for renewal of a vehicle registration shall be made by the vehicle owner by proper application and payment of the taxes and registration fees provided by law.

The department may receive applications for renewal of any vehicle registration and each sheriff may receive applications from residents in his county for renewal of any Class A or G vehicle registration. The department and each sheriff shall issue the renewals of registration each receives, respectively, in accordance with all of the provisions in this article pertaining to renewal of vehicle registration including, but not limited to, the payment of the taxes and fees required thereunder.

Each sheriff may charge a service fee of one dollar for each renewal of a Class A or G vehicle registration he issues which he shall pay into the county general fund.

On the first day of each month, each sheriff shall pay over to the commissioner all fees he collected during the preceding month for renewal of Class A and G vehicle registrations, except his service fees. Such payment shall be accompanied by a report showing the name of the county, the name and address of the person who obtained the registration and paid the registration fee therefor, the vehicle registered, the registration number, the date the registration was issued, the signature of the sheriff and any other information the commissioner may reasonably
 require in order to maintain the functions and records of
the department. The commissioner shall deposit all fees
he receives from the sheriffs for renewal of Class A and G
vehicle registrations in the state treasury and credited
to the state road fund as provided in section twenty-one,
article two of this chapter.

The commissioner shall provide each sheriff with the
necessary forms, supplies, registration plates, registration
decals and instructions necessary to enable them to per-
form the duties and functions specified in this section.

No person may display upon a vehicle a new registra-
tion plate or registration decal prior to the first day of
the month preceding the new registration period.

CHAPTER 74
(Com. Sub. for H. B. 778—By Mr. Teetz)

[Passed February 28, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter
seventeen-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to vehicles exempt
from payment of registration fees and removing distinction
between incorporated and unincorporated volunteer fire depart-
ments receiving the exemption; and providing an exemption for
certain ambulances and other emergency rescue vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

1 The following specified vehicles shall be exempt from the
2 payment of any registration fees:
(1) Any vehicle owned or operated by the United States government, the state of West Virginia or any of their political subdivisions. The proper representative of the United States government, the state of West Virginia or any of their political subdivisions shall make, or cause to be made, on the form provided for that purpose, an application for registration for such vehicle so owned or operated, and the registration plate or plates issued for such vehicle shall be displayed or caused to be displayed as provided in this chapter.

(2) Any fire vehicle owned or operated by a volunteer fire department organized for protection of community property.

(3) Any ambulance or any other emergency rescue vehicle owned or operated by a nonprofit, charitable organization, and used exclusively for charitable purposes.

(4) Any vehicle owned by a disabled veteran under the provisions of Public Law 663 of the 79th Congress of the United States, or Public Law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States, but this exemption shall not apply to vehicles used for hire which are owned by disabled veterans.

CHAPTER 75

(S. B. 144—By Mr. Willis and Mr. Hinkle)

[Passed March 1, 1976; in effect ninety days from passage. Approved by the Governor.]
of any other drug to a degree which renders him incapable of safely driving or who is under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving; granting a person convicted for the first offense of driving a vehicle in this state while under the influence of alcohol or while a habitual user of or under the influence of a controlled substance or other drugs or combinations thereof which renders him incapable of safely driving or of having permitted another person to drive his vehicle in this state while such person was under the influence of such substances in the same manner and to the same degree the option to attend an alcohol and drug countermeasure school conducted under the jurisdiction and supervision of the department of mental health with advice and consultation from the department of public safety; providing that a person who elects to attend the school may be issued a temporary operator's or chauffeur's license which he may use for certain limited purposes; providing for restoration of such person's operator's or chauffeur's license upon completion of the six-month revocation period without any limitation as to use; authorizing the division of alcoholism and drug abuse of the department of mental health to collect from each offender who attends an alcohol and drug countermeasure school a fee not to exceed fifty dollars to pay the administrative costs thereof; and setting forth the procedures to be followed in the implementation and administration of such provisions of law.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs.

1 (a) It is unlawful and punishable as provided in sub-
2 sections (c), (d) and (e) of this section for any person
3 to drive any vehicle in this state while:
(1) He is under the influence of alcohol;

(2) He is a habitual user of or under the influence of any controlled substance or he is under the influence of any other drug to a degree which renders him incapable of safely driving; or

(3) He is under the combined influence of alcohol and any controlled substance or any other drug to a degree which renders him incapable of safely driving.

The fact that any person charged with a violation of subsection (a) or (b) of this section is or has been legally entitled to use alcohol, a controlled substance or a drug shall not constitute a defense against any charge of violating subsection (a) or (b) of this section.

For purposes of this section, the term "controlled substance" shall have the meaning ascribed to it in chapter sixty-a of this code.

(b) It is unlawful and punishable as provided in subsections (c), (d) and (e) of this section for the owner of any vehicle to knowingly permit his vehicle to be driven in this state by any other person who is under the influence of alcohol, or who is a habitual user of or under the influence of any controlled substance or who is under the influence of any other drug to a degree or in the manner set forth in subdivisions (1), (2) and (3) of subsection (a) of this section.

(c) A person violating any provisions of subsection (a) or (b) of this section shall, for the first offense, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than twenty-four hours nor more than six months and, in addition to such mandatory jail sentence, such person may be fined not less than fifty nor more than one hundred dollars; and, in every case of such conviction, such convicted person's operator's or chauffeur's license shall be revoked for a period of six months. The court which convicted such person shall require him to surrender his operator's or chauffeur's license to it and the court shall cause such license and a certified abstract of the judgment on such conviction to be sent to the
A person convicted for a first offense under subsection (a) or (b) of this section and if the records of the department do not disclose that he had been previously convicted for such an offense shall be granted the option to attend an alcohol and drug countermeasure school conducted under the jurisdiction and supervision of the division of alcoholism and drug abuse of the department of mental health. Such person who elects to attend the school shall have a temporary operator's or chauffeur's license issued to him by the department upon it receiving certification from the division of alcoholism and drug abuse of the department of mental health that the person is enrolled in a course of instruction in the school. Any person who is issued such temporary operator's or chauffeur's license may use it only for the limited purpose of driving to and from the school and to and from his regular place of education or employment, or both, and to drive any vehicle required as a necessary part of his employment. If any person who has been issued such temporary operator's or chauffeur's license fails to attend any session of an alcohol and drug countermeasure school in which he is enrolled without proper reason or excuse, the division of alcoholism and drug abuse of the department of mental health shall promptly notify the department and the department shall revoke that person's temporary operator's or chauffeur's license immediately.

Such person shall have his operator's or chauffeur's license restored to him by the department upon the expiration of the six-month period for which his operator's or chauffeur's license was revoked, without any limitation as to use, upon his compliance with all applicable requirements of state law and the rules and regulations promulgated thereunder by the commissioner.

A person convicted for a first offense under subsection (a) or (b) of this section shall receive written notification from the department of the provisions of this section and complete information regarding the revocation and
restoration of his operator's or chauffeur's license and the alcohol and drug countermeasure school.

At the time a person is convicted for a first offense under subsection (a) or (b) of this section, the court shall inform the division of alcoholism and drug abuse of the department of mental health of such conviction and the division shall notify the person of when and where he can enroll and attend an alcohol and drug countermeasure school.

Alcohol and drug countermeasure schools shall be conducted in accordance with rules and regulations promulgated by the director of the department of mental health in accordance with the provisions of chapter twenty-nine-a of this code. In promulgating such rules and regulations, the director shall establish and publish a curriculum to be applied uniformly throughout the state for the course taught in such schools to persons convicted for a first offense under subsection (a) or (b) of this section which shall consist of not less than twenty hours of instruction and training to be conducted during a period not to exceed six months. The department of public safety shall advise and consult with the division of alcoholism and drug abuse of the department of mental health regarding the manner in which the schools are conducted and the curriculum of such course. The division of alcoholism and drug abuse of the department of mental health is hereby authorized to collect from each such convicted person who attends an alcohol and drug countermeasure school it conducts a fee not to exceed fifty dollars. All such fees shall be deposited in the state treasury in a special fund to be used only to pay administrative costs necessarily incurred in providing such schools.

(d) A person violating any provision of subsection (a) or (b) of this section shall, for the second offense occurring within a five-year period, be guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned in the county jail for a period of not less than six months nor more than one year, which sentence shall not be subject to probation; and whenever the records
of the department disclose that a conviction is the second such conviction of such person within a period of five years for a violation of subsection (a) or (b) of this section, his operator's or chauffeur's license shall be revoked by the commissioner for a period of ten years, unless it is restored by the department as hereinafter provided. Whenever the commissioner, after full investigation, shall find that the character of any person who was convicted of a second offense under subsection (a) or (b) of this section and the circumstances at the time indicate that he is not likely to repeat his offense again and that the public good does not require that his license be longer revoked, the commissioner may if it is deemed advisable restore such license at any time more than five years after the date on which it was revoked.

(e) A person violating any provision of subsection (a) or (b) of this section shall, for the third or any subsequent offense occurring within a five-year period, be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than three years; and whenever the records of the department disclose that a conviction is the third such or any subsequent conviction of such person within a period of five years for a violation of subsection (a) or (b) of this section, his operator's or chauffeur's license shall be revoked by the commissioner for a period of ten years and indefinitely thereafter unless it is restored by the department as hereinafter provided. Whenever the commissioner, after full investigation, shall find that the character of any person who was convicted of a third or subsequent offense under subsection (a) or (b) of this section and the circumstances at the time indicate that he is not likely to repeat his offense again and the public good does not require that his license be longer revoked, the commissioner may if it is deemed advisable restore such license at any time more than ten years after the date on which it was revoked.

The discretionary power herein conferred may be exercised by the commissioner and the department with respect to the restoring of licenses revoked because of convictions prior to the passage hereof.
AN ACT to amend and reenact section ten, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting stopping of vehicle or combination of vehicles for weighing if no weighing device is then present unless the vehicle or combination of vehicles is escorted to a weighing device without delay; prohibiting detaining such vehicle or combination for more than one hour unless impounded.

Be it enacted by the Legislature of West Virginia:

That section ten, 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-17-10. Officers may weigh, measure, etc., vehicles and require removal or rearrangement of excess loads.

1 (a) Any police officer or employee of the department of highways designated by the commissioner of highways as a member of an official weighing crew may require the driver of any vehicle or combination of vehicles on any highway to stop and submit such vehicle or combination of vehicles to a weighing with portable or stationary weighing devices or submit such vehicle or combination of vehicles to a measuring or to any other examination necessary to determine if such vehicle or combination of vehicles is in violation of any of the provisions of this article, and may require that such vehicle or combination of vehicles be driven to the nearest weighing device, but only if such weighing device is within two miles of the place where the vehicle or combination of vehicles is stopped.

16 No police officer or member of an official weighing crew
may stop a vehicle or combination of vehicles for weighing unless a portable or stationary weighing device is actually present at the location where, and at the time, the vehicle or combination of vehicles is stopped or unless the vehicle or combination of vehicles is escorted immediately after being stopped to a portable or stationary weighing device. In no case may a vehicle or combination of vehicles be detained more than one hour from the time the same is stopped for weighing unless the vehicle or combination of vehicles is impounded for a violation in accordance with the provisions of section fourteen of this article.

(b) Whenever an officer or a member of an official weighing crew determines that a vehicle or combination of vehicles is in violation of any of the provisions of this article, he may require the driver to stop such vehicle or combination of vehicles in a suitable place and to remain standing until such vehicle or combination of vehicles is brought into conformity with the provisions violated.

In the case of a weight violation all material unloaded shall be cared for by the owner, lessee or borrower of such vehicle or combination of vehicles at the risk of such owner, lessee or borrower: Provided, That no criminal charge shall be preferred against any driver, operator or owner of a vehicle when a rearrangement of the load upon the vehicle, without removal therefrom, reduces the axle loads of said vehicle to such limit as is permitted under this chapter.

(c) Any driver of a vehicle or combination of vehicles who fails or refuses to comply with any requirement or provision of this section shall be guilty of a misdemeanor.

CHAPTER 77

(S. B. 64—By Mr. Huffman)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article twelve, chapter eight of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to enlarge-
ment of time period from thirty days to six months after
accrual of injury to file notice of claim.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twelve, 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 12. GENERAL AND SPECIFIC POWERS, DUTIES AND
ALLIED RELATIONS OF MUNICIPALITIES, GOV-
ERNING BODIES AND MUNICIPAL OFFICERS
AND EMPLOYEES; SUITS AGAINST MUNICIPAL-
ITIES.

§8-12-20. Notice to be given of claims for damages due to
alleged negligence; waiting period.

1 Notwithstanding any other provision of this code or any
2 charter provision to the contrary, no action shall be main-
3 tained against any municipality for injury to any person
4 or property or for wrongful death alleged to have been
5 sustained by reason of the negligence of the municipality,
6 or of any officer, agent or employee thereof, unless a
7 written notice by the claimant, his agent, attorney
8 or representative of the nature of the claim and of the
9 time and place at which the injury is alleged to have
10 occurred or been received shall have been filed with the
11 mayor, clerk, recorder or municipal attorney within six
12 months after such cause of action shall have accrued. The
13 cause of action shall be deemed to have accrued on the
14 date of the sustaining of the injury, except that where
15 death results therefrom the time for the personal repre-
16 sentative to give notice shall run from the date of death.
17 An action at law for damages for injury to any person or
18 property or for wrongful death shall not be commenced
19 until the expiration of thirty days after the filing of the
20 notice provided for in this section.

21 Substantial compliance with the notice provisions of
22 this section shall be deemed sufficient compliance thereof.
county board of education in this state, or (5) general
obligation bonds of any municipality in this state.

(c) Interest bearing savings accounts in banking insti-
tutions, the accounts of which are insured by the federal
deposit insurance corporation, or in federal savings and
loan associations, the accounts of which are insured by
the federal savings and loan insurance corporation, or in
building and loan associations, the accounts of which are
insured by the federal savings and loan insurance
corporation: Provided, That an investment in any such
savings account in excess of the amount thereof which
would be insured by the federal deposit insurance corpora-
tion or the federal savings and loan insurance corpora-
tion, as the case may be, shall not be made unless such
banking institution, federal savings and loan association
or building and loan association provides adequate bond or
other adequate security for the amount of the proposed
municipal investment in excess of such insurance cover-
age, the adequacy of any such bond or other security to
be determined by the treasurer of such municipality.

CHAPTER 80

[Com. Sub. for H. B. 815—By Mr. Harmon]

[Passed March 8, 1976; 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 two-a; and to amend article fifteen of said chapter by adding thereto a new section, designated section ten-a, all relating to benefits to policemen and firemen.

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 two-a; and that
article fifteen of said chapter be amended by adding thereto a new section, designated section ten-a, all 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 and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.

15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§§8-14-2a. Policemen who are required to work during holidays; how compensated.

1 From the effective date of this section, if any municipal police officer is required to work during a legal holiday as is specified in section one, article two, chapter two of this code, or if a legal holiday falls on the police officer's regular scheduled day off, he shall be allowed equal time off at such time as may be approved by the chief of police under whom he serves, or in the alternative, shall be paid at a rate not less than one and one-half times his regular rate of pay.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§§8-15-10a. Firemen who are required to work during holidays; how compensated.

1 From the effective date of this section, if any member of a paid fire department is required to work during a legal holiday as is specified in section one, article two, chapter two of this code, or if a legal holiday falls on the member's regular scheduled day off, he shall be allowed equal time off at such time as may be approved by the chief executive officer of the department under whom he serves, or in the alternative, shall be paid at a rate not less than one and one-half times his regular rate of pay.
AN ACT to amend and reenact section three, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers, authority and duties of municipal law-enforcement officials and policemen; supervision of prisoners in the jail.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, 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 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

PART II. POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN.

§8-14-3. Powers, authority and duties of law-enforcement officials and policemen.

1 The chief and any member of the police force or department of a municipality and any municipal sergeant shall have all of the powers, authority, rights and privileges within the corporate limits of the municipality with regard to the arrest of persons, the collection of claims, and the execution and return of any search warrant, warrant of arrest or other process, which can legally be exercised or discharged by a deputy sheriff of a county. In order to arrest for the violation of municipal ordinances and as to all matters arising within the corporate limits and coming within the scope of his official duties, the powers of any chief, policeman
or sergeant shall extend anywhere within the county or coun-
ties in which the municipality is located, and any such chief, 
policeman or sergeant shall have the same authority of 
pursuit and arrest beyond his normal jurisdiction as has a 
sheriff. For an offense committed in his presence, any such 
officer may arrest the offender without a warrant and take 
him before the mayor or police court or municipal court to 
be dealt with according to law. He and his sureties shall be 
liable to all the fines, penalties and forfeitures which a 
deputy sheriff is liable to, for any failure or dereliction 
in such office, to be recovered in the same manner and 
in the same courts in which such fines, penalties and for-
feitures are recovered against a deputy sheriff. In addition to 
the mayor, or police court judge or municipal court judge, if 
any, of a city, the chief of police of any municipality and in 
the absence from the station house of the chief of police the 
captains of police and lieutenants of police shall each have 
authority to administer oaths to complainants and to issue 
arrest warrants thereon for all violations of the ordinances of 
such municipality.

It shall be the duty of the mayor and police officers of 
every municipality and any municipal sergeant to aid in 
the enforcement of the criminal laws of the state within the 
municipality, independently of any charter provision or any 
ordinance or lack of an ordinance with respect thereto, and 
to cause the arrest of or arrest any offender and take him 
before a regular or ex officio justice of the peace of the 
county or a magistrate to be dealt with according to the law. 
Failure on the part of any such official or officer to discharge 
any duty imposed by the provisions of this section shall be 
deemed official misconduct for which he may be removed from 
office. Any such official or officer shall have the same author-
ity to execute a warrant issued by a justice of the peace or a 
magistrate, and the same authority to arrest without a warrant 
for offenses committed in his presence, as a deputy sheriff.

The chief of police shall be charged with the keeping and 
security of the jail and at any time that one or more prisoners 
are being held in the jail, he shall require that the jail be 
attended by a police officer or other responsible person.
AN ACT to amend article sixteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to the pledge or expenditure of the hotel occupancy tax for the security and payment of revenue bonds issued by municipalities, and the contributing of such revenues to building commissions created by municipalities for such uses as the building commission may determine, including the payment of bonds issued by such building commission.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 eighteen-a, all to read as follows:

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

§8-16-18a. Pledge of the hotel occupancy tax; contribution of revenues to building commission.

1 In addition to the rates or charges authorized to be pledged and expended for the security and payment of bonds as provided in this article, the governing body issuing such bonds shall have plenary power and authority to pledge and expend for the security and payment of such bonds all, or any part, of the revenues which are derived from the hotel occupancy tax which a municipality may impose pursuant to section three, article thirteen of this chapter and which are specifically dedicated by such governing body for any purpose or purposes set forth in section three, article thirteen of this chapter.

12 All such sums which are so pledged shall be deemed "revenues of the works" for all purposes of the provisions of
14 this article. The governing body shall also have the power
15 and authority to contribute all, or any part of, the revenues
16 derived from said hotel occupancy tax to a building com-
17 mission created by such governing body pursuant to
18 article thirty-three, chapter eight of this code for such
19 lawful purposes which such building commission shall
determine and which are set forth in section three, article
20 thirteen of this chapter, including payment of revenue
21 bonds issued by such building commission.

CHAPTER 83

[Passed February 19, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter eight of the code of
West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated sec-
tion one-a, relating to authority of municipalities to
cooperate with the state of West Virginia or any political
subdivision thereof, or with the United States of America
or any agency or department thereof in combined water-
works and sewerage systems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYS-
TEMS.

§8-20-1a. Cooperation with other governmental units.

1 In carrying out any lawful purpose prescribed by this
2 article, any municipality may, in the exercise of its powers,
3 duties and responsibilities, cooperate or join with the state
4 of West Virginia or any political subdivision, agency,
5 board, commission, office or department thereof, how-
6 ever designated, or with the United States of America
7 or any agency or department thereof.
AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-a, authorizing any Class I or Class II city to establish a neighborhood rehabilitation fund; providing certain legislative findings and purpose; defining terms; providing that any such neighborhood rehabilitation fund shall be used to make loans or to guarantee the repayment of loans made to certain residents of any such Class I or Class II city for the rehabilitation of their residences; relating to certain written agreements setting forth the terms and conditions pertaining to such loans; limiting the liability of any such Class I or Class II city to the funds on deposit in such neighborhood rehabilitation fund; and providing that any such Class I or Class II city shall have the authority to provide technical and other assistance to such residents in connection with such rehabilitation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20A. NEIGHBORHOOD REHABILITATION.

§8-20A-1. Legislative findings and purpose.
§8-20A-4. Inspection and technical assistance.

§8-20A-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that there has been for a number of years a clear trend for younger and more affluent persons and families residing in Class I or Class II cities to move their residences from the inner urban areas of such cities to newer suburban areas; that as a result, a disproportionate number of homeowners remaining in such inner ur-
ban areas are older, less affluent and otherwise less able to afford the expense of the remodeling, repairing and rehabilitating of their residences necessary to maintain such residences in a sanitary, safe and decent condition; that because of their lack of acceptable loan collateral, the age of their residences and the location and age of the neighborhoods in which their residences are located, many of such homeowners have not been able to borrow funds necessary to effect such remodeling, repair and rehabilitation; and that some of such homeowners who have been able to borrow funds for such purposes have been able to do so only upon rates of interest and upon other terms and conditions which are particularly onerous to such homeowners.

(b) The Legislature further finds and declares that the assistance authorized in this article will provide, and will encourage private lenders to provide, to such homeowners, more readily and at rates of interest and upon other terms and conditions significantly more favorable to such homeowners, the loans necessary to finance the cost of such remodeling, repair and rehabilitations.

(c) The Legislature further finds and declares that it is manifestly in the public interest to foster, in the populous inner urban areas of this state, the pride, self-respect and esteem incident to home ownership and to encourage and assist in the maintenance of residences situate in such areas in a safe, decent and sanitary condition; that without the assistance authorized in this article there will be continued deterioration of such inner urban areas with the resultant proliferation of urban decay and slums, higher crime rates and general decline in civic pride, public spirit and the quality of life, with all of the public cost, direct and indirect, attendant thereon; and that accordingly by providing such assistance, any Class I or Class II city will be acting in all respects for the benefit of the people of the state of West Virginia and shall thereby serve a public purpose in improving and otherwise promoting their health, welfare and prosperity.


As used in this article, unless the context otherwise requires:

1. "Eligible dwelling" means real estate upon which there
is located a structure designed primarily for residential hous-
ing and consisting of dwelling units for not more than four
families, provided that all occupancy thereof shall be limited
to persons and families who would qualify as eligible residents.

(2) "Eligible resident" means a person or family residing
in an eligible dwelling owned by such person or family situate
within the corporate limits of a Class I or Class II city, irre-
spective of race, creed, national origin or sex, with respect to
whom it is determined by the governing body of such city that
(a) such person or family because of financial conditions, age,
infirmity, family size or other reasons, is unable to obtain, on
suitable terms and conditions, loans or other credit necessary
for the rehabilitation of such eligible dwelling, and hence re-
quires the assistance as provided in this article, (b) such reha-
bilitation is necessary to place such eligible dwelling in a safe,
sanitary and decent condition, and (c) the assistance as autho-
rized in this article shall make financing available to such per-
son or family, or enable such person or family to obtain such
financing, on terms and conditions substantially more favorable
to such person or family than would otherwise be available.

(3) "Rehabilitation" means a specific work of improvement
within a Class I or Class II city undertaken primarily to re-
model, repair, or rehabilitate an eligible dwelling occupied by
an eligible resident as his principal residence.


(a) Any Class I or Class II city shall have plenary power and
authority, by charter provision, ordinance or resolution, to es-
ablish a special fund of moneys made available by appropri-
tion, grant, contribution, loan or otherwise, to be known as the
neighborhood rehabilitation fund of such city, to be governed,
administered and accounted for by the governing body of such
city as a special purpose account, separate and distinct from
any other moneys, fund or funds owned by such city.

(b) The governing body of any Class I or Class II city may
from time to time, by resolution, establish criteria which shall
govern the determination of persons and families who qualify
as eligible residents.
(c) The purpose of such neighborhood rehabilitation fund shall be to provide funds for the making of loans, or to guarantee the repayment of loans made by private lenders, to eligible residents of such city, the proceeds of which loans are to be used exclusively for rehabilitation.

(d) Such loans shall be made or guaranteed only upon determination by the governing body of such city, or by a board or commission appointed for such purpose by such governing body, that the borrowers are eligible residents, that the proceeds of the loan shall be used for rehabilitation and that loans to such eligible borrowers for rehabilitation are not otherwise available upon reasonably equivalent terms and conditions.

(e) No loan shall be made or guaranteed by such city except in accordance with a written agreement between such city, the eligible resident and in the case of a guaranteed loan the lender making such loan, which agreement shall provide, without limitation, that:

1. The proceeds of such loan shall be used exclusively for rehabilitation;

2. The loan shall be in such principal amount, repayable in such number of consecutive and substantially equal monthly installments, at such annual rate of interest and shall be secured in such manner as specified in such agreement;

3. In the case of a guaranteed loan, such city shall be obligated to repay, from the neighborhood rehabilitation fund established in accordance with this article, any installment or installments of such loan as shall be in default from time to time in accordance with the provisions of such agreement;

4. In the event an eligible resident defaults on such a loan made by such city, or in the event such city incurs an obligation on a guaranteed loan such city shall be entitled, at its option, to realize on any and all security for said loan: Provided, That the right of such city to realize on such security with respect to a guaranteed loan shall be subordinate and secondary to the right of the lender as to such security, to the extent of the unpaid balance of such loan.

(f) Nothing in this article contained shall be so construed
§8-20A-4. Inspection and technical assistance.

1 In addition to all other powers and rights of a Class I or Class II city, any Class I or Class II city shall have plenary power and authority, at the request of eligible residents, to inspect the residences of such eligible residents, to make recommendations concerning rehabilitation and to provide all manner of technical services and assistance in the planning, processing and design of needed rehabilitation.

CHAPTER 85

(S. B. 174—By Mr. Brotherton, Mr. President)

[Passed February 25, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eighteen, article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three, ten, fifteen, twenty and twenty-five of said article; and to amend and reenact section three, article one, and section one, article five, chapter twenty-four-a, all of said code, all relating to urban mass transportation authorities and the removal of urban mass transportation authorities from the jurisdiction of the public service commission.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article twenty-seven, chapter eight be repealed; that sections three, ten, fifteen, twenty and twenty-five of said article be amended and reenacted; and that section three, article one, and section one, article five, chapter twenty-four-a, 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

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

24A. Motor Carriers of Passengers and Property for Hire.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.

PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF AUTHORITIES.


PART III. POWERS AND DUTIES OF AUTHORITIES.

§8-27-10 Powers and duties of authorities generally.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.

§8-27-15 Trust indenture generally.

PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.

§8-27-20 Exemption from taxation.

PART X. CONFLICT OF INTEREST; BIDS; LEGAL INVESTMENTS; CONSTRUCTION.

§8-27-25 Article constitutes complete authority; liberal construction.

PART I. TITLE; FINDINGS; DEFINITIONS; CREATION OF AUTHORITIES.


1 As used in this article, unless a different meaning appears from the context:

3 (a) "Authority" means any urban mass transportation authority created pursuant to the provisions of this article;

6 (b) "Board" means the board of any urban mass transportation authority;

8 (c) "Contiguous counties" means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least one other county, but does not require that
each county touch all of the other counties so combining;

(d) "Facilities and equipment" means all real and personal property of every kind and character owned or held by any urban mass transportation system for the purpose of providing transportation by bus or rail or other conveyance serving the public;

(e) "Participating government" means any municipality or county establishing or participating in an urban mass transportation authority;

(f) "Project" means any undertaking of an authority;

(g) "Revenues" means the gross receipts derived directly or indirectly from or in connection with the operation by an authority of any urban mass transportation system or systems and shall include, without limitation, all fees, rates, fares, rentals or other income actually received or receivable by or for the account of an authority from the operation of the system, and any other receipts from whatever source derived;

(h) "Service area of the authority" means and includes an area commensurate with the area served by an existing system or systems acquired or to be acquired by an authority, or if there be no existing system, the area shall extend to and include an area to be defined by the authority;

(i) "System" means any urban mass transportation system;

(j) "Trust indenture" means a security instrument entered into by an authority pursuant to which bonds or notes are issued;

(k) "Urban area" means any area that includes a municipality or other built-up place which is appropriate for a system to serve commuters or others in the locality taking into consideration the local patterns and trends of growth;

(l) "Urban mass transportation system" means any
49 common carrier of passengers for hire which operates
50 equipment over regular routes within the service area
51 of the authority; and
52 (m) The singular shall include the plural and the
53 plural shall include the singular.

PART III. POWERS AND DUTIES OF AUTHORITIES.


1 Each authority is hereby given the power:
2 (a) To sue and be sued, implead and be impleaded;
3 (b) To have and use a seal and alter the same at
4 pleasure;
5 (c) To make and adopt all rules and regulations and
6 bylaws as may be necessary or desirable to enable it
7 to exercise the powers and perform the duties conferred
8 or imposed upon it by the provisions of this article;
9 (d) To employ, in its discretion, planning, architectural
10 and engineering consultants, attorneys, accountants, con-
11 struction, financial, transportation and traffic experts and
12 consultants, superintendents, managers and such other
13 employees and agents as may be necessary in its judg-
14 ment, and to fix their compensation;
15 (e) To acquire by grant, purchase, gift, devise or
16 lease and to hold, use, sell, lease or otherwise dispose
17 of real and personal property of every kind and nature
18 whatsoever, licenses, franchises, rights and interests
19 necessary for the full exercise of its powers pursuant to
20 the provisions of this article, or which may be con-
21 venient or useful for the carrying out of such powers;
22 (f) To acquire, construct, reconstruct, complete, de-
23 velop, improve, own, equip, maintain and operate any
24 system or systems, or any part thereof, including, with-
25 out limitation, the power to acquire by purchase, lease
26 or gift all or any part of any licenses, franchises, rights,
27 interests, engineering and technical studies, data or re-
28 ports owned or held by any person and determined by
29 its board to be necessary, convenient or useful to the
authority in connection with the acquisition, construction, reconstruction, completion, development, improvement, ownership, equipping, maintenance or operation of any system or systems and to reimburse public utilities for relocation of any utility line or facility made necessary by the construction, reconstruction, completion, development, improvement, equipping, maintenance or operation of any system or systems;

(g) To acquire any land, rights or easements deemed necessary or incidental for the purposes of the authority by eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by business corporations;

(h) To enter into contracts and agreements which are necessary, convenient or useful to carry out the purposes of this article with any person, public corporation, state or any agency or political subdivision thereof and the federal government and any department or agency thereof, including, without limitation, contracts and agreements for the joint use of any property and rights by the authority and any person or authority operating any system, whether within or without the service area of the authority, and contracts and agreements with any person or authority for the maintenance, servicing, storage, operation or use of any system or part thereof, facility or equipment on such basis as shall seem proper to its board;

(i) To enter into contracts and agreements for superintendence and management services with any person, who has executive personnel with experience and skill applicable to the superintendence and management of any system, for the furnishing of its services and the services of experienced and qualified personnel for the superintendence and management of any system or any part thereof, including, without limitation, superintendence over personnel, purchases, properties and operations and all matters relating thereto, and any revenue bond trust indenture may require such contract or agreement, but the personnel whose services are to be so furnished
under any such contract or agreement shall not include any member of the board, any member of the immediate family of a member of the board or any agents or employees of the authority, and no such contract or agreement shall extend beyond a term of ten years or such longer time as there are outstanding any revenue bonds under a trust indenture which requires such contract or agreement;

(j) To assume any lien indebtedness of any system or part thereof acquired by it under the provisions of this article;

(k) To execute security agreements, contracts, leases, equipment trust certificates and any other forms of contracts or agreements, granting or creating a lien, security interest, encumbrance or other security in, on or to facilities and equipment, containing such terms and provisions as the board deems necessary;

(l) To apply for, receive and use grants, grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the federal government and any agency or department thereof, and a state government whose constitution does not prohibit such grants, grants-in-aid, donations and contributions, and any agency or department thereof, and to accept and use bequests, devises, gifts and donations from any person;

(m) To lease any system or any part thereof to, or contract for the use of any system or any part thereof by, any person, but a trust indenture may prohibit, limit or restrict the exercise of such power;

(n) To acquire for cash or in exchange for its bonds all or any part of any publicly or privately owned system or systems;

(o) To make or cause to be made either by itself or in cooperation with other persons or organizations, whether public or private, traffic surveys, population surveys and such other surveys and studies as it shall consider useful in the performance of its duties or the exercise
of its powers under the provisions of this article and in
connection therewith the authority may contract with
any person or organization for such planning services;

(p) To enter into contracts and agreements with any
public or private system either within or contiguous to
its boundaries for the transfer of passengers between it
and the system operating in territory contiguous to its
boundaries;

(q) To fix and establish from time to time, such fees,
rates or other charges and routes, time schedules and
standards of service as will provide revenues in each
year at least sufficient to pay the principal of and interest
on all bonds issued by the authority, and reasonable
reserves therefor, as the same shall become due, together
with the cost of administration, maintenance, repair and
operation of such system or systems in each year, together
with all other payments required in each such year by
the resolution which authorized the issuance of such
bonds, or the trust indenture securing the same, includ-
ing, without limitation, reasonable reserves or margins
for any of such purposes: Provided, That prior to the
initial implementation of any fees, rates or other charges
and any subsequent increase thereof affecting generally
the users of the system, every authority shall hold a
public hearing in the service area of the system on such
proposed fees, rates or other charges or any increase
thereof, and each authority shall publish a notice of the
time and place of said hearing as a Class II legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the service area of the
authority. Such notice shall plainly state the fees, rates
or other charges or any increase thereof to be imposed,
the time when they shall go into effect, and the time
and place where such public hearing will be conducted.
Said public hearing shall not be less than ten days sub-
sequent to the date of the last publication of such notice.
At such hearing all objections and suggestions shall be
heard, and after the hearing has been held the authority
shall take such action as it shall deem proper: Provided,
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however, That the foregoing public hearing and notice
requirements shall not apply to fees, rates or charges
imposed for charter or special services rendered by said
authorities;

(r) To issue revenue bonds of the authority for any
of its purposes or projects and to refund its bonds, all
as provided in this article;

(s) To encumber or mortgage all or any part of its
facilities and equipment;

(t) To prepare plans for and assist in the relocation
of persons displaced by the authority and to make re-
location payments to or with respect to such persons for
moving expenses and losses of property for which re-
imbursement or compensation is not otherwise made,
including the making of such payments financed by the
federal government; and

(u) To do any and all things necessary or convenient
to carry out the powers given in this article unless other-
wise forbidden by law.

PART VI. DEVELOPMENT OF SYSTEM; FINANCING THEREOF.


1 In the discretion of the authority, any bonds issued
under the provisions of this article may be secured by
a trust indenture by and between such authority and
a corporate trustee, which may be any trust company
or banking institution having the powers of a trust
company within or without the state, or any person
in the United States having power to enter into the
same, including any federal agency.

9 Any resolution authorizing the issuance of such bonds
or any trust indenture securing the same may contain
such provisions for protecting and enforcing the rights
and remedies of the bondholders and of the trustee as
the authority may deem necessary and proper and
not in violation of law, including provisions pledging
all or any part of the revenues of such authority or
encumbering all or any part of the facilities and equip-
ment of such authority to secure the payment of the
bonds subject to such agreements with bondholders as
may then exist; limiting the purpose to which the pro-
ceeds of sale of any bonds then or thereafter to
be issued may be applied; defining the duties of
such authority in relation to the acquisition, construc-
tion, improvement, maintenance, repair, operation and
insurance of any project or projects in connection with
which such bonds shall have been authorized; providing
for the custody, safeguarding and application of all
moneys; limiting the issuance of additional bonds; pre-
scribing a procedure by which the provisions of any
trust indenture or contract with bondholders may be
amended or modified; requiring such authority to fix
and establish such fees, rates or other charges and routes,
time schedules and standards of service as will provide
revenues in each year at least sufficient to pay the prin-
cipal of and interest on all bonds issued by such
authority and reasonable reserves therefor as the
same shall become due, together with the cost of ad-
ministration, maintenance, repair and operation of such
system or systems in each year, including, without
limitation, reasonable reserves or margins or sinking
funds for any of such purposes, defining the acts or
omissions to act which shall constitute a default in the
duties of such authority to the holders of its bonds and
providing the rights and remedies of such holders and
of the trustee in the event of default and the manner
and terms upon which such default may be declared
cured; vesting in a trustee such property rights, pow-
ers and duties, in trust, as such authority may deter-
mine; and such other additional provisions as such
authority may deem necessary or desirable for the
security of the holders of bonds issued under the pro-
visions of this article, notwithstanding that such other
provisions are not expressly enumerated in this section,
it being the intention to grant to the authority the
power to make any and all covenants or agreements
necessary to secure greater marketability of bonds issued
under the provisions of this article, as fully and to the
same extent as such covenants or agreements could be
made by a private corporation rendering similar ser-
vices, and to grant to such authorities full and complete
power to enter into any contract, covenant or agreement
with holders of bonds issued under the provisions of
this article not inconsistent with this article or the
constitution of this state.

PART VIII. INDEBTEDNESS; EXEMPTION FROM TAXATION.


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 em-
ployee of the state or any of its political subdivisions.
Property, real and personal, owned by or leased and
used exclusively by each authority shall be public prop-
erty and therefore exempt from taxation in accordance
with section nine, article three, chapter eleven of this
code. The revenue bonds or other evidences of in-
debtedness issued pursuant to the provisions of this
article, and the interest thereon, shall be exempt from
taxation, except inheritance and transfer taxes.

PART X. CONFLICT OF INTEREST; BIDS; LEGAL
INVESTMENTS; CONSTRUCTION.

§8-27-25. Article constitutes complete authority; liberal con-
struction.

1 This article shall constitute full and complete au-
thority for the creation of any authority and for carrying
out the powers and duties of any such authority and for
the issuance, sale or exchange of revenue bonds by such
authority as provided in this article. The provisions of
this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals shall be required in connection therewith except as may be prescribed by this article.

CHAPTER 24A. MOTOR CARRIERS OF PASSENGERS AND PROPERTY FOR HIRE.

Article

1. Purposes, Definitions and Exemptions.

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifically otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the transportation of United States mail or in the transportation of newspapers;

6 (2) Motor vehicles owned and operated by the United States of America, the state of West Virginia, or any county, municipality or county board of education, urban mass transportation authority established and maintained pursuant to article twenty-seven, chapter eight of this code, or by any department thereof, and any motor vehicles operated under a contract with a county board of education exclusively for the transportation of children to and from school or such other legitimate transportation for the schools as the commission may specifically authorize;

17 (3) Motor vehicles used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants, and in the transportation of agricultural or horticultural supplies to such farms or orchards to be used thereon;

25 (4) Motor vehicles used exclusively in the transportation of human or animal excreta;
(5) Motor vehicles used exclusively in ambulance service, or duly chartered rescue squad service;

(6) Motor vehicles used exclusively for volunteer fire department service;

(7) Motor vehicles used exclusively in the transportation of coal from mining operations to loading facilities for further shipment by rail or water carriers; and

(8) Motor vehicles used by petroleum commission agents and oil distributors solely for the transportation of petroleum products and related automotive products when such transportation is incidental to the business of selling said products: Provided, That the owner of said vehicle or vehicles shall have in effect at all times a public liability insurance policy with respect to said vehicle or vehicles and the driver or drivers thereof in an amount equal to or in excess of that required by the public service commission of West Virginia for similar vehicles under its jurisdiction, evidence of which insurance shall be filed with the motor carrier division of said public service commission. All such motor vehicles not so insured shall be subject to the provisions of this chapter.

ARTICLE 5. POWERS AND DUTIES OF COMMISSION.

§24A-5-1. Powers of commission as to rates, schedules, etc.

1 The commission shall have power to originate, establish, promulgate, change, investigate and enforce tariffs, rates, joint rates, classifications and schedules for all motor carriers, except urban mass transportation authorities established and maintained pursuant to article twenty-seven, chapter eight of this code, and the practices, services and facilities of all motor carriers. And whenever the commission shall, after hearing, find any existing rates, tariffs, joint rates, classifications, schedules, practices, services or facilities unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall, by order, fix and require reason-
AN ACT to amend article thirty-two, 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, authorizing municipalities and counties to make appropriations for public purposes to nonstock, nonprofit corporations chartered for the purpose of celebrating the American Revolution Bicentennial; subject to certain specified limitations.

Be it enacted by the Legislature of West Virginia:

That article thirty-two, 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, to read as follows:

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART V. CELEBRATION OF AMERICAN REVOLUTION BICENTENNIAL.

§8-32-5. Legislative findings; authority of municipalities and counties to make appropriations for bicentennial celebration; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public, programs, activities or events organized by a bicentennial commission, commit-
tee, group, organization or community, for the purpose of providing historical or cultural activities, municipal, county or regional improvement events or other programs related to the celebration of the American Revolution Bicentennial, is for the general welfare of the public and is a public purpose for which funds of a municipality or county may be lawfully expended. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) When a bicentennial commission, committee, group, organization or community (hereinafter referred to as corporation) is chartered as a nonstock, nonprofit corporation under the laws of this state, and, (1) is organized for the purpose of providing historical or cultural activities, municipal, county or regional improvement events or other programs related to the celebration of the American Revolution Bicentennial, and provides in its charter that its programs, activities or events shall be devoted to the use by the public for all purposes set forth in such charter without regard to race, sex, religion, national origin or economic circumstance, and free from charge except such as is necessary to provide the means to keep any buildings, facilities or grounds in proper condition and repair, or to pay the cost of insurance, care, management, operations, programs, activities or events, so that the general public may have the benefit of such establishments, programs, activities or events 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, any municipality in the county in which such corporation is operating, and the county commission of any county in which such corporation is operating, are hereby empowered and authorized to appropriate funds to any such corporation, subject to the provisions and limitations set forth in this section.
(c) Any appropriation shall be made from the general funds of such municipality or county that have not been otherwise appropriated: Provided, That no appropriation shall be made after December thirty-one, one thousand nine hundred seventy-six. Each corporation receiving an appropriation from a municipality or county shall upon demand at any time make a full and complete accounting of all such funds to such governing body of the municipality or to the county commission, as the case may be, and shall in every event without demand make to such governing body or county commission an accounting thereof.

(d) Under no circumstances whatever shall any action taken by any municipality or county commission 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 commission, any member of such governing body or county commission or any municipal or county official or employee.

(e) No municipality or county commission may appropriate funds to any corporation under this article unless and until such corporation has recorded a certified copy of its corporate charter in the county in which the principal office of such corporation is located, and has received from the prosecuting attorney a written statement that the charter of such corporation contains the necessary language to comply with the provisions of this article.

(f) No officer, agent or instrumentality of the state shall require that local government funds be appropriated or expended under this section as a prerequisite for, or as matching funds for, a federal or state grant or as a prerequisite to entitle such corporation to receive a grant of federal or state funds.
AN ACT to amend and reenact sections three and four, article thirty-three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to municipal, county and municipal-county building commissions; providing for the appointment of members to such commissions and the manner of filling vacancies; providing the powers and duties of such commissions; and making the power of eminent domain subject to limitations imposed by the governmental bodies creating such commissions.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article thirty-three, 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 33. INTERGOVERNMENTAL RELATIONS—BUILDING COMMISSIONS.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

§8-33-4. Powers.

§8-33-3. Authority vested in board; composition of board; appointment; qualifications and terms of members; vacancies; reimbursement of expenses.

All property, powers and duties and the management and control of each commission shall be vested in a board consisting of representatives appointed by the governmental body or bodies creating and establishing such commission. In the case of a municipal building commission or a county building commission such board shall consist of not less than three nor more than five members and in the case of a municipal-county building commission each participating municipality shall appoint two members and each participating county shall appoint three members. All members of any board shall be appointed...
for terms of five years. Prior to making the initial appointments to the board, the governmental body or bodies shall make such initial appointments so that approximately one fifth of the total number of members of the board shall be appointed for a term of one year, approximately one fifth of the total number of members of the board shall be appointed for a term of two years, approximately one fifth of the total number of members of the board shall be appointed for a term of three years, approximately one fifth of the total number of members of the board shall be appointed for a term of four years, and approximately one fifth of the total number of members of the board shall be appointed for a term of five years. As the term of each such initial appointee expires the successor to fill the vacancy created by such expired term shall be appointed for a term of five years.

The ordinance or order creating a building commission may provide for the manner of appointments to the membership of such commission by the governmental body creating such commission, which, in the case of a county, shall be the county commission or other tribunal in lieu thereof and, in the case of a municipality, shall be the governing body thereof.

If any member of any board die, resign or for any reason cease to be a member of the board, the governmental body which such member represented shall appoint another individual to fill the unexpired portion of the term of such member. No more than two thirds of the total number of members of the board of each commission shall be from the same political party and no member of any such board shall hold any office (other than the office of notary public) or employment under the United States of America, the state of West Virginia, any county or political subdivision thereof, or any political party. All members of any board shall be residents of the municipality or county for which appointed. No member of any board shall receive any compensation for his services as such, but each member shall be reimbursed by the commission for any reasonable and necessary expenses actually incurred in the discharge of his duties as a member of the board.

§8-33-4. Powers.

Each commission shall have plenary power and authority to:
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(a) Sue and be sued;
(b) Contract and be contracted with;
(c) Adopt, use and alter a common seal;
(d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;
(e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;
(f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);
(g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including but not limited to the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;
(h) Sell, encumber or dispose of any property, real or personal;
(i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein;
(j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of article sixteen of this chapter, without regard to the extent provided in section five of this article, to the limitations specified in said article sixteen, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each commission is a “governing body” as that term is used in said article sixteen only;
(k) Subject to such reasonable limitations and conditions as the governmental body or all of the governmental bodies creating and establishing such building commission may prescribe by ordinance or by order, exercise the power of eminent domain in the manner provided in chapter fifty-four of this code for business corporations, for the purposes set forth in subdivision (f) of this section, which purposes are hereby declared public purposes for which private property may be taken or damaged;

(1) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper, but when any municipality or county commission is a lessee under any such lease, such lease must contain a provision granting to such municipality or county commission the option to terminate such lease during any fiscal year covered thereby; and

(m) Do all things reasonable and necessary to carry out the foregoing powers.

CHAPTER 88
(S. B. 320—By Mr. Susman)

[Passed February 24, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to organization and administration of the department of natural resources and requiring the director of the department to establish and maintain a uniform bookkeeping system and an internal auditing system for all state parks.

Be it enacted by the Legislature of West Virginia:

That section nine, article one, 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 1. ORGANIZATION AND ADMINISTRATION.

§20-1-9. Fiscal management; bookkeeping and auditing system for state parks.

Subject to any controlling rules and regulations of the department of finance and administration relating to state fiscal management policies and practices, the director shall establish in the department an adequate budget, finance and accounting system which will currently and accurately reflect the fiscal operations and conditions of the department at all times. The department's accounting and auditing services shall be on a fiscal-year basis.

The director shall select and designate a competent and qualified person as department fiscal officer who, under the supervision of the director, shall be responsible for all budget, finance and accounting services of the department. All moneys received by the department shall be recorded and shall be paid as special revenue to the department of natural resources, as provided in subdivision (i), section two, article two, chapter twelve of this code, except in cases wherein certain receipts of the department are by specific provisions of this chapter required to be paid into some special fund or funds.

The director shall establish and maintain a uniform bookkeeping system for all state parks. The system shall be designed so that every financial transaction, excluding those under concessionaire license agreements, that takes place involving each state park respectively shall be recorded by the superintendent thereof. Ledgers of such transactions shall be maintained by the superintendent in each state park.

The director shall establish and maintain an internal auditing system for all state parks. The director is hereby authorized to employ at least two internal auditors who shall perform continuous internal audits of the ledgers and financial transactions in each state park, including those of state park concessionaires. The results of the internal audits shall be reported to the legislative auditor quarterly.
AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to requiring person convicted for violating any criminal law of the state resulting in injury, death or destruction of game or protected species of animal to forfeit the cost of the replacement thereof; setting forth replacement values for game and protected species of animals; and procedures for collecting, depositing and using such forfeitures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5a. Forfeiture by person causing injury, death or destruction of game or protected species of animal; replacement values thereof; forfeiture procedures.

1 Any person who is convicted of violating any criminal law of this state and the violation causes or results in the injury, death or destruction of game, as defined in section two, article one of this chapter, or a protected species of animal, in addition to any other penalty to which he is subject, shall forfeit the cost of replacing such game or protected species of animal to the state.

8 For such purpose, replacement values for game and protected species of animals are as follows:

10 (1) For each game fish or each fish of a protected species taken illegally other than by pollution kill, five dollars for each pound and any fraction thereof;
13  (2) For each bear, elk or eagle, five hundred dollars;  
14  (3) For each deer or raven, two hundred dollars;  
15  (4) For each wild turkey, hawk or owl, one hundred  
16 dollars;  
17  (5) For each beaver, otter or mink, twenty-five dollars;  
18  (6) For each muskrat, raccoon, skunk or fox, ten  
19 dollars;  
20  (7) For each rabbit, squirrel, opossum, duck, quail,  
21 woodcock, grouse or pheasant, three dollars; and  
22  (8) For any other game or protected species of  
23 animal, five dollars each.  
24  The court upon convicting such person shall order him  
25 to forfeit to the state the proper amount based on the  
26 values set forth herein for the game or protected  
27 species of animal the injury, death or destruction of  
28 which he caused or which resulted from his criminal act.  
29 If two or more defendants are convicted for the same  
30 violation causing, or resulting in, the injury, death or  
31 destruction of game or protected species of animal, the  
32 forfeiture shall be declared against them jointly and  
33 equally. The forfeiture shall be paid by the person so  
34 convicted and ordered to pay the forfeiture within the  
35 time prescribed by the court, but not exceeding sixty  
36 days. In each instance, the court shall pay such forfeiture  
37 to the state treasury where it shall be credited to the  
38 department of natural resources to be used only for the  
39 replacement, habitat management or enforcement pro-  
40 grams for injured, killed or destroyed game or protected  
41 species of animal.

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CHAPTER 90
(S. B. 531—By Mr. Gainer)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twelve and twenty-  
two, article two, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, relating to transportation of wildlife out of state; providing penalties; and requiring any deer killed by an arrow to be delivered to a conservation officer for checking.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-12. Transportation of wildlife out of state; penalties.
§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

§20-2-12. Transportation of wildlife out of state; penalties.

1 No person shall at any time transport or have in his possession with the intention of transporting beyond the limits of the state, any species of wildlife or any part thereof killed, taken, captured or caught within this state: Provided, That a nonresident legally entitled to hunt and fish in this state may take with him personally, when leaving the state, any wildlife that he has lawfully taken or killed, not exceeding, during the open season, the number that any person may lawfully take or kill in any two days. This section shall not apply to persons legally entitled to propagate and sell wild animals, wild birds, fish, amphibians and other forms of aquatic life.

14 Any person violating the provisions of this section by transporting or possessing with the intention of transporting beyond the limits of this state, deer or wild boar, shall be deemed to have committed a separate offense for each animal so transported or possessed. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty dollars nor more than three hundred dollars and be imprisoned in the county jail not less than ten nor more than sixty days.
§20-2-22. Tagging, removing, transporting and reporting deer and wild turkey.

Each person killing a deer or wild turkey found in a wild state shall immediately after removing the entrails, but in any event within one hour and before transporting or removing the carcass in any manner from where it was killed, complete and attach thereto the game tag supplied with his or her hunting license. The game tag shall remain on the carcass until it is dressed for consumption.

If such wild turkey or deer has been lawfully killed by a person not required to secure a license, or by a person who has previously killed another species of game bird or game animal for which a game tag is required, or by a person who has lost the tag supplied with his or her license, such person shall make and attach a tag to the carcass within the time specified after such killing. The tag shall bear in plain English the name and address of the hunter, and the date of killing, or, if holding a license, the license number and the date and county where the game was killed.

The carcass of such wild turkey or deer shall be delivered to a conservation officer or an official checking station, unless such deer was killed with an arrow in which case the carcass of such deer shall be delivered to a conservation officer, for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made: Provided, however, That if no conservation officer can be located, the carcass of such deer shall be delivered to a member of the department of public safety, the county sheriff or any of his deputies, for checking and retagging before it is either skinned or transported beyond the boundaries of the county adjacent to that in which the kill was made.

Every failure to have said tag or tags attached, or removing or transporting such animal in any manner, or failure to deliver the carcass to a conservation officer or other officer specified in this section or an official checking station for checking, as herein provided, shall subject
the person so neglecting to the penalties provided in this article.

Any deer or wild turkey found and not tagged as herein provided shall be forfeited to the state of West Virginia to be disposed of as hereinafter provided and may be seized by any officer whose duty it is to enforce the game laws.

CHAPTER 91

(H. B. 937—By Mr. Smith)

[Passed March 11, 1976; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increase in fees for issuance of hunting and fishing licenses by agents appointed by the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

That section thirty-three, 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.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

The director shall have authority to appoint within any county as many persons as his agents, with authority to issue licenses under the provisions of this article, as may, in his opinion, be necessary, in addition to the clerk of the county commission of the county, to serve the convenience of the public in procuring such licenses. Each person so appointed as such agent and license issuing authority shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director at not less than one thousand dollars,
conditioned upon the faithful performance of his obligation
to issue licenses only in conformity with the provisions of
this article and to account for all license fees received by
him. The form of such bond shall be prescribed by the
attorney general. No person, other than those designated as
issuing agents by the director, shall sell licenses or buy
the same for the purposes of resale.

After the thirty-first day of December, one thousand nine
hundred seventy-six, except when any such license is pur-
chased from a state official, every person making application
for any such license shall pay, in addition to the license fee
prescribed therefor in the later sections of this article, an addi-
tional fee of twenty-five cents to any county official issuing
the license and all such fees collected by county officials
shall be paid by them into the general fund of the county
treasury, or an additional fee of fifty cents as compensation for
any agent issuing the license: Provided, That only one fee
of twenty-five cents or fifty cents shall be collected by such
county officials or agents, respectively, for issuing two or
more licenses at the same time for use by the same person or
for issuing combination resident statewide hunting, trapping
and fishing Class AB licenses.

CHAPTER 92
(Com. Sub. for S. B. 183—By Mr. Benson)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article five-a,
chapter twenty of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to requir-
ing a permit from the department of natural resources
for any preparation plant.

Be it enacted by the Legislature of West Virginia:

That section five, 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-5. Prohibitions; permits required.

1. (a) The chief may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article.

(b) It shall be unlawful for any person, unless he holds a permit therefrom from the department, which is in full force and effect, to:

1. Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any establishment to flow into the waters of this state;

2. Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;

3. Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

4. Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

5. Extend, modify or add to any establishment, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

6. Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or
dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, That the department's permit shall only be required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit shall be required for any preparation plant: Provided, however, That unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandonment shall be subject to modification or amendment upon application by the permit holder to the chief and approval of such modification or amendment by the chief; (7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

CHAPTER 93

(S. B. 568—Originating in the Senate Committee on Natural Resources)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact section four, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salary of surface-mining reclamation supervisors and inspectors.
Be it enacted by the Legislature of West Virginia:

That section four, article six, 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 6. SURFACE MINING AND RECLAMATION.

§20-6-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the director of natural resources: Provided, That the provisions of this section shall not affect the status of persons employed on the effective date of this article as reclamation inspectors under the former provisions of this article, if such persons are qualified civil service employees.

Every surface-mining reclamation supervisor or inspector shall be paid not less than fifteen thousand dollars per year.

CHAPTER 94

(Com. Sub. for H. B. 1618—By Mr. Allen and Mr. Chafin)

[Passed March 17, 1976; in effect July 1, 1976. Approved by the Governor.]
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.

§20-7-1. Chief conservation officer; conservation officers; special and emergency conservation officers; subsistence allowance; expenses.

The department's law-enforcement policies, practices and programs 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 require-
ments 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 sub-

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 em-

The chief conservation officer, acting under supervision of  
the director, is also authorized to appoint as special con-

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.

The chief conservation officer shall designate the area of
primary residence of each conservation officer, including himself, and in lieu of providing quarters and meals in such area as designated and assigned, the chief conservation officer and each full-time uniformed conservation officer, whose primary duty is law enforcement, shall be paid, in addition to salary, a subsistence allowance to be provided for by appropriation of the Legislature. Since the area of business activity of the department is actually anywhere within the territorial confines of the state of West Virginia, such subsistence allowance shall be paid as the most convenient means of providing meals and quarters in the area of assignment; such subsistence allowance shall be paid, together with actual expenses incurred, whenever duties are performed outside the area of primary assignment and still within the state.

CHAPTER 95
(Com. Sub. for H. B. 1059—By Mr. Goldstrom and Mrs. Withrow)

[Passed March 1, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT directing the chief of the division of water resources to provide for the destruction and removal of a dam on the Cacapon River.

Be it enacted by the Legislature of West Virginia:

DEPARTMENT OF NATURAL RESOURCES.

§1. Destruction of dam on the Cacapon River.

The chief of the division of water resources of the department of natural resources is hereby directed, under the supervision of the director of the department of natural resources, to provide for the safe and expeditious destruction and removal of the formerly owned Potomac light and power company dam, located on the Cacapon River in Morgan County, now owned by the department.
AN ACT to amend and reenact sections two and two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of certain state officers and relating to increasing the salaries of certain appointive state officers; effective date; and provisions relating to filing of sworn statement by state appointive officer as to compensation relative to his employees, with state officer's increase contingent thereon.

_Be it enacted by the Legislature of West Virginia:_

That sections two and 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.**

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. _Salaries of certain state officers._

1. Effective on and after the first Monday after the second Wednesday in January, one thousand nine hundred seventy-seven, the salary of the governor shall be fifty thousand dollars per year.

2. The salary of the attorney general shall be thirty-five thousand dollars per year; the salary of the auditor shall be thirty-two thousand five hundred dollars per year; the salary of the secretary of state shall be thirty thousand dollars per year; the salary of the commissioner of agriculture shall be thirty-two thousand five hundred dollars per year; and the salary of the state treasurer shall be thirty-five thousand dollars per year.

§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, each of the following named appointive state officers...
shall be appointed by the governor, by and with the advice and
cconsent of the Senate. Each of such appointive state officers
shall serve at the will and pleasure of the governor for the
term for which the governor was elected and until the respec-
tive state officers’ successors have been appointed and qualifi-
ced. Each of such appointive state officers shall hereafter be
subject to the existing qualifications for holding each such re-
spective office and each shall have and is hereby granted all
of the powers and authority and shall perform all of the func-
tions and services heretofore vested in and performed by virtue
of existing law respecting each such office. Beginning on the
first day of July, one thousand nine hundred seventy-six, the
annual salary of each such named appointive state officer shall
be as follows:

The commissioner of highways, thirty-five thousand dollars;
director of mental health, thirty thousand dollars; commissioner
of commerce, twenty-five thousand dollars; tax commissioner,
twenty-seven thousand five hundred dollars; director of depart-
ment of natural resources, twenty-seven thousand five hundred
dollars; commissioner of department of welfare, twenty-seven
cousand five hundred dollars; alcohol beverage control com-
mmissioner, twenty-five thousand dollars; commissioner of pub-
ic institutions, twenty-five thousand dollars; commissioner
of employment security, twenty-five thousand dollars; com-
mmissioner of labor, twenty-two thousand five hundred dol-
ars; director of personnel civil service commission, twenty-
two thousand five hundred dollars; superintendent of de-
partment of public safety, twenty-two thousand five hundred
dollars; insurance commissioner, twenty-two thousand five hun-
dred dollars; commissioner of motor vehicles, twenty-two
cousand five hundred dollars; commissioner of banking,
twenty-two thousand five hundred dollars; members of the
board of probation and parole, sixteen thousand dollars; non-
intoxicating beer commissioner, nineteen thousand dollars; state
historian and archivist, twenty thousand dollars; adjutant
general, twenty-one thousand five hundred dollars; director
of emergency services, eighteen thousand five hundred dollars;
director of veterans affairs, twenty-one thousand five hundred
dollars; members of the board of review of employment
security, fourteen thousand dollars; members of workmen’s
compensation appeal board, fourteen thousand dollars; state workmen's compensation commissioner, twenty-five thousand dollars; finance and administration commissioner, twenty-five thousand dollars; and director of the department of mines, twenty-eight thousand five hundred dollars.

No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless such appointive state officer shall have first filed with the state auditor and the legislative auditor a sworn statement, on a form to be prescribed by the attorney general, certifying that such spending unit is in compliance with any general law providing for a salary increase for his employees. The attorney general shall prepare and distribute such form to the affected spending units.

CHAPTER 97

(Com. Sub. for H. B. 1564—By Mr. Seibert)

[Passed May 15, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections one-c, one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the salary and mileage allowance for the supervising inspector, oil and gas inspectors and oil and gas examining board.

Be it enacted by the Legislature of West Virginia:

That sections one-c, one-d and one-e, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1c. Oil and gas inspectors—Supervising inspectors; tenure; oath and bond.

§22-4-1d. Same—Eligibility for appointment; qualifications; salary; expenses; removal.

§22-4-1e. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; chairman; oaths of members; meetings; powers and duties generally.
§22-4-1c. Oil and gas inspectors—Supervising inspectors; tenure; oath and bond.

1 Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

2 The deputy director for oil and gas shall divide the state so as to equalize, as far as practical, the work of each oil and gas inspector. He may designate a supervising inspector and other inspectors as may be necessary, and may designate their places of abode, at points convenient to the accomplishment of their work.

3 The deputy director for oil and gas shall make each appointment from among the three qualified eligible candidates on the register having the highest grades. The director of the department of mines or the deputy director for oil and gas 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 or deputy director, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors’ examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors’ examining board, after hearing, if it finds that the action of striking such name 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.

4 Any candidate passed over for appointment for three years shall be automatically stricken from the register.

5 After having served for a probationary period of one year to the satisfaction of the deputy director for oil and gas and the director, an oil and gas inspector or supervising inspector shall have permanent tenure until he becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section one-d of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any oil or gas drilling or producing venture or
of any coal mine in this state. Before entering upon the
discharge of his duties as an oil and gas inspector or super-
vising 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 supervising inspector and oil and gas inspectors shall
perform such duties as are imposed upon them by this
chapter, and related duties assigned by the deputy director
for oil and gas upon approval of the director.

§22-4-1d. Same—Eligibility for appointment; qualifications; salary;
expenses; removal.

(a) No person shall be eligible for appointment as an
oil and gas inspector or supervising inspector unless, at
the time of his probationary appointment he (1) is a
citizen of West Virginia, in good health, and of good
character, reputation and temperate habits; (2) has had
at least ten years' practical experience in the oil and gas
industry, at least five years of which, immediately pre-
ceding his original appointment shall have been in the
oil and gas industry in this state: Provided, That a diploma
in geology or in mining or petroleum engineering shall be
considered the equivalent of five years' practical experience;
and (3) has good theoretical and practical knowledge of
oil and gas drilling and production methods, practices and
techniques, sound safety practices and applicable mining
laws.

(b) In order to qualify for appointment as an oil and
gas inspector or supervising inspector, an eligible applicant
shall submit to a written and oral examination by the
oil and gas inspectors' examining board and shall furnish
such evidence of good health, character and other facts
establishing eligibility as such board may require. If such
board finds after investigation and examination that an ap-
plicant (1) is eligible for appointment and (2) has passed
all written and oral examinations, the board shall add such
applicant's name and grade to the register of qualified eligible candidates and certify its action to the deputy director for oil and gas. No candidate's name shall remain on the register for more than three years without requalifying.

(c) The salary of the supervising inspector shall be not less than fifteen thousand two hundred twenty-two dollars per annum and not more than fifteen cents per mile traveling expenses. Salaries of inspectors shall be not less than thirteen thousand three hundred twenty-five dollars per annum and traveling expenses for personal car not more than fifteen cents per mile. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by the deputy director for oil and gas, subject to the approval of the director of the department of mines and oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, the deputy director for oil and gas shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

(d) An inspector or the supervising inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by the deputy director for oil and gas or the director of the department of mines whenever either has reasonable grounds to believe and does believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the oil and gas inspectors' examining board by the deputy director for oil and gas or the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition the deputy director for oil and gas or the director of the de-
part of mines for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, the deputy director for oil and gas or the director of the department of mines shall cause an investigation of the facts to be made. If, after such investigation, the deputy director for oil and gas or the director finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, he shall file a petition with the oil and gas inspectors' examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by the deputy director for oil and gas or by the director of the department of mines seeking removal of an inspector or the supervising inspector, the oil and gas inspectors' examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors' examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown.

The chairman of the board, the deputy director for oil and gas, and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

An inspector or supervising inspector who shall willfully refuse or fail to appear before such board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to accept a grant of immunity from
104 prosecution on account of any relevant matter about which
105 he may be asked to testify at such hearing before such
106 board, shall forfeit his position.

107 If, after hearing, the oil and gas inspectors' examining
108 board finds that the inspector or supervising inspector should
109 be removed, it shall enter an order to that effect. The decision
110 of the board shall be final and shall not be subject to judicial
111 review.

§22-4-1e. Oil and gas inspectors' examining board created; com-
1 position; appointment, term and compensation of
2 members; chairman; oaths of members; meetings;
3 powers and duties generally.

1 There is hereby created an oil and gas inspectors' ex-
2 amining board consisting of five members who, except for
3 the public representative on such board, shall be appointed
4 by the governor, by and with the advice and consent of
5 the Senate. Members may be removed only for the same
6 causes and like manner as elective state officers. One mem-
7 ber of the board who shall be the representative of the public,
8 shall be a professor in the petroleum engineering department
9 of the school of mines at West Virginia University appointed
10 by the dean of said school; two members shall be persons
11 who by reason of previous training and experience may rea-
12 sonably be said to represent the viewpoint of independent oil
13 and gas operators; and two members shall be persons who
14 by reason of previous training and experience may reasonably
15 be said to represent the viewpoint of major oil and gas
16 producers.

17 The deputy director for oil and gas shall be an ex of-
18 ficio member of the board and shall serve as secretary of
19 the board without additional compensation, but he shall
20 have no right to vote with respect to any matter before the
21 board.

22 The members of the board, except the public representa-
23 tive, shall be appointed for overlapping terms of eight
24 years, except that the original appointments shall be for
25 terms of two, four, six and eight years, respectively. Any
26 member whose term expires may be reappointed by the
27 governor.
Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board; and shall receive mileage at the rate of not more than fifteen 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 section five, article four of the constitution of West Virginia.

The 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 two members, or on the written request of the deputy director for oil and gas 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 voting members shall constitute a quorum for the transaction of business.

In addition to other powers and 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 an oil and gas inspector and supervising inspector and forms for written examinations to test the qualifications of candidates, with such distinctions, if any, in the forms for oil and gas inspector and supervising inspector as the board may from time to time deem necessary or advisable;

2. Adopt and promulgate reasonable rules and regulations relating to the examination, qualification and certification of candidates for appointment, and relating to hearings for removal of inspectors or the supervising inspector, 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. 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 to a candidate the written portion of the examination;

(4) Prepare and certify to the deputy director for oil and gas and the director of the department of mines a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. 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 deputy director for oil and gas and the director of the department of mines a revised and corrected register of qualified eligible candidates for appointment, 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 persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three 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 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 inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by the deputy director for oil and gas pursuant to the provisions of section one-a of this article: Provided, That in order to appeal from any order of suspension, an aggrieved inspector or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of the deputy director for oil and gas unless it be satisfied from a clear preponderance of the evidence that the deputy director for oil and gas has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state service; making such recommendations as the board considers to be in the public interest; and

(10) Render such advice and assistance to the deputy director for oil and gas as he shall from time to time determine necessary or desirable in the performance of his duties.

CHAPTER 98

(Com. Sub. for S. B. 279—By Mr. Brotherton, Mr. President, and Mr. Benson)

[Passed March 16, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-c, relating to the West Virginia petroleum products franchise act; providing for definitions; providing certain provisions to which franchise agreements are subject; providing for certain disclosures relating to such agree-
ments; providing how such agreements may be terminated or canceled; providing when options to renew need not be honored and providing for damages and remedies for violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA PETROLEUM PRODUCTS FRANCHISE ACT.

§47-11C-1. Short title.
§47-11C-2. Definitions.
§47-11C-3. Franchise agreement.
§47-11C-4. Disclosures to prospective dealers.
§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.
§47-11C-6. Damages; remedies.
§47-11C-7. Application.
§47-11C-8. Effective date.

§47-11C-1. Short title.

1 This article shall be known and may be cited as the “West Virginia Petroleum Products Franchise Act.”

§47-11C-2. Definitions.

1 As used in this article:
2 (1) “Dealer” means any person, other than an agent or employee of a producer, who is engaged in the retail sale of petroleum products under a franchise agreement as defined by this section;
3 (2) “Franchise” or “franchise agreement” means a written agreement between a producer and a dealer under which the dealer is granted the right to use a trademark, trade name, service mark, or other identifying symbol or name owned by the producer, or a written agreement between a producer and a dealer by which the dealer is granted the right to occupy premises owned, leased or controlled by the producer, for the purpose of engaging in the retail sale of petroleum products of the producer;
(3) "Good cause" means failure of the dealer to make good faith effort to comply with any material requirement of a franchise agreement;

(4) "Producer" means every person who produces, refines, manufactures, processes or otherwise alters any motor fuel and other petroleum products for sale or use in this state;

(5) "Service station" means any filling station, store, garage or other place of business in this state for the retail sale of motor fuel and other petroleum products.

§ 47-11C-3. Franchise agreement.

Every franchise agreement between a producer and a dealer shall be subject to the following provisions whether or not they are expressly set forth in the agreement:

(1) The term of the initial agreement between the producer and the dealer relating to specific premises shall not be less than one year; the term of the second agreement between the producer and the dealer, relating to the same premises, shall also be for not less than one year; and the term of all subsequent agreements between the producer and the dealer, relating to the same premises, shall be of not less than two years. This subdivision shall not be construed to require a term of greater duration than the remainder of the term to which the producer is entitled under its lease without regard to any renewal rights which the producer may have;

(2) No producer shall require a dealer to keep his station open for business more than seventy-two hours per week;

(3) The dealer alone shall determine his retail sale price of the products listed in the franchise agreement;

(4) In the absence of any express agreement, the dealer shall not be required to participate financially in the use of any premium, coupon, giveaway or rebate
in the operation of his retail outlet: Provided, That the
producer may require the dealer to distribute to cus-
tomers premiums, coupons or giveaways which are
furnished to the dealer at the expense of the producer;

(5) In the event of any termination, cancellation
or failure to renew, whether by mutual agreement
or otherwise, a producer shall, within thirty days, tender
to the dealer, for the products he sold to the dealer
which the dealer has been unable to sell, except to the
extent that such may be damaged or not resalable, the
full price originally paid by the dealer for the products:
Provided, That the producer shall have the right to apply
the proceeds against any existing indebtedness owed to
him by the dealer and that such repurchase obligation is
conditioned upon there being no other claims or liens
against such products by or on behalf of other creditors of
the dealer. Such repurchase shall not constitute a waiver
of the dealer's other rights and remedies under this
article. If the producer does not make such tender within
thirty days, the dealer may sell the products for a
price which is not less than the full price originally paid
by the dealer for such products, and shall have a cause
of action against the producer for the balance;

(6) The right of either party to a trial by jury or to
the interposition of counterclaims or crossclaims shall not
be waived;

(7) Liability imposed on, and rights granted to, and
person by this article shall not be waived;

(8) The dealer shall not be required to forego his
right of free association with other dealers for any lawful
purpose;

(9) No transfer or assignment of a franchise by a
dealer to a qualified transferee or assignee shall be un-
reasonably disapproved by the producer;

(10) No producer shall require any dealer to sell
exclusively any products, other than petroleum products,
that such producer offers for sale.
§47-11C-4. Disclosures to prospective dealers.

1 A producer shall disclose in writing to any prospective dealer the following information, before any franchise is concluded:

4 (1) The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period which the location has been supplied by the producer, whichever is shorter;

9 (2) The name and last known home address of the previous dealer or dealers for the last three years, or for and during the entire period for which the location has been supplied by the producer, whichever is shorter, and the reason or reasons for the termination of each dealer franchise;

(3) Any legally binding commitments for the sale, demolition or other disposition of the location;

(4) The training programs, if any, and the specified goods and services the producer will provide for and to the dealer;

(5) Full disclosure of any and all obligations which will be required of the dealer, including, but not limited to, any obligation to exclusively deal in any of the products of the producer, its subsidiaries, any other company or any advertising and promotional items that the dealer must accept;

(6) Full disclosure of all restrictions on the sale, transfer, renewal and termination of the agreement.

§47-11C-5. Termination of or refusal to renew franchise; notice; grounds.

1 (1) No producer directly or indirectly through any officer, agent or employee shall terminate, cancel, or refuse to renew a franchise without good cause or other grounds as provided in this section, and without having first given written notice to the dealer. Such notice shall contain a statement of the producer's in-
tention to terminate, cancel, or refuse to renew, the reasons therefor, the date on which such action shall take effect, and a reference to this article and the remedies available to such dealer. Such notice must be given at least sixty days in advance of the action to be taken, except where the premises have been abandoned by the dealer for five consecutive days or where the producer and dealer mutually agree in writing to a shorter notice period. In circumstances where it would not be reasonable to provide advance notice of sixty days, the franchiser shall provide notice at the earliest date as is reasonably practicable. In no event shall any such notice period be less than thirty days.

(2) It shall be a violation of this article for any producer to directly or indirectly terminate, cancel or fail to renew an agreement with the dealer unless the termination, cancellation or failure to renew is for good cause. Good cause includes but is not limited to:

(a) Where the dealer has filed for or has been declared bankrupt or has petitioned for a reorganization, creditor arrangement or insolvency under the applicable statutes;

(b) Where there has been dissolution of a partnership or corporation or other entity carrying on the business;

(c) Where the producer has lost its right to grant possession of the premises;

(d) Where there has been willful or malicious destruction of the property of the producer by the dealer;

(e) Where there has been failure to pay financial obligations to the lessor producer when due, including, but not limited to, rents or payment for gasoline, petroleum products or accessories supplied to the lessee dealer by the lessor producer;

(f) Where there has been adulteration, commingling, mislabeling or misbranding of products supplied by the producer;

(g) Where there has been failure by the dealer to
comply with federal, state or local laws or regulations which are related to the operation of the gasoline service station business and which may affect the relationship between the producer and the dealer and such failure to comply therewith has or may have an adverse effect on the producer;

(h) Where there has been a conviction of the dealer of a criminal offense which is related to the operation of the business or would affect the ability of the dealer to operate the business or would tend to defame the reputation of the producer;

(i) Where there has been the death or other incapacity of the dealer to manage his station;

(j) Where the producer totally withdraws from marketing in the state in which the leased property is located;

(k) Where there has been the receipt by the producer of twenty-four written bona fide customer complaints concerning the dealer's quality of service or unsanitary restrooms within any twelve-month period;

(l) Where there has been expropriation, appropriation, condemnation, or other taking of the premises, in whole or in part, pursuant to the power of eminent domain;

(m) Where there has been substantial damage to or loss of the premises covered by the agreement.

(3) Nothing in subsection two shall prohibit termination, cancellation or failure to renew:

(a) If there is a failure on the part of the producer and the dealer to agree upon the terms of a renewal agreement where both parties have acted in good faith in trying to effect such a renewal;

(b) If there is a mutual termination executed by the parties;

(c) Where there is such cause for termination as a court of competent jurisdiction might find to be reasonable and just under all of the circumstances; or
(d) If the producer intends to use the premises for purposes other than the sale of motor fuel: Provided, that motor fuel may not be sold for a period of two years following the date of termination, cancellation or failure to honor the option to renew.

§47-11C-6. Damages; remedies.

1 (1) Any producer or dealer, aggrieved by a violation of this article may bring an action for legal or equitable relief, including reasonable attorney fees, in the circuit court of the county in which the franchised premises are located.

2 (2) No action may be brought under the provisions of this article for a cause of action which arises more than two years prior to the date on which such action is brought.

§47-11C-7. Application.

1 This article shall not apply to a franchise granted prior to the effective date of this article provided that a renewal or extension of such a franchise shall not be excluded from the application of this article.

§47-11C-8. Effective date.

1 This article shall take effect on the first day of July, one thousand nine hundred seventy-six.

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CHAPteR 99

(§ 8, 33—By Mr. Galpin)

[Passed March 16, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to requiring the West Virginia board of pharmacy to prepare list of one hundred most commonly used drugs by brand name and approved generic
equivalent; and requiring pharmacists and drugstores to post such list of drugs, their prices and professional services offered by the particular pharmacy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-12a. List of drugs and prices; posting required; penalties for failure to comply.

1 The West Virginia board of pharmacy shall annually in the month of August prepare a list of not less than one hundred most commonly prescribed prescription drugs by brand name and approved generic equivalent, if available, along with their most commonly used strengths and quantity prescribed. Such list shall also display in prominent print all professional or convenience services performed by the particular pharmacy and the same shall be distributed along with rules and regulations for posting to each pharmacy. The determination by the board of pharmacy as to which drugs are to be included on the list shall be final. The West Virginia board of pharmacy shall furnish forms to list the one hundred drugs and the professional or convenience services and these forms are to be used to display the required information.

17 The current list of the one hundred or more most commonly prescribed drugs by brand name and approved generic equivalent, if available, shall be conspicuously posted in each pharmacy registered with the board. After each prescription drug listed, the name of the manufacturer and the current selling price shall be clearly indicated for that prescription by the pharmacy. The price of any drug offered for sale shall be available and shall be quoted by the pharmacy upon request.
The "current selling" price means the price above which the listed drug may not be sold to the purchaser by the pharmacist. A pharmacy may change the current selling price and posting of such price at any time.

Pursuant to section nineteen of this article, the board of pharmacy shall establish and require compliance with all rules and regulations necessary to implement this section.

CHAPTER 100
(Com. Sub. for H. B. 1469—By Mr. Toney and Mr. Tompkins)

[Passed March 11, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to pardon, reprieve, commutation or parole; notice to be given to sentencing judge and prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.


1 The board of probation and parole, whenever it shall be of the opinion that the best interests of the state and of the prisoner will be subserved thereby, and subject to the limitations hereinafter provided, shall have authority to release any such prisoner on parole for such terms and upon such conditions as are provided by this article. Any prisoner of a penitentiary of this state, to be eligible for parole:
(1) Shall have served the minimum term of his indeterminate sentence, or shall have served one third of his definite term sentence, as the case may be;

(2) Shall not be under punishment or in solitary confinement for any infraction of prison rules;

(3) Shall have maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his release on parole;

(4) Shall have satisfied the board that, if released on parole, he will conduct himself in a lawful manner and that his release is not incompatible with the best interests and welfare of society generally.

Except in the case of one serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he has served the minimum term provided by law for the crime for which he was convicted. No person sentenced for life may be paroled until he has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he has served fifteen years. In the case of a person sentenced to any penal institution of this state, it shall be the duty of the board, as soon as such person becomes eligible, to consider the advisability of his or her release on parole. If, upon such consideration, parole be denied, the board shall at least once a year reconsider and review the case of every prisoner so eligible, which reconsideration and review shall be by the entire board. If parole be denied, the prisoner shall be promptly notified.

In the case of any person sentenced to or confined under sentence in any city or county jail in this state, the board shall act only upon written application for parole. If such jail prisoner be under sentence on a felony conviction, the provisions hereof relating to penitentiary prisoners shall apply to and control his release on parole. If such person be serving time on a misdemeanor conviction, he shall be eligible for parole consideration, upon receipt of his written parole application and after time for probation release by the sentencing court or judge has expired.
The board shall, with the approval of the governor, adopt rules and regulations governing the procedure in the granting of parole. No provision of this article and none of the rules and regulations adopted hereunder are intended or shall be construed to contravene, limit or otherwise interfere with or affect the authority of the governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his constitutional powers of executive clemency.

The board shall have general supervisory control over all court or county probation officers. It shall be charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision.

When considering a penitentiary prisoner for release on parole, the board of parole shall have before it an authentic copy of or report on the prisoner's current criminal record as provided through the department of public safety of West Virginia, the United States department of justice or other reliable criminal information sources and written reports of the warden or superintendent of the penitentiary, as the case may be, to which such prisoner is sentenced:

1. On the prisoner's conduct record while in prison, including a detailed statement showing any and all infractions of prison rules by the prisoner and the nature and extent of discipline and punishment administered therefor;

2. On improvement or other changes noted in the prisoner's mental and moral condition while in prison, including a statement expressive of the prisoner's current attitude toward society in general, toward the judge who sentenced him, toward the prosecuting attorney who prosecuted him, toward the policeman or other officer who arrested him and toward the crime for which he is under sentence and his previous criminal record;

3. On the prisoner's industrial record while in prison, showing the nature of his prison work or occupation and the average number of hours per day he has been employed
in prison industry and recommending the nature and kinds of
employment which he is best fitted to perform and in which
he is most likely to succeed when he leaves prison;

(4) On physical, mental and psychiatric examinations, of the
prisoner conducted, insofar as practicable, within the two
months next preceding parole consideration by the board.

The board may waive the requirement of any such report
when not available or not applicable as to any prisoner
considered for parole but, in every such case, shall enter
in the record thereof its reason for such waiver.

Before releasing any penitentiary prisoner on parole,
the board of parole shall arrange for him to appear in
person before the board and the board may examine and
interrogate him on any matters pertaining to his parole,
including reports before the board made pursuant to the
provisions hereof. The board shall reach its own written
conclusions as to the desirability of releasing such pris-
oner on parole. The warden or superintendent shall furnish
all necessary assistance and cooperate to the fullest
extent with the board of parole. All information, records
and reports received by the board shall be kept on permanent
file.

The board and its designated agents shall at all times have
access to inmates imprisoned in any penal or correctional
institution of this state or in any city or county jail in this
state, and shall have power to obtain any information or aid
necessary to the performance of their duties from other de-
partments and agencies of the state or from any political sub-
division thereof.

The board shall, if so requested by the governor, investigate
and consider all applications for pardon, reprieve or com-
mutation and shall make recommendation thereon to the
governor.

Prior to making such recommendation and prior to releasing
any penitentiary person on parole the board shall notify the
sentencing judge and prosecuting attorney at least ten days
before such recommendation or parole.
AN ACT to amend and reenact article three-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; providing for definitions; rules and regulations of the board; certification and classification of physician assistants; temporary certification; recertification; responsibilities of supervising physician; identification requirements; limitations on physician assistants; unlawful use of title of physician assistant; unlawful representation as physician; and providing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3A. ASSISTANTS TO PHYSICIANS.

§30-3A-1. Definitions.

§30-3A-2. Medical licensing board; rules and regulations; limitations; annual report.

§30-3A-3. Certification.

§30-3A-4. Temporary certification.

§30-3A-5. Recertification.

§30-3A-6. Reciprocity.

§30-3A-7. Job description required; revocation or suspension of certification.

§30-3A-8. Responsibilities of supervising physician; legal responsibility for physician assistant.


§30-3A-10. Limitations on employment and duties of physician assistant.

§30-3A-11. Fees.

§30-3A-12. Unlawful use of title of "Physician Assistant"; penalty.

§30-3A-13. Unlawful representation of physician assistant as a physician; penalty.

§30-3A-1. Definitions.

1 As used in this article the following terms shall have 2 the following meanings:
(a) "Board" means the medical licensing board of West Virginia.

(b) "Type 'A' physician assistant" means an assistant to a primary care physician who is a graduate of an approved program of instruction in primary health care, who has passed the national certification examination and is qualified to perform direct patient care services under the supervision of the primary care physician.

(c) "Type 'B' physician assistant" means an assistant to the physician who is a graduate of an approved program for instruction in a recognized clinical specialty or has received training from a physician adequate to qualify him to perform patient services in that specialty as defined by the supervising physician.

(d) "Supervising physician" means a doctor of medicine, or podiatry permanently licensed in West Virginia who assumes legal and supervisory responsibility for the work or training of any physician assistant in his employment.

(e) "Approved program" means an educational program for physician assistants approved and accredited by the American medical association, or American podiatry association.

(f) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.

§30-3A-2. Medical licensing board; rules and regulations; limitations; annual report.

(a) The board shall promulgate rules and regulations governing the extent to which physician assistants may function within this state.

Such regulations shall provide:

(1) That the physician assistant shall be limited to the performance of those services for which he is trained; and

(2) That each physician assistant shall perform only
under the supervision and control of a physician per-
manently licensed in this state, but such supervision and
control shall not require the personal presence of the
supervising physician at the place or places, where ser-
vices are rendered: Provided, That the physician assis-
tant's normal place of employment shall be on the prem-
ises of his supervising physician. The supervising
physician may send the physician assistant off the
premises of the supervising physician to perform
duties at his direction, but no separate place of work
for the physician assistant shall be established, other
than premises which are established by, and for the
practice of the supervising physician.

(b) In promulgating such rules and regulations, the
board shall allow the physician assistant to perform those
procedures and examinations submitted to the board in
the job description pursuant to section seven of this ar-
ticle.

(c) In addition thereto, the board shall compile and
publish an annual report that includes a list of currently
certified physician assistants, their employers and loca-
tion in the state; a list of approved programs; the number
of graduates per year of such approved programs and the
number of physician assistants from other states practic-
ing in West Virginia.

§30-3A-3. Certification.

1 (a) The board shall certify as a Type A physician
assistant any person who files an application and furnishes
evidence to the board that he has met the following
standards for qualification for the type of physician
assistant certificate for which he has applied:

1 (1) Shall be a graduate of an approved program of
instruction in primary health care, and

1 (2) Shall successfully have passed the examination for
a primary care physician assistant and be certified by the
national board of medical examiners, and

1 (3) Shall be of good moral character.
(b) The board may certify as a Type B physician assistant any person who files an application and furnishes evidence to the board that he has met the following standards for qualification for the type of physician assistant certificate for which he has applied:

1. Shall be a graduate of an approved program in a recognized clinical specialty, or
2. Shall have received specialized training and experience from a physician adequate for him to perform patient services in that specialty, and
3. Shall be of good moral character.

(c) Certification of an assistant to a physician practicing the specialty of ophthalmology shall neither be required nor permitted under this article.

§30-3A-4. Temporary certification.

When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with section seven of this article, for a Type A physician assistant certificate, the board shall issue to such applicant a temporary certificate allowing such applicant to function as a Type A physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. A Type A physician assistant who has not been certified as such by the national board of medical examiners will be restricted to work under the direct supervision of the supervising physician.

When any person who meets the qualifications for a Type B physician assistant as defined in this section and who submits an application accompanied by a job description for a Type B physician assistant certificate, the board may certify such applicant as a Type B physician assistant for a period of four months. Upon expiration of the four-month temporary certification, the board may certify the applicant as a Type B physician assistant. During the period of temporary certification, the Type B physician assistant...
23 assistant shall be restricted to work under the direct
24 supervision of the supervising physician.

25 As of the effective date of this article, any person
26 holding a valid certificate from the board allowing such
27 person to practice as a physician assistant within this
28 state shall be eligible for certification for a period of one
29 year as a Type A or Type B physician assistant depending
30 upon such person's education, training or experience, as
31 determined by the board.

§30-3A-5. Recertification.

1 Certification of a Type B physician assistant shall be
2 subject to review and recertification annually for the
3 first five years following the first certification. Such
4 recertification shall require the supervising physician
5 of a Type B physician assistant to report to the board
6 on the status of the Type B physician assistant.
7 This report shall include a performance evaluation,
8 a summary of experience or continuing medical edu-
9 cation, and any proposed changes in job description.

§30-3A-6. Reciprocity.

1 The board may certify as a physician assistant in this
2 state, without examination, any person who has been so
3 certified or licensed by examination in another state of the
4 United States which has requirements substantially equiv-
5 alent to the requirements contained in this article.

§30-3A-7. Job description required; revocation or suspension
of certification.

1 Any supervising physician making application to the
2 medical licensing board to employ either a Type A or Type
3 B physician assistant shall provide a job description which
4 shall set forth the range of medical services to be provided
5 by such assistant. Before employing a physician assistant
6 the supervising physician must obtain approval of the job
7 description from the board. The board shall have the
8 power to revoke or suspend any certification of an assis-
9 tant to a physician or podiatrist, for cause, after having
10 given the person an opportunity to be heard in the man-
§30-3A-8. Responsibilities of supervising physician; legal responsibility for physician assistant.

The supervising physician is responsible for observing, directing and evaluating the work, records and practices performed by the physician assistant pursuant to this article. The supervising physician shall notify the medical licensing board, in writing, of any termination of the employment of his physician assistant within ten days of said termination. The legal responsibility for any physician assistant shall remain that of the employing physician or physicians at all times including occasions when the assistant, under the direction and supervision of the employing physician or physicians, aids in the care and treatment of patients in health care facilities. Such health care facilities shall not be legally responsible for the actions or omissions of the physician assistant, unless such physician assistant is an employee of the facility.


(a) When functioning as a physician assistant, the physician assistant shall wear a name tag which identifies the physician assistant as a physician assistant and which also specifies the type of classification of such assistant and the name of his supervising physician.

(b) A two and one-half by three and one-half inch card of identification shall be furnished by the board upon certification of the physician assistant and shall specify the type of classification.

§30-3A-10. Limitations on employment and duties of physician assistant.

(a) A supervising physician shall not employ at any one time more than two physician assistants.

(b) A physician assistant shall not sign prescriptions. He shall not perform any service which his employing
supervising physician is not qualified to perform. Further, he shall not perform any service which is not included in his job description and approved as provided in section seven of this article.

(c) Nothing in this article shall be construed to authorize physician assistants to perform those specific functions and duties delegated by law to those persons licensed as chiropractors, dentists, dental hygienists, optometrists, pharmacists, or certified as nurse anesthetists.

§30-3A-11. Fees.

Each job description submitted by a licensed supervising physician or supervising physicians shall be accompanied by a fee of fifty dollars. A fee of five dollars shall be charged for the annual renewal of the certificate.

§30-3A-12. Unlawful use of title of "Physician Assistant"; penalty.

It shall be unlawful for any person who is not certified by the board as a physician assistant to use the title of "physician assistant" or to represent to any other person that he is a physician assistant. Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in an amount not to exceed two thousand dollars.

§30-3A-13. Unlawful representation of physician assistant as a physician; penalty.

It shall be unlawful for any physician assistant, as defined in subdivisions (b) and (c) of this article, to represent to any person that he is a physician or surgeon. Any person who shall violate the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for not less than one nor more than two years, or be fined in an amount not to exceed two thousand dollars.
AN ACT to amend and reenact section one, article five, and sections two, four and five, article eight, all of chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the profession of optometry; adding, within the definition of "prescription," optometrist to the licensed professionals who order drugs or medicines or combinations or mixtures thereof in certain cases; providing for the redefinition of the practice of optometry; exempting the practice of osteopathy from the provisions of law regulating the practice of optometry; accreditation of schools and colleges of optometry and the qualifications, education, examination and certification of applicants to practice optometry.

Be it enacted by the Legislature of West Virginia:

That section one, article five, and sections two, four and five, article eight, all of 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

5. Pharmacists, Assistant Pharmacists and Drugstores.

8. Optometrists.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-1. Definitions.

1. The following words and phrases as used in this article, shall have the following meanings, unless the context otherwise requires:

4. (1) The term "drug" means (a) articles in the official United States Pharmacopoeia, or official National Formulary, or any other supplement to either of them, which are intended for use in the diagnosis, cure, mitigation, treatment or prevention of
disease in man or other animals, and (b) all other articles in-
tended for use in the diagnosis, cure, mitigation, treatment, or
prevention of disease in man or other animals, and (c) articles,
other than food, intended to affect the structure or any func-
tion of the body of man or other animals and (d) articles in-
tended for use as a component of any articles specified in
clause (a), (b), or (c).

(2) The term "poisonous drug" means any drug likely to
be destructive to adult human life in quantities of five grains
or less.

(3) The term "deleterious drug" means any drug likely to
be destructive to adult human life in quantities of sixty grains
or less.

(4) The term "habit-forming drug" means any drug which
has been or may be designated as habit forming under the
regulations promulgated in accordance with Section 502 (d)
of the Federal Food, Drug and Cosmetic Act of June twenty-
fifth, nineteen hundred and thirty-eight.

(5) The term "pharmacy" or "drugstore" or "apothecary"
shall be held to mean and include every store or shop or
other place (a) where drugs are dispensed, or sold at retail,
or displayed for sale at retail; or (b) where physicians' 
prescriptions are compounded; or (c) which has upon it or
displayed within it, or affixed to or used in connection with
it, a sign bearing the word or words "pharmacy," "pharma-
cists," "apothecary," "drugstore," "drugs," "druggists," "medi-
cine," "medicine store," "drug sundries," "remedies" or any
word or words of similar or like import; or (d) any store
or shop or other place, with respect to which any of the
above words are used in any advertisement.

(6) The term "prescription" shall be held to mean an
order for drugs or medicines or combinations or mixtures
thereof, written or signed by a duly licensed physician,
dentist, optometrist, as authorized by section two, ar-
icle eight of this chapter, veterinarian or other medical practi-
tioner licensed to write prescriptions intended for the treat-
ment or prevention of disease of man or animals. The
term "prescription" shall also include orders for drugs or
medicines or combinations or mixtures thereof transmitted
to the pharmacist by word of mouth, telephone or other means
of communication by a duly licensed physician, dentist,
optometrist, veterinarian or other medical practitioner licensed
to write prescriptions intended for treatment or prevention of
disease of man or animals, and such prescriptions received
by word of mouth, telephone or other means of communication
shall be recorded in writing by the pharmacist and the record
so made by the pharmacist shall constitute the original prescrip-
tion to be filed by the pharmacist. All such prescriptions shall
be preserved on file for a period of five years, subject to in-
spection by the proper officer of the law. The above shall apply
except for narcotic prescriptions, when all narcotic laws and
regulations must be complied with.

(7) The term "cosmetic," which shall be held to include
"dentifrice" and "toilet article," means (a) articles intended
to be rubbed, poured, sprinkled, or sprayed on, introduced
into, or otherwise applied to the human body, or any part
thereof for cleansing, beautifying, promoting attractiveness, or
altering the appearance, and (b) articles intended for use
as a component of any such articles, except that such term
shall not include soap.

ARTICLE 8. OPTOMETRISTS.
§30-8-2. Practice of optometry defined.
§30-8-4. Registration prerequisite to practice of optometry; exceptions.
§30-8-5. Qualifications of applicant for registration; examination; duties of
board as to examinations and certifications; education necessary
for use of pharmaceutical agents.

§30-8-2. Practice of optometry defined.

Any one or any combination of the following practices
shall constitute the practice of optometry:

(a) The examination of the human eye, with or without
the use of drugs prescribable for the human eye, which drugs
may be used for diagnostic or therapeutic purposes for topical
application to the anterior segment of the human eye only, and,
by any method other than surgery, to diagnose, to treat or to
refer for consultation or treatment any abnormal condition of
the human eye or its appendages;
(b) The employment without the use of surgery of any instrument, device, method or diagnostic or therapeutic drug for topical application to the anterior segment of the human eye intended for the purpose of investigating, examining, treating, diagnosing, improving or correcting any visual defect or abnormal condition of the human eye or its appendages;

(c) The prescribing and application or the replacement or duplication of lenses, prisms, contact lenses, orthoptics, vision training, vision rehabilitation, diagnostic or therapeutic drugs for topical application to the anterior segment of the human eye, or the furnishing or providing of any prosthetic device, or any other method other than surgery necessary to correct or relieve any defects or abnormal conditions of the human eye or its appendages.

Nothing in this section shall be construed to permit an optometrist to perform surgery, use drugs by injection or to use or prescribe any drug for other than the specific purposes authorized by this section.

§30-8-4. Registration prerequisite to practice of optometry; exceptions.

No person shall practice or offer to practice optometry in this state without first applying for and obtaining a certificate of registration for such purpose from the West Virginia board of optometry; but the following persons, firms and corporations are exempt from the operation of this article, except as hereinafter provided:

(a) Persons who have heretofore been registered as optometrists in this state, or who were engaged in the practice of optometry in this state before the passage of any law by this state regulating such practice, and who have heretofore received from the board of examiners certificates of exemption from examination;

(b) Persons authorized under the laws of this state to practice medicine and surgery or osteopathy;

(c) Persons, firms and corporations who sell eyeglasses or spectacles in a store, shop or other permanently established place of business on prescriptions from persons authorized
under the laws of this state to practice either optometry or medicine and surgery;

(d) Persons, firms and corporations who manufacture or deal in eyeglasses or spectacles in a store, shop or other permanently established place of business, and who neither practice nor attempt to practice optometry.

§30-8-5. Qualifications of applicant for registration; examination; duties of board as to examinations and certifications; education necessary for use of pharmaceutical agents.

An applicant for registration shall present satisfactory evidence that he is at least eighteen years of age, of good moral character and temperate habits, and has graduated from a high school or secondary school, or has completed an equivalent course of study approved by the West Virginia board of optometry, has satisfactorily completed all preoptometry or premedical college requirements and has graduated from a school or college of optometry approved by said board. No school or college of optometry shall be approved by the West Virginia board of optometry unless at first it has been accredited by a regional or professional accreditation organization which is recognized by the national commission on accreditation or the United States commission of education. Each applicant shall submit to and be examined in all phases of optometry as is provided by the school or college of optometry and shall include, but not be limited to, anatomy and physiology of the human eye, the use of instruments such as the ophthalmoscope, retinoscope, tonometer, slit lamp biomicroscope, the general laws of optics and refraction, general and ocular pharmacology, general and ocular pathology and other such subjects or instrumentation as the board of optometry may deem necessary.

The West Virginia board of optometry shall be responsible to determine the educational training received by the applicant from the schools and colleges of optometry, the educational qualifications of each applicant and the administering of the examination and certification of each applicant commensurate with his education. No optometrist shall be registered or certified to practice optometry in the state of West Virginia in any area that is beyond the scope of his educational train-
Provided, That any optometrist presently registered in the state of West Virginia and who desires to employ the use of pharmaceutical agents must submit to the West Virginia board of optometry evidence of satisfactory completion of all necessary educational requirements as made mandatory by the West Virginia board of optometry: Provided further, That the West Virginia board of optometry shall provide for continuing educational requirements to be completed from time to time by all optometrists desiring to employ the use of pharmaceutical agents.

CHAPTER 103
(S. B. 333—By Mr. Hatfield and Mr. Benson)

[Passed March 9, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, five, seven, nine, ten, twelve and thirteen, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the definition of chiropractic; creating a continuing education clause; increasing and updating the subjects for which applicants to practice chiropractic are to be examined; clarifying the title of doctor of chiropractic; updating the approved diagnostic instrument list; prohibiting use of physio-therapeutic devices unless qualified; and providing offenses and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, five, seven, nine, ten, twelve and thirteen, article sixteen, 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 16. CHIROPRACTORS.

§30-16-2. Definitions.
§30-16-5. Examination; certificates of license.
§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.
§30-16-2. Definitions.

1 The following words, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

4 (a) "Board" shall mean the West Virginia board of chiropractic examiners;

6 (b) "Chiropractor" shall mean a practitioner of chiropractic;

8 (c) "Chiropractic" is that science and art which utilizes the inherent recuperative powers of the body and the relationship between the musculo-skeletal structures and functions of the body, particularly of the spinal column and the nervous system, in the restoration and maintenance of health.

14 The practices and procedures which may be employed by doctors of chiropractic are based on the academic and clinical training received in and through accredited chiropractic colleges. These shall include the use of diagnostic, analytical and therapeutic procedures specifically including the adjustment and manipulation of the articulations and adjacent tissues of the human body, particularly of the spinal column; included is the treatment of intersegmental disorders for alleviation of related neurological aberrations. Patient care and management is conducted with due regard for environmental and nutritional factors, as well as first aid, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in the restoration and maintenance of neurological integrity and homeostatic balance.

§30-16-5. Examination; certificates of license.

1 The examination for a license to practice chiropractic shall be written and oral and shall cover the following subjects: Anatomy, physiology, chemistry, pathology, bacteriology, hygiene, diagnosis, gynecology, X ray, geri-
The board shall issue certificates of license to all applicants who shall successfully pass the said examination, but no license shall be issued under this section until the person applying therefor shall have paid to the board a fee of twenty-five dollars.

All applicants shall be required to secure an average grade of seventy-five percent in all subjects: Provided, That sixty percent shall be the minimum grade in any subject.

§30-16-7. License; annual renewal fee; effect of failure to renew; reinstatement.

All holders of certificates of license to practice chiropractic in this state shall renew them annually on or before the first day of July of each year: (1) By payment of a renewal fee of twenty-five dollars to the board, and (2) except for those holders with forty years of practice as of the effective date of this section, by presentation to the board of evidence of attendance of at least twelve classroom hours of continuing education each year. The board shall notify each certificate holder by mail, at least thirty days prior to the first day of July of each year, of the necessity of renewing his (or her) certificate. The first annual renewal fee shall be due on the first day of July, one thousand nine hundred sixty-five.

The failure to renew a certificate of license to practice chiropractic shall operate as an automatic suspension of the rights and privileges granted by its issuance.

A certificate of license suspended by a failure to make an annual renewal thereof as herein provided may be reinstated by the board upon presentation of evidence of attendance of at least twelve classroom hours of continuing education for each year such license has been suspended, payment of all fees that would have been paid had the certificate holder maintained his certificate in
good standing and the payment to the board of a rein-
statement fee of not to exceed fifty dollars as determined
by the board; but no certificate shall be reinstated after
a lapse of three years. After a lapse of three years,
license may be issued only after the former certificate
holder subsequent to said lapse has passed the examina-
tion in this article provided.

§30-16-9. Who may practice chiropractic; title of chiropractor.

Every chiropractor who has complied with the pro-
visions of this article shall thereupon be entitled to prac-
tice chiropractic in this state. The title of chiropractor
shall be doctor of chiropractic and shall be designated
by the letters "D.C." The titles "D.C.", doctor of chiro-
practic, chiropractor, chiropractic physician are inter-
preted as the same.

§30-16-10. Use of diagnostic instruments and procedures.

Any chiropractor who has complied with the provisions
of this article may use any instrument, or procedure, for
the purpose of diagnosis and analysis of disease, or
abnormalities, provided such instruments are used in a
school approved by the American chiropractic association,
the international chiropractic association, or their succes-
sors.

§30-16-12. Chiropractor not permitted to perform certain acts; except.

No chiropractor shall be permitted to prescribe any
medicine or drugs now or hereafter included in materia
medica, or to administer any such medicine or drugs; and
no chiropractor shall perform any minor or major sur-
gery, practice obstetrics or practice osteopathy, unless
duly licensed to do so; by the laws of this state in addition
to his license to practice chiropractic; nor shall any chiro-
practor use any physio-therapeutic devices in his practice
until he has certified to the board that he has completed
at least ninety classroom hours in the use of these
procedures.
§30-16-13. Offenses; penalties.

1 Each of the following acts shall constitute a misdemeanor, punishable upon conviction by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court, and each day any person shall so violate any provisions of this article shall constitute a separate and distinct offense:

9 (a) The obtaining of or attempt to obtain a license by the use of fraud, deceit or willful misrepresentation;

(b) The practice, or attempting to practice, as a chiropractor without a license granted under the provisions of this article, or practicing or attempting to practice while said license is suspended, or after said license has been revoked;

(c) The use of any title to induce belief that the user of said title is engaged in the practice of chiropractic, if the user of said title has not fully complied with the provisions of this article;

(d) The buying, selling or fraudulent procurement of any diploma of, or license to practice, chiropractic;

(e) The violation of any provision of this article regulating the practice of chiropractors.

CHAPTER 104
(S. B. 327—By Mr. Savilla and Mr. Benson)

(Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to the incorporation of chiropractors.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. CHIROPRACTORS.

§30-16-17. Chiropractic corporations.

1 One or more individuals, each of whom is licensed to practice chiropractic within this state, may organize and become a shareholder or shareholders of a chiropractic corporation. Individuals who may be practicing chiropractic as an organization created otherwise than pursuant to the provisions of this section may incorporate under and pursuant to this section. This section is not intended to amend the statutory or common law as it relates to associations or partnerships, except to allow partnerships of chiropractors to organize as a chiropractic corporation.

12 A chiropractic corporation may render professional service only through officers, employees and agents who are themselves duly licensed to render chiropractic service within this state. The term "employee" or "agent" as used in this section, does not include secretaries, clerks, typists, paraprofessional personnel or other individuals who are not usually and ordinarily considered by custom and practice to be rendering chiropractic services for which a license is required.

21 This section does not modify the law as it relates to the relationship between a person furnishing chiropractic services and his client, nor does it modify the law as it relates to liability arising out of such a professional service relationship. Except for permitting chiropractic corporations, this section is not intended to modify any legal requirement or court rule relating to ethical standards of conduct required of persons providing chiropractic services.

30 A chiropractic corporation may issue its capital
stock only to persons who are duly licensed chiropractors.

When not inconsistent with this section, the organization and procedures of chiropractic corporations shall conform to the requirements of article one, chapter thirty-one of this code.

The West Virginia board of chiropractic examiners may require that chiropractors under its licensing authority must obtain its prior authorization before beginning to act as a chiropractic corporation and may require a fee of not more than fifty dollars for each application for authorization to form a chiropractic corporation. The board may adopt rules and regulations:

(1) To set reasonable standards for granting or refusing prior approval, (2) to require appropriate information therefor from a chiropractic corporation applicant, and (3) to notify the secretary of state that certain persons have been given authorization by the board to form a chiropractic corporation.

Upon notification by the West Virginia board of chiropractic examiners of its approval, the secretary of state, upon compliance by the incorporators with this section and the applicable provisions of chapter thirty-one of this code, may issue to the incorporators a certificate of incorporation for the chiropractic corporation which then may engage in practice through duly licensed or otherwise legally authorized stockholders, employees and agents.

A shareholder of a chiropractic corporation may sell or transfer his shares of stock in such corporation only to another individual who is duly licensed to practice chiropractic in this state or back to the corporation. Any chiropractic corporation shall cease to engage in the practice of chiropractic upon being notified by the board that any of its shareholders is no longer a duly licensed chiropractor, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed chiropractor: Provided, That the personal representative of a deceased shareholder shall have
a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of chiropractic.

The corporate name of a chiropractic corporation shall contain the last name or names of one or more of its shareholders: Provided, That if the rules or regulations of the board so permit the corporate name may contain or include the name or names of former shareholders or of persons who were associated with a predecessor partnership. The corporate name shall also contain the words "chiropractic corporation" or the abbreviation "C.C." The use of the word "company," "corporation" or "incorporated" or any other words or abbreviations in the name of a corporation organized under this article which indicates that such corporation is a corporation, other than the words "chiropractic corporation" or the abbreviation "C.C.", is specifically prohibited.

CHAPTER 105

(Com. Sub. for S. B. 358—By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the practice of physical therapy, licensing of persons engaging in the practice of physical therapy and the licensing of persons to act as physical therapy assistants; providing legislative findings and declarations of public policy; defining terms; requiring license for persons engaging in the practice of physical therapy and for persons acting as physical therapy assistants; providing an exception; relating to the circumstances under which a firm, association or corporation may engage in the practice of physical therapy;
prohibiting unauthorized practice of physical therapy; continuing the West Virginia state board of examiners and registration of physical therapists; changing the name of such board to the West Virginia board of physical therapy; increasing number of members of the board from three to five; relating to the appointment, qualifications, terms of office, oath, removal and payment of compensation and expenses of members of the board; relating to officers, meetings and quorum of the board; specifying powers and duties of the board; relating to the receipt and disbursement of funds by the board; establishing qualifications for the issuance of a license or temporary permit to engage in the practice of physical therapy; establishing qualifications for the issuance of a license or temporary permit to act as a physical therapy assistant; providing for examination of applicants; providing for the issuance of licenses and temporary permits, renewals thereof and fees therefor; authorizing the board to suspend or revoke a license or temporary permit and establishing the grounds therefor; authorizing said board to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hearings; authorizing the board to issue subpoenas and subpoenas duces tecum in connection with such hearings; providing an automatic stay or suspension of certain orders of the board pending such hearings; relating to the costs for such hearings; providing for judicial review of decisions of the board entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the board; establishing criminal penalties; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-1. Legislative findings and declaration of public policy.

§30-20-2. Definitions.
§30-20-1. Legislative findings and declaration of public policy.

1 The Legislature of the state of West Virginia hereby determines and finds that in the public interest persons should not engage in the practice of physical therapy or act as physical therapy assistants without the requisite experience and training and without adequate regulation and control; and that it is necessary to protect the citizens of this state from the unauthorized, unqualified and unregulated practice of physical therapy. It is therefore declared to be the public policy of this state that the practice of physical therapy affects the general welfare and public interest of the state and its citizens; that persons without the necessary qualifications, training and education and persons not of good character should not engage in the practice of physical therapy or act as physical therapy assistants; and that the evils of such unauthorized and unqualified practice may be best prevented and the interests of the public best served by regulating and controlling such practice as provided in this article.

§30-20-2. Definitions.

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

3 (a) "Applicant" means any person making application
for an original or renewal license or a temporary permit
under the provisions of this article.

(b) "Board" means the West Virginia board of physical
therapy.

(c) "Licensed physical therapist" means any physical
therapist holding a license or temporary permit issued
under the provisions of this article or under the former
provisions of this article.

(d) "Licensed physical therapy assistant" means any
physical therapy assistant holding a license or temporary
permit issued under the provisions of this article.

(e) "Licensee" means any person holding a license
or temporary permit issued under the provisions of
this article or under the former provisions of this
article.

(f) "Physical therapy" means the therapeutic treat-
ment of any person by the use of massage, mechanical
stimulation, heat, cold, light, air, water, electricity, sound
and exercise, including mobilization of the joints and
training in functional activities, for the purpose of cor-
recting or alleviating any physical or mental condition
or preventing the development of any physical or mental
disability, and the performance of neuro-muscular-skeletal
tests and measurements as an aid in diagnosis, evaluation
or determination of the existence of and the extent of
any body malfunction: Provided, That electromyography
examination and electrodiagnostic studies other than
the determination of chronaxia and strength duration
curves shall not be performed except under the super-
vision of a physician electromyographer and electro-
diagnostician. Physical therapy does not include the use
of radiology and radium for diagnostic and therapeutic
purposes, or the use of electricity for surgical purposes,
including cauterization.

(g) "Physical therapist" means a person who engages
in the practice of physical therapy.

(h) "Physical therapy aide" means a person, other than
a physical therapy assistant, who assists a licensed physi-
42 cal therapist in the practice of physical therapy under
43 the direct supervision of such, licensed physical ther-
44apist and who also performs activities supportive of
45 but not involving assistance in the practice of physical
46 therapy.
47
48 (1) As contained in this section, the term "direct
49 supervision" shall mean the actual physical presence of
50 the physical therapist.
51
52 (i) "Physical therapy assistant" means a person who
53 assists in the practice of physical therapy by performing
54 patient-related activities delegated to him by a licensed
55 physical therapist and performed under the direct super-
56 vision of such licensed physical therapist and which are
57 commensurate with his education and training, including
58 physical therapy procedures, but not the interpretation
59 of referrals, performance of evaluation procedures or
60 determination and modification of patient programs.
61
62 (j) "Practice of physical therapy" means the render-
63ing or offering to render for a fee, salary or other
64 compensation, monetary or otherwise, any service in-
65 volving physical therapy. However, for the purpose of
66 section three of this article, the term "practice of physical
67 therapy" shall not include:
68
69 (1) Teaching physical therapy as part of employment
70 at an institution of higher learning; or
71
72 (2) The activities of a student of physical therapy,
73 physical therapy extern or physical therapy intern, which
74 activities are a part of and are engaged in pursuant to
75 a course of study at an institution of higher learning,
76 including, but not limited to, activities conducted at
77 the institution of higher learning and activities con-
78 duced outside the institution if under the direct super-
79 vision of a licensed physical therapist; or
80
81 (3) The activities of a physical therapy aide if all
82 activities of such physical therapy aide involving assis-
83 tance in the practice of physical therapy are performed
84 under the direct supervision of a licensed physical
85 therapist; or
(4) The administration of simple massages and the operation of health clubs so long as not intended to constitute or represent the practice of physical therapy.

§30-20-3. License required; exception; firms, associations and corporations engaging in the practice of physical therapy; unauthorized practice of physical therapy.

(a) No person shall engage in, offer to engage in or hold himself out to the public as being engaged in, the practice of physical therapy in this state unless he is a licensed physical therapist: Provided, That the foregoing prohibition shall not apply to the activities of a licensed physical therapy assistant performed in accordance with the definitional requirements of a physical therapy assistant as specified in subdivision (1), section two of this article. No person shall use in connection with his name the words "physical therapy technician," "registered physical therapist," "physical therapist," "licensed physical therapist" or "physiotherapist" or use the initials "R.P.T.," "P.T.T.," "P.T." or any other letters, words or insignia which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of physical therapy, unless he is a licensed physical therapist. No person shall use in connection with his name the words "physical therapy assistant," "registered physical therapy assistant" or "licensed physical therapy assistant" or use the initials "P.T.A.," "A.P.T." or any other letters, words or insignia which induces or tends to induce the belief that such person is qualified to act or is acting as a physical therapy assistant, unless he is a licensed physical therapy assistant. No firm, association or corporation shall, except through a licensee or licensees, render any service or engage in any activity which if rendered or engaged in by any individual would constitute the practice of physical therapy.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who practiced physical therapy in this state for five continuous years prior to July one, one thousand nine hundred sixty-three, and who
was eligible to qualify for a license under the former provisions of this article by successful completion of a written examination provided by the board and who has not yet successfully completed such examination, may continue to practice physical therapy without a license or temporary permit issued under the provisions of this article, and notwithstanding that such person does not meet the educational requirement specified in subdivision (5), subsection (a), section six of this article, may continue to take such examination: Provided, however, That unless and until such person passes such examination, such person shall not use in connection with his name the words "physical therapy technician," "registered physical therapist," "physical therapist," "licensed physical therapist" or "physiotherapist" or use the initials "R.P.T.,” “P.T.T.,” “P.T." or any other letters, words or insignia which induces or tends to induce the belief that such person is a licensed physical therapist.

(c) No person shall act, nor hold himself out as being able to act, as a physical therapy assistant unless he is a licensed physical therapy assistant.

(d) Nothing contained within this article shall prohibit any person licensed in this state under any other article of this code from engaging in the practice for which he is licensed.

(e) Nothing contained within this article shall be construed as authorizing a physical therapist, or physical therapy assistant, or any other person to practice medicine, surgery, osteopathy, homeopathy, chiropractics, naturopathy or any other form, branch or method of healing as authorized by the laws of the state of West Virginia.

(f) A licensed physical therapist shall not treat persons by physical therapy or otherwise other than upon referral by a licensed physician or surgeon, dentist, osteopathic physician and surgeon or chiropodist-podiatrist. A licensed physical therapy assistant shall not practice physical therapy other than in accordance with the definitional requirements of a physical therapy assis-
§30-20-4. West Virginia board of physical therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.

(a) The West Virginia state board of examiners and registration of physical therapists heretofore created shall continue in existence but on and after the effective date of this article shall be known and designated as "the West Virginia board of physical therapy," and shall consist of five members appointed by the governor by and with the advice and consent of the Senate. The three members of the board in office on the effective date of this article shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before July one, one thousand nine hundred seventy-six, the governor shall appoint one member to serve until June thirty, one thousand nine hundred seventy-nine, and one member to serve until June thirty, one thousand nine hundred eighty, or until their successors have been appointed and have qualified. As the terms of the three members of the board in office on the effective date of this article expire and as the terms of the two members to be appointed by the governor on or before July one, one thousand nine hundred seventy-six, expire, members shall be appointed for overlapping terms of five years, so that one term expires each year, or until their successors have been appointed and have qualified. Any vacancy shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and any such appointment shall be made within sixty days of the occurrence of such vacancy. The governor may remove any member of the board in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(b) Each member of the board must be licensed under the provisions of this article or under the former provisions of this article, have at least three years' experi-
ence as a physical therapist and be actively engaged in the practice of physical therapy. Members may be reappointed for any number of terms. Before entering upon the performance of this duty, each member shall take and subscribe to the oath prescribed by section five, article four of the constitution of this state.

(c) The board shall elect from its membership a chairman and secretary who shall serve at the will and pleasure 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 three 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 examinations hereinafter provided for and to transact such other business as may come before it. Members may be paid such reasonable compensation as the board may from time to time determine, and in addition may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties, which compensation and expenses shall be paid in accordance with the provisions of subsection (b), section five of this article.

§30-20-5. Powers and duties of board; funds of board.

(a) The board shall:

1. Examine applicants and determine their eligibility for a license or temporary permit to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be;

2. Prepare or approve, conduct and grade or provide for the grading of, an apt and proper written or written and oral examination of applicants for a license to engage in the practice of physical therapy and a separate examination of applicants for a license to act as a physical therapy assistant;

3. Determine the time and place for any such examinations and the passing score for each such separate examination;
(4) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, including, but not limited to, (1) reasonable rules and regulations establishing standards to insure that the activities of a licensed physical therapy assistant are performed in accordance with the definitional requirements of a physical therapy assistant as specified in subdivision (i), section two of this article, which reasonable rules and regulations shall require that there shall be no more than two physical therapy assistants licensed to practice in this state for every physical therapist so licensed and shall require that no more than two physical therapy assistants be performing under the direct supervision of a licensed physical therapist at any one time, and (2) reasonable rules and regulations establishing standards to insure that those activities of a physical therapy aide involving assistance in the practice of physical therapy are performed under the direct supervision of a licensed physical therapist, which reasonable rules and regulations shall require that a licensed physical therapist be on the premises at all times while such activities of the physical therapy aide are being performed, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(5) Issue, renew, deny, suspend or revoke licenses and temporary permits to engage in the practice of physical therapy or licenses and temporary permits to act as physical therapy assistants in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may renew, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

(6) Investigate alleged violations of any provision of this article, any reasonable rule and regulation promulgated hereunder and any order or final decision of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of any provision
of this article, any reasonable rule and regulation promul-
gated hereunder and any order or final decision of the
board or take such disciplinary action and institute such
legal action;

(7) Purchase or rent necessary office space, equipment
and supplies and employ, direct, discharge and define
the duties of an executive secretary and other full-time
or part-time professional, clerical or other personnel
necessary to effectuate the provisions of this article;

(8) Maintain a register listing the name of every
licensed physical therapist and licensed physical therapy
assistant, his last known place of business or employment
and last known residence, and the date and certificate
number of his license; prepare annually from such regis-
ter a list of every such licensed physical therapist and
licensed physical therapy assistant; furnish such list free
of charge to the superintendent or administrator of every
known hospital in this state and every licensed physician
or surgeon, dentist, osteopathic physician and surgeon or
chiroprist-podiatrist in this state who requests the same;
and furnish such list to any other interested person who
makes application therefor and who pays to the board
the reasonable cost of the copy of such list;

(9) Keep accurate and complete records of its pro-
ceedings, certify the same as may be appropriate and
submit to the governor a report on the transactions of
the board including an accounting of all money received
and disbursed;

(10) Whenever it deems it appropriate, confer with
the attorney general or his assistants in connection with
all legal matters and questions, whose responsibility it
shall be to render all legal assistance required; and

(11) Take such other action as may be reasonably
necessary and appropriate to effectuate the provisions
of this article.

(b) All moneys paid to the board shall be accepted
by a person designated by the board and deposited by
him with the treasurer of the state and credited to an
account to be known as the "West Virginia Board of
Physical Therapy." The compensation of and the reimbursement of all reasonable and necessary expenses 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 such purpose.

§30-20-6. Qualifications of applicants for license; application fee.

(a) To be eligible for a license to engage in the practice of physical therapy, the applicant must:

1. Be at least eighteen years of age;

2. Be of good moral character;

3. Not be addicted to the intemperate use of alcohol or narcotic drugs or other controlled substances;

4. Not have been convicted of a felony in any state or federal court in this or any other state within ten years preceding the date of application for license, which conviction remains unreversed; and not have been convicted of a felony in any state or federal court in this or any other state at any time if the offense for which he was convicted related to the practice of physical therapy, which conviction remains unreversed;

5. Present evidence that he is a graduate of a school of physical therapy approved by the American physical therapy association and the board: Provided, That any person who received his education in physical therapy outside of the United States may qualify for a license by fulfilling the requirements specified by the American physical therapy association and the board, including successful completion of a period of supervised clinical experience; and

6. Either have passed the examination prescribed by the board for a license to engage in the practice of physical therapy, or be entitled to be licensed without examination as provided in subsection (d) of this section.
(b) To be eligible for a license to act as a physical therapy assistant, the applicant must:

(1) Satisfy the requirements of subdivisions (1) through (4), subsection (a) of this section;

(2) Present evidence that he is a graduate of a two-year college level education program for physical therapy assistants which meets the standards established by the American physical therapy association and the board; and

(3) Either have passed the examination prescribed by the board for a license to act as a physical therapy assistant, or be entitled to be licensed without examination as provided in subsection (d) of this section.

(c) Although an applicant does not meet the educational requirement specified in subdivision (2), subsection (b) of this section, the board may, nevertheless, issue a license to act as a physical therapy assistant to such applicant if such applicant (i) presents evidence that he has a high school diploma or its equivalent; (ii) meets the requirements of subdivision (1), subsection (b) of this section; (iii) presents sufficient and satisfactory written evidence to the board on or before July one, one thousand nine hundred seventy-nine, that such applicant has been employed as a physical therapy aide under the supervision of a licensed physical therapist in this state on a full-time basis for a continuous period of at least two years, or for cumulative periods of time either full-time or part-time which equal two years full-time employment, between January one, one thousand nine hundred seventy-one, and July one, one thousand nine hundred seventy-nine; and (iv) successfully passes the examination required for a license to act as a physical therapy assistant: Provided, however, That such applicant shall be afforded only two opportunities to pass such examination.

(d) The board may issue a license to practice physical therapy or a license to act as a physical therapy assistant, without examination, to any applicant who holds a valid license or is registered to engage in the practice of
physical therapy or to act as a physical therapy assistant, as the case may be, issued to him under the laws of another state or territory or possession of the United States: Provided further, That the applicant's qualifications are in the opinion of the board equal to or greater than the requirements of this article and the rules and regulations promulgated by the board.

(e) Any applicant for a license under the provisions of subsection (a), (b), (c) or (d) of this section shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board shall from time to time by reasonable rule and regulation prescribe and pay to the board a nonrefundable application fee of sixty dollars in the case of an application for a license to engage in the practice of physical therapy and thirty dollars in the case of an application for a license to act as a physical therapy assistant.

§30-20-7. Examination of applicants.

The board shall give the prescribed examination to applicants for a license to engage in the practice of physical therapy and the prescribed examination to applicants for a license to act as a physical therapy assistant, who meet the appropriate other requirements of section six of this article. The examination for a license to engage in the practice of physical therapy shall include a written examination which shall test the applicant's advanced knowledge of anatomical, biological and physical sciences, physical therapy procedures and theory and such other subjects as the board may deem appropriate to test the applicant's fitness to engage in the practice of physical therapy. The examination for a license to act as a physical therapy assistant shall include a written examination which shall test the applicant's knowledge of anatomical, biological and physical science, physical therapy procedures and theory: Provided, That the examination given to applicants for a license to act as a physical therapy assistant under subsection (c), section six of this article, shall be prepared and graded by the board and shall test only the
applicant's knowledge of physical therapy procedures and theory. All examinations shall be held within this state, at least once each year, at such time and place as the board shall determine. Except as provided in subsection (c), section six of this article, there shall be no limit to the number of times that an applicant may make application for and take the required examination for a license to engage in the practice of physical therapy or the required examination to act as a physical therapy assistant: Provided, however, That for each such application, the applicant shall pay the appropriate application fee prescribed in subsection (e), section six of this article.

§30-20-8. Issuance of license; renewal of license; renewal fee; display of license.

(a) Whenever the board finds that an applicant meets all of the requirements of this article for a license to engage in the practice of physical therapy or to act as a physical therapy assistant, as the case may be, it shall forthwith issue to him such license; and otherwise the board shall deny the same.

(b) Every licensee shall renew his license on or before January one of each year by payment of a fee of twenty dollars in the case of a license to engage in the practice of physical therapy and ten dollars in the case of a license to act as a physical therapy assistant. Any license which is not so renewed shall automatically lapse. A license which has lapsed may be renewed within five years of its expiration date by payment to the board of the appropriate renewal fee for each year or part thereof during which the license was not renewed. After the expiration of such five-year period, a license may be renewed only by complying with the provisions herein relating to the issuance of an original license.

(c) A licensee desiring to cease engaging in the practice of physical therapy temporarily or to cease acting temporarily as a physical therapy assistant shall send a written notice to the board. Upon receipt of such notice, the board shall place the name of such person upon the inactive list.
While his name remains on this list, such person shall not be subject to the payment of any fee and shall not engage in the practice of physical therapy or act as a physical therapy assistant, as the case may be, in this state. When such person again desires to engage in the practice of physical therapy or to act as a physical therapy assistant, application for renewal of the license and the payment of a renewal fee for the then current year shall be made to the board.

(d) The board may deny any application for renewal of a license for any reason which would justify the denial of an original application for a license.

(e) The board shall prescribe the form of licenses and each license shall be conspicuously displayed by the licensee at his principal place of practice, or, in the case of a license to act as a physical therapy assistant, at his place of employment.

(f) Any license issued under the former provisions of this article, which license remains unsuspended and unrevoked, shall be valid and considered for all purposes as having been issued under the provisions of this article and may be renewed, suspended or revoked as licenses issued under the provisions of this article, and any license issued under the former provisions of this article which has lapsed or shall hereafter lapse shall be subject to the provisions of subsection (b) of this section pertaining to the lapse of a license issued under the provisions of this article and the renewal thereof.


(a) Upon proper application and the payment of a nonrefundable fee of twenty dollars, the board may issue, without examination, a temporary permit to engage in the practice of physical therapy in this state:

(1) Pending examination, to any applicant who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article, which temporary 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, but upon such expiration, one additional temporary permit may be obtained by such applicant, upon proper application therefor and the payment of a nonrefundable fee of twenty dollars; and

(2) To an applicant who is not a resident of this state and who meets the requirements of subdivisions (1) through (5), subsection (a), section six of this article, which temporary permit shall be valid only for a period of ninety days in the calendar year in which issued and such permit may not be renewed nor another thereof issued to the same person in the same calendar year.

(b) Upon proper application and the payment of a nonrefundable fee of ten dollars, the board may issue, without examination, a temporary permit to act as a physical therapy assistant in this state:

(1) Pending examination, to an applicant who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article, which temporary 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, but upon such expiration, one additional temporary permit may be obtained by such applicant, upon proper application therefor and the payment of a nonrefundable fee of ten dollars; and

(2) To an applicant who is not a resident of this state and who meets the requirements of subdivisions (1) and (2), subsection (b), section six of this article, which temporary permit shall be valid only for a period of ninety days in the calendar year in which issued and such permit may not be renewed nor another thereof issued to the same person in the same calendar year.

§30-20-10. Suspension or revocation of license or temporary permit.

(a) The board may at any time upon its own motion, and shall upon the written complaint of any person, 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.

(b) The board shall suspend or revoke any license or temporary permit when it finds the holder thereof has:

(1) Used narcotic drugs, other controlled substances or alcohol to the extent that it affects his professional competency; or

(2) Been convicted of violating any state or federal law relating to controlled substances, which conviction remains unreversed; or

(3) Been, in the judgment of the board, guilty of immoral or unprofessional conduct; or

(4) Been convicted of a felony or a crime involving moral turpitude; or

(5) Been declared mentally incompetent by a court of competent jurisdiction; or

(6) Obtained or attempted to obtain a license issued under the provisions of this article by fraud or willful misrepresentation; or

(7) Been grossly negligent in the practice of physical therapy or in acting as a physical therapy assistant, as the case may be; or

(8) Treated or undertaken to treat a human being otherwise than by physical therapy and as authorized by this article; or

(9) 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; or

(10) In the case of a physical therapist, practiced physical therapy other than upon the referral by a licensed physician or surgeon, dentist, osteopathic physician and surgeon or chiropodist-podiatrist; or employed a physical therapy assistant who is not a licensed physical therapy assistant; or employed or utilized a licensed
physical therapy assistant or physical therapy aide without complying with the provisions of this article or the rules and regulations of the board; or

(11) In the case of a physical therapy assistant, practiced physical therapy other than in accordance with the definitional requirements of a physical therapy assistant as specified in subdivision (i), section two of this article.

(c) The board shall also suspend or revoke any license or temporary permit if it finds the existence of any grounds which would justify the denial of an application for a license or temporary permit if application were then being made for it.


(a) Whenever the board shall deny an application for any original or renewal license or any 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 or denying a temporary permit to act as a physical therapy assistant. 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 a civil action 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 nor more than thirty days thereafter. Any scheduled
hearing may be continued by the board upon its own mo-
tion or for good cause shown by the person demanding the
hearing.

(d) All of the pertinent provisions of article five, chap-
ter 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 sub-
section.

(e) Any such hearing shall be conducted by a quorum
of the board. For the purpose of conducting any such
hearing any member of the board shall have the power
and authority to issue subpoenas and subpoenas duces
tecum which shall be issued and served within the time
and for the fees and shall be enforced, as specified in sec-
tion 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 hear-
ing hereunder.

(f) At any such hearing the person who demanded the
same may represent himself or be represented by an at-
torney-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 re-
versed, vacated or modified upon judicial review thereof
in accordance with the provisions of section twelve of this
article.

§30-20-12. Judicial review; appeal to supreme court of appeals;
legal representation for board.

Any person adversely affected by a decision of the board
rendered after a hearing held in accordance with the pro-
visions of section eleven 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 sec-
tion 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.

§30-20-13. Penalties.

Any person who violates any provision of this article,
any reasonable rule and regulation promulgated here-
under or any order or any final decision of the board shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than five hundred dollars, or im-
prisoned in the county jail not more than six months, or
both fined and imprisoned.

§30-20-14. 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 pro-
mulgated 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 thirteen of this article.

Upon application by the board, the circuit courts of
this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article,
the reasonable rules and regulations promulgated here-
under and all orders and final decisions of the board. The
court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.

The judgment of the circuit court upon any 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
additional compensation.
CHAPTER 106

(H. B. 942—By Mrs. Withrow and Mr. Dinsmore)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing experience requirements for eligibility for licenses to engage in practice of psychology.

Be it enacted by the Legislature of West Virginia:

That section seven, article twenty-one, 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 21. PSYCHOLOGISTS.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

(a) To be eligible for a license to engage in the practice of psychology, the applicant must:

1. Be at least eighteen years of age;
2. Be of good moral character;
3. Be a holder of a doctor of philosophy degree or its equivalent or a master's degree in psychology from an accredited institution of higher learning, with adequate course study at such institution in psychology, the adequacy of any such course study to be determined by the board;
4. When the degree held is a doctor of philosophy degree or its equivalent, have at least one year's experience subsequent to receiving said degree in the performance of any of the psychological services described in subdivision (e), section two of this article, including those activities excluded from the definition of the term "practice of psychology" in said subdivision (e), and, when the degree held is a master's degree, have at least five years' experience subsequent to receiving said degree in the performance of any of the psychological
services described in said subdivision (e), including those ac-
tivities excluded from the definition of the term “practice of 
psychology” in said subdivision (e);

(5) Have passed the examination prescribed by the board,
which examination shall cover the basic subject matter of
psychology and psychological skills and techniques;

(6) Not have been convicted of a felony or crime involv-
ing moral turpitude; and

(7) Not, within the next preceding six months, have taken
and failed to pass the examination required by subdivision (5),
subsection (a) of this section.

(b) The following persons shall be eligible for a license to
engage in the practice of psychology without examination:

(1) Any applicant who holds a doctor of philosophy de-
gree or its equivalent from an institution of higher learning,
with adequate course study at such institution in psychology
and who is a diplomate of the “American Board of Examiners
in Professional Psychology”; and

(2) Any person who holds a license or certificate to engage
in the practice of psychology issued by any other state, the
requirements for which license or certificate are found by the
board to be at least as great as those provided in this article.

(c) Any person who is engaged in the practice of psychology
in this state, or is engaged in any of the activities described in
subdivision (e), (1), (2) or (3), section two of this article, in
this state, on the effective date of this article and has been
so engaged for a period of two consecutive years immediately
prior thereto shall be eligible for a license to engage in the
practice of psychology without examination and without meet-
ing the requirements of subdivision (4), subsection (a) of this
section, if application for such license is made within six
months after the effective date of this article and if such
person meets the requirements of subdivisions (1), (2), (3) and
(6), subsection (a) of this section: Provided, That an equiva-
ient of a master’s degree in psychology may be considered by
the board, only for the purpose of this subsection (c), as
meeting the requirements of subdivision (3), subsection (a)
of this section.
PUBLIC EMPLOYEES INSURANCE

(d) 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 an application fee of fifty dollars, not refundable.

CHAPTER 107

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public insurance board; requiring the board to provide for optional group life and accidental death insurance in amounts not to exceed twenty thousand dollars for each eligible employee.

Be it enacted by the Legislature of West Virginia:

That section seven, article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§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; separate rating for claims experience purposes.

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 those employees herein made eligible, 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.

The board shall make available to each employee herein made eligible, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance in an amount not to exceed twenty thousand dollars for life insurance and twenty thousand dollars for accidental death insurance as established under the rules and regulations of the board.

The board may cause to be separately rated for claims experience purposes (1) all employees of the state of West Virginia, (2) all teaching and professional employees of the West Virginia board of regents and county boards of education, (3) all nonteaching employees of the West Virginia board of regents and county boards of education or (4) any other categorization which would insure the stability of the overall program.

CHAPTER 108

(S. B. 469—By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Passed March 13, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing public employees to continue their coverage under the
public employees insurance act by paying their proportionate share of premium costs during medical leave of absence not exceeding one year.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article sixteen, 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage.

The board shall promulgate such rules and regulations as may be required for the effective administration of the provisions of this article. All rules and regulations of the board and all hearings held by the board shall be promulgated and held in accordance with the provisions of chapter twenty-nine-a of the code.

Such regulations shall provide that any employee of the state who has been compelled or required by law to retire before reaching the age of sixty-five years shall be eligible for coverage at their own expense for the total cost of coverage, as provided under this article, and the dependents of any deceased member shall be entitled to continue their participation and coverage upon payment of the total cost for such coverage. Any employee who voluntarily retires, as provided by law, shall be eligible to participate in the public employees health insurance program at his own expense for the total cost of such coverage.

Any employee who is on a medical leave of absence, approved by his employer, shall, subject to the following provisions of this paragraph, be entitled to continue his coverage until he returns to his employment, and such employee and employer shall continue to pay their proportionate share of premium costs as provided by this
Provided, That the employer shall be obligated to pay its proportionate share of the premium cost only for a period of one year: Provided, however, That during the period of such leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work.

CHAPTER 109

(Com. Sub. for H. B. 1228—By Mr. Altmeier and Mr. Kopp)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to membership in the West Virginia public employees retirement system and permitting retired members of the department of public safety retirement system and retired members of any municipal policemen or firemen retirement system to participate therein; limitations.

Be it enacted by the Legislature of West Virginia:

That section seventeen, 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.

§5-10-17. Retirement system membership.

The membership of the retirement system shall consist of the following persons:

(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 public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system; and all persons who become employees of a
participating public employer on or after the said date shall thereupon become members of the system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers' retirement system, the judges' retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia department of employment security, by the commissioner of such department, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That such exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the department of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the department of public safety.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the clerk of the House of Delegates or the clerk of the state Senate or such person as the legislative body of any other political subdivision shall designate to deduct such member's contribution, as provided in subsection (b), section twenty-nine of this article, and after said deductions have been made from said member's compen-
48  sation, such deductions shall be forwarded to the retirement
49  system.

50  (d) Should any question arise regarding the membership
51  status of any employee, the board of trustees has the final
52  power to decide the question.

CHAPTER 110

[Passed February 17, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-eight, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public employees retirement; reemployment after retirement; allowing temporary employment by a participating employer up to twenty-seven hundred sixty dollars per year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement.

1  In the event a retirant becomes employed by a participating public employer, payment of his annuity shall
2  be suspended during the period of his reemployment and
3  he shall become a contributing member to the retirement
4  system. If his reemployment is for a period of one year or
5  longer, his annuity shall be recalculated and he shall be
6  granted an increased annuity due to such additional em-
7  ployment, said annuity to be computed according to sec-
8  tion twenty-two of this article. A retirant may accept
9  temporary employment from a participating employer so
long as he shall not receive compensation in excess of twenty-seven hundred sixty dollars per year and continue to draw his annuity.

CHAPTER 111
(S. B. 400—Originating in the Senate Committee on the Judiciary)

[Passed March 13, 1976; 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 ten-a, relating to benefits under the public employees retirement act, the municipal employees retirement plan, the policemen's and firemen's pension and relief funds, the death, disability and retirement fund of the department of public safety, the state teachers retirement system, certain supplemental and additional retirement plans, the judges' retirement system and any other retirement plan supported in whole or in part by public funds, by providing that officers and employees convicted of certain crimes, or determined to have committed conduct constituting all of the elements of such crimes, shall, together with their beneficiaries, be ineligible for benefits from such plans; providing findings and declarations; definitions; providing for notice of intention to terminate benefits, waiver and failure to reply; providing for jurisdiction of the circuit court for determination of eligibility; providing for appeal; providing for termination of benefits; providing for refund of contributions; providing for eligibility for new participation upon rehabilitation; providing for setoff; relating to rules of construction; 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 ten-a, to read as follows:

ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.

§5-10A-1. Findings and declarations.
§5-10A-2. Definitions.
§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.
§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.
§5-10A-5. Termination of benefits.
§5-10A-6. Refund of contributions.
§5-10A-7. Eligibility for new participation upon rehabilitation.
§5-10A-8. Setoff; unpaid benefits subject to execution, etc.
§5-10A-10. Severability.

§5-10A-1. Findings and declarations.
1 The Legislature finds and declares that every retirement plan instituted and created under the laws of this state has from the inception thereof contemplated and each now contemplates that the service rendered by any participating public officer or employee shall at all times be honorable. The Legislature further finds and declares that honorable service is a condition to receiving any pension, annuity, disability payment or any other benefit under a retirement plan.

§5-10A-2. Definitions.
1 As used in this article:

2 (a) “Retirement plan” or “plan” means the public employees retirement act, pursuant to article ten, chapter five of this code; each municipal employees retirement plan, pursuant to article twenty-two, chapter eight of this code; each policemen’s and firemen’s pension and relief fund, pursuant to article twenty-two, chapter eight of this code; the death, disability and retirement fund of the department of public safety, pursuant to article two, chapter fifteen of this code; the state teachers retirement system, pursuant to article seven-a, chapter eighteen of this code; supplemental and additional retirement plans, pursuant to section four-a, article twenty-three, chapter eighteen of this code; the judges’ retirement system, pursuant to
article nine, chapter fifty-one of this code; and any other
plan established pursuant to this code for the payment
of pension, annuity, disability or other benefits to
any person by reason of his service as an officer
or employee of this state or of any political subdivision,
agency or instrumentality thereof, whenever such
plan is supported in whole or in part by public
funds.

(b) "Beneficiary" means any person eligible for or
receiving benefits on account of the service for a public
employer by a participant in a retirement plan.

(c) "Benefits" means pension, annuity, disability or
any other benefits granted pursuant to a retirement
plan.

(d) "Conviction" means a conviction on or after the
effective date of this article in any federal or state
court of record whether following a plea of guilty, not
guilty or nolo contendere, and whether or not the per-
son convicted was serving as an officer or employee
of a public employer at the time of the convic-
tion.

(e) "Less than honorable service" means:

(1) Impeachment and conviction of a participant
under the provisions of section nine, article four of
the constitution of West Virginia, except for a misde-
meanor; or

(2) Conviction of a participant of a felony for con-
duct related to his office or employment which he com-
mitted while holding such office or during such employ-
ment; or

(3) Conduct of a participant which constitutes all of
the elements of a crime described in either of the fore-
going subdivisions (1) or (2) but for which the partici-
 pant was not convicted because:

(i) Having been indicted for such crime, he made a
plea bargaining agreement pursuant to which he pleaded
guilty to or nolo contendere to a lesser crime; or
(ii) Having been indicted for such crime, he was granted immunity from prosecution for the same; or

(iii) Having been named as an unindicted coconspirator in an indictment of another person for such a crime, which indictment resulted in the conviction of such other person, he was not prosecuted for such crime or conspiracy therefor.

(f) "Participant" means any person eligible for or receiving any benefit under a retirement plan on account of his service as an officer or employee for a public employer.

(g) "Public employer" means the state of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(h) "Supervisory board" or "board" means the board of trustees of the West Virginia public employees retirement system; the board of trustees of any municipal retirement fund; the board of trustees of any policemen's or firemen's retirement plan; the retirement board of the department of public safety; the state treasurer, state auditor and one other member of the board of public works so designated by the governor to sit on the supervisory board of the judges' retirement plan (who shall for the purpose of this article constitute the board); the designated members of the state teachers retirement system established pursuant to section five, article seven-a, chapter eighteen of this code; the governing board of any supplemental retirement plan instituted pursuant to authority granted by section four-a, article twenty-three, chapter eighteen of this code, and any other board, commission or public body having the duty to supervise and operate any retirement plan.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

Whenever a supervisory board, upon receipt of a verified complaint or otherwise, has reasonable cause to be-
lieve that a participant rendered less than honorable
service as defined in section two of this article, it shall
notify the affected participant or beneficiary that it be-
lieves that the participant rendered less than honorable
service and that the participant or beneficiary is thereby
ineligible to receive benefits. No supervisory board shall
issue such notice:

(1) If more than one year has elapsed since the judg-
ment of conviction upon which such notice is based be-
came final; or

(2) In the cases described in paragraph (3), sub-
division (e), section two of this article, if more than
one year has elapsed since, as the case may be: the plea
bargaining agreement, the grant of immunity, or, in the
event the participant was named as an unindicted co-
conspirator for a crime, the conviction of another person
for such crime; or

(3) With respect to conduct which occurred prior to
the effective date of this article.

The notice shall contain a concise statement of the
reasons why the board believes that the participant
rendered less than honorable service and shall be made
either by personal service or by certified mail, return
receipt requested, to the address which the participant
or beneficiary maintains for purposes of corresponding
with the board. If notice is made by certified mail, ser-
vice shall be deemed complete upon mailing and a com-
pleted receipt shall constitute proof of the receipt thereof.
The notice shall inform the participant or beneficiary
that he has the right to demand that the board seek a
determination in circuit court of his eligibility for bene-
fits and membership in the retirement plan by notifying
the board of such demand within forty days. The notice
shall also inform the participant or beneficiary that the
board will terminate the benefits in accordance with sec-
tion four of this article and refund the participant's
contributions with interest less benefits previously paid
as provided in section six thereof if the participant or
beneficiary either waives the right to demand that the
board take the matter before the circuit court or fails to respond to the board's notice within forty days after service.

§5-10A-4. Determination by circuit court of ineligibility; jurisdiction; appeal.

If a participant or beneficiary informs the supervisory board within forty days after service of the notice provided for in section three of this article that he demands that the board seek a determination in circuit court, the board shall forthwith file a petition in the circuit court in the county in which the board is located or in which the participant or beneficiary resides, seeking that the court determine that the participant rendered less than honorable service as defined in section two of this article and that the affected participant or beneficiary is thereby ineligible to receive benefits.

Jurisdiction is hereby conferred on circuit courts to make such determinations.

Upon the filing of such a petition by a supervisory board, the circuit court shall give such notice and opportunity to be heard to the affected parties as are consistent with the demands of due process and necessary for a fair determination of the matter. Upon completion of its hearings the court shall make such findings of fact and conclusions of law as are appropriate. Except in the case of exigent circumstances, the court shall make its determination within sixty days of the filing of the petition by the board.

A determination of the circuit court shall be a final order which may be appealed to the supreme court of appeals in the same manner as decisions in other civil actions.

§5-10A-5. Termination of benefits.

(a) The board shall terminate a participant's or beneficiary's membership in the plan and shall not thereafter pay any benefits to the participant or his beneficiaries if an affected participant or beneficiary either waives the right to demand that the board seek a determination of
eligibility in circuit court as set forth in section three of this article or fails to respond to the notice within forty days after service thereof as set forth in said section three, or if a circuit court has determined that the participant rendered less than honorable service in accordance with section four of this article.

(b) In the event that the participant is deceased and there are two or more beneficiaries at least one of whom has given the board timely notice that he wishes to exercise his right to demand that the board seek a determination of eligibility in circuit court, the board shall take the action provided for by this section with respect to all the beneficiaries only upon a determination by the court that the participant has rendered less than honorable service.

§5-10A-6. Refund of contributions.

The supervisory board shall refund to a participant or beneficiary terminated from benefits by section five of this article the contributions of the participant in the same manner and with the same interest as provided to those participants or beneficiaries otherwise eligible to withdraw the participant’s contributions under the retirement plan, less the amount of any benefits which the participant or his beneficiaries have previously received.

§5-10A-7. Eligibility for new participation upon rehabilitation.

Nothing in this article shall prohibit a participant made ineligible for benefits by virtue of conviction of a crime under this article, and who has paid the full penalty imposed by law for such crime, from accepting a position as an officer or employee of the same or different public employer and joining a retirement plan as a new member; but he and his beneficiaries shall remain forever ineligible for any benefits arising from his former participation in a retirement plan.

§5-10A-8. Setoff; unpaid benefits subject to execution, etc.

The state of West Virginia or any of its political subdivisions shall have the right of setoff against any unpaid benefits which have accrued or may thereafter accrue
under the plan, including any contributions by the participant, for any claim caused by less than honorable service by the participant. Notwithstanding any provision of the law to the contrary, any unpaid benefits which have accrued or may thereafter accrue shall be subject to execution, garnishment, attachment or any other legal process for collection of a judgment for the recovery of loss or damages incurred by the state or its political subdivision, caused by the participant's less than honorable service.


1 If any provision of this article is determined to deprive a person of any property right which is vested and is indefeasible as of the effective date of this article, the provisions of this article shall nonetheless be effective as to any benefits or a part of any benefit under a retirement plan which shall be deemed to vest on or after the effective date of this article; and the right to receive any benefit under a retirement plan, which right shall vest on or after the effective date of this article, is hereby conditioned upon the full compliance and observance of the provisions hereof and the rendering of honorable service throughout the service in public employment or public office in respect of which such benefit is payable.

§5-10A-10. Severability.

1 If any section, subsection, subdivision, provision, clause or phrase 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 sections, subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every section, subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature hereby declares that it would have enacted the remaining sections, subsections, subdivisions, provisions, clauses and phrases of this article even if it had known that any sections, subsections, subdivisions, provisions, clauses and phrases
AN ACT to amend and reenact section three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the salaries of members of the department of public safety.

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 sixteen thousand one hundred sixty-four dollars; the major shall receive an annual salary of fourteen thousand seven hundred ninety-one dollars; captains shall each receive an annual salary of thirteen thousand five hundred twenty-four dollars; lieutenants shall each receive an annual salary of twelve thousand nine hundred seventeen dollars; the master sergeants and first sergeants shall each receive an annual salary of twelve thousand two hundred forty-four dollars; sergeants shall each receive an annual salary of eleven thousand two hundred forty-four dollars; corporals shall each receive an annual salary of eleven thousand five hundred thirty-one dollars; troopers first class shall each receive an annual salary of eleven thousand two hundred forty dollars; and each newly enlisted trooper shall receive a salary of eight hundred twelve 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 eight hundred eighty-three dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of ten thousand seven hundred sixty-five dollars; during the third year of his service each trooper shall receive an annual salary of ten thousand nine hundred thirty-seven dollars; and during the fourth year and fifth year of his service and for each year thereafter each trooper shall receive an annual salary of eleven thousand ninety-five 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 department shall receive a salary increase of three hundred dollars per year to be effective during his next three years of service and like increases at three-year intervals thereafter, until a total of six such increases shall be received and such increases shall be cumulative.

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 becomes effective shall be given credit for prior service and shall be paid such salaries as the same length of service will entitle them to receive under the provisions hereof.

Each member of the department of public safety, except the superintendent and civilian employees, shall, before entering upon the discharge of his duties, execute a bond with security in the sum of three thousand five hundred dollars payable to the state of West Virginia, conditioned for the faithful performance of his duties as such, and such bond shall be approved as to form by the attorney general, and as to sufficiency by the governor, and the same shall be filed with the secretary of state and preserved in his office.

CHAPTER 113
(Com. Sub. for H. B. 929—By Mrs. Neal and Mr. Dinsmore)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-h, article two, chapter fifteen 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-eight-l, relating to increasing retirement benefits; crediting members of the department of public safety with no more than five years toward their retire-
Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, twenty-eight-a, twenty-eight-b, twenty-eight-c, twenty-eight-f, twenty-eight-g, twenty-eight-h, article two, chapter fifteen 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-eight-l, all to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.


§15-2-28a. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.


§15-2-28c. Awards and benefits for disability—Due to other causes.

§15-2-28f. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-28g. Awards and benefits to dependents of member—When member dies from nonservice-connected causes.

§15-2-28h. Awards and benefits to dependents of members—When member dies after retirement or after serving twenty years.

§15-2-28l. Dependent child or children—Qualifications.


1 (a) The retirement board shall retire any member of the department of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the department, including military service credit granted under section twenty-eight-a of this article.

6 (b) The retirement board shall retire any member of the department of public safety who has lodged with the secretary of the retirement board his voluntary petition in writing for retirement, and:
(1) Has or shall have completed twenty-five years of service as a member of the department (including military service credit granted under section twenty-eight-a of this article); or

(2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the department (excluding military service credit granted under section twenty-eight-a of this article); or

(3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the department (excluding military service credit granted under section twenty-eight-a of this article).

(c) When the retirement board retires any member under any of the foregoing provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of the member while in status of retirement one or the other of two amounts, whichever is the greater, namely:

(1) An amount equal to four and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the department of public safety; or

(2) The sum of three thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the department and shall be retired under any of the provisions of this section before he shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date he attains the age of fifty years.

§15-2-28a. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the armed forces of the
United States, namely, the United States air force, army, coast
guard, marines or navy; and service with the national guard
or reserve military forces of any of such armed forces when the
member has been called to active full-time duty and has re-
ceived no compensation during the period of such duty from
any person other than the armed forces.

(b) Any member of the department of public safety who has
previously served on active military duty shall be entitled to
and receive credit on the minimum period of service required
by law for retirement pay from the service of the department
of public safety under the provisions of this article for a period
equal to the active military duty not to exceed five years, sub-
ject to the following:

(1) That he has been honorably discharged from the armed
forces;

(2) That he substantiates by appropriate documentation or
evidence his period of active military duty;

(3) That he is receiving no benefits from any other retire-
ment system for his active military duty; and

(4) That, except with respect to disability retirement pay
awarded under section twenty-eight-c of this article, he has
actually served with the department for twenty years exclusive
of his active military duty.

The amount of retirement pay to which any such member is
entitled shall be calculated and determined as if he had been
receiving for the period of his active military duty a monthly
salary from the department equal to the average monthly salary
which he actually received from the department for his total
service with the department exclusive of the active military
duty. The superintendent is authorized to transfer and pay into
the death, disability and retirement fund from moneys appro-
priated for the department a sum equal to eighteen percent of
the aggregate of the salaries on which the retirement pay of all
such members has been calculated and determined for their
periods of active military duty. In addition, any person who
while a member of the department of public safety was com-
missoned, enlisted or inducted into the armed forces of the
United States or, being a member of the reserve officers' corps, was called to active duty in said armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other order of the president, shall be entitled to and receive credit on the minimum period of service required by law for retirement pay from the service of the department of public safety for a period equal to the full time he has or shall, pursuant to such commission, enlistment, induction or call, have served with said armed forces subject to the following:

1. That he has been honorably discharged from the armed forces;

2. That within ninety days after honorable discharge from the armed forces he has presented himself to the superintendent and offered to resume service as an active member of the department;

3. That he has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces beyond the period of service for which he was originally commissioned, enlisted, inducted or called.

The amount of retirement pay to which any such member shall be entitled shall be calculated and determined as if the member has continued in the active service of the department at the rank or grade to him appertaining at the time of such commission, induction, enlistment or call, during a period co-extensive with the time the member served with the armed forces pursuant to the commission, induction, enlistment or call. The superintendent of the department is authorized to transfer and pay each month into the death, disability and re-

Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to five percent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department. If such disability shall be permanent and total to the extent that such member is or shall be incapacitated ever to engage in any gainful employment, such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, an amount equal to eight percent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department.
The superintendent is authorized to expend moneys from funds appropriated for the department of public safety in payment of medical, surgical, laboratory, X-ray, hospital, ambulance and dental expenses and fees, and reasonable costs and expenses incurred in purchase of artificial limbs and other approved appliances which may be reasonably necessary for any member of said department who has or shall become temporarily, permanently or totally disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the service required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department. Whenever the superintendent shall determine that any disabled member is ineligible to receive any of the aforesaid benefits at public expense the superintendent shall, at the request of such disabled member, refer such matter to the retirement board for hearing and final decision.

§15-2-28c. Awards and benefits for disability—Due to other causes.

If any member while in active service of said department has or shall, in the opinion of the retirement board, become permanently disabled to the extent that such member cannot adequately perform the duties required of a member of the department from any cause other than those set forth in the next preceding section and not due to vicious habits, intemperance or willful misconduct on his part, such member shall be retired by the retirement board and, if such member at the time of such retirement under this section shall have served less than twenty years as a member of said department, such member shall be entitled to receive annually and there shall be paid to such member while in status of retirement, from the death, disability and retirement fund in equal monthly installments during a period equal to one half the time such member has served as a member of said department, a sum equal to four and one-half percent of the total salary which would have been earned by him during twenty-five years of service in said department based on his average earnings while employed as a member of said department; but if such member, at the time of such retirement under
the terms of this section, shall have served twenty years or
longer as a member of said department, such member shall
be entitled to receive annually and there shall be paid to
such member from the death, disability and retirement fund
in equal monthly installments, commencing on the date such
member shall be retired and continuing during the natural
lifetime of such member while in status of retirement, one or
the other of the two amounts, based upon either the aggregate
of salary paid to such member during the whole period of
service of such member or the period of twenty years or
longer during which such member at the time of such retire-
ment has, or shall have served as a member of said department,
whichever shall be the greater, to be determined in the manner
provided by subdivisions (1) and (2), subsection (c), section
twenty-eight of this article.

§15-2-28f. Awards and benefits to dependents of member—When
member dies in performance of duty, etc.

The widow or the dependent child or children or dependent
parent or parents of any member who has lost or shall lose
his life by reason of injury, illness or disease resulting from
an occupational risk or hazard inherent in or peculiar to the
service required of members while such member was or shall
be engaged in the performance of his duties as a member of
said department or if said member shall die from any cause
after having been retired pursuant to the provisions of section
twenty-eight-b of this article shall be entitled to receive and
shall be paid from the death, disability and retirement fund
benefits as follows: To the widow annually, in equal monthly
installments during her lifetime or until her remarriage one or
the other of two amounts, whichever shall be the greater,
namely:

(1) An amount equal to five percent of the total salary
which would have been earned by said deceased member
during twenty-five years of service in said department based
on his average earnings while employed as a member of said
department.

(2) The sum of three thousand dollars.

In addition thereto such widow shall be entitled to receive
and there shall be paid to her fifty dollars monthly for each
dependent child or children. If such widow shall die or
remarry or if there be no widow there shall be paid monthly
to such dependent child or children from the death, disability
and retirement fund the sum of fifty dollars each. If there
be no widow and no dependent child or children, there shall
be paid annually in equal monthly installments from said
deadth, disability and retirement fund to the dependent parents
of said deceased member during their joint lifetimes a sum
equal to the amount which a widow, without children, would
have received: Provided, That when there shall be but one
dependent parent surviving, such parent shall be entitled to
receive during his or her lifetime one half the amount which
both parents, if living, would have been entitled to receive.

§15-2-28g. Awards and benefits to dependents of member—When
member dies from nonservice-connected causes.

In any case where a member while in active service of said
department, before having completed twenty years of service as
a member of said department, has died or shall die from any
cause other than those specified in section twenty-eight-f of
this article and not due to vicious habits, intemperance or will-
ful misconduct on his part, there shall be paid annually in
equal monthly installments from said death, disability and re-
tirement fund to the widow of such member during her natural
lifetime or until such time said widow remarries, a sum equal
to two and one-quarter percent of the total salary which would
have been earned by said member during twenty-five years of
service in said department based on his average earnings while
employed as a member of said department. If there be no
widow there shall be paid from said fund to each dependent
child or children of said deceased member the sum of fifty
dollars monthly. If there be no widow and no dependent child
or children there shall be paid annually in equal monthly in-
stallments from said fund to the dependent parents of said
deceased member during their joint lifetimes a sum equal to
the amount which a widow would have been entitled to receive:
Provided, That when there shall be but one dependent parent
surviving then such dependent parent shall be entitled to re-
cieve during his or her lifetime one half the amount which
both parents, if living, would have been entitled to receive.
§15-2-28h.  

Awards and benefits to dependents of members—When member dies after retirement or after serving twenty years.

When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in section twenty-eight-b of this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of section twenty-eight of this article, there shall be paid annually in equal monthly installments from said fund to the widow of said member, commencing on the date of the death of said member and continuing during her lifetime or until remarriage an amount equal to one half the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if such member had been retired under the provisions of section twenty-eight of this article immediately prior to the time of his death; and in addition thereto said widow shall be entitled to receive and there shall be paid to her from said fund the sum of fifty dollars monthly for each dependent child or children. If such widow die or remarry, or if there be no widow there shall be paid monthly from said fund to each dependent child or children of said deceased member the sum of fifty dollars. If there be no widow or no widow eligible to receive benefits and no dependent child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a widow without children would have been entitled to receive: Provided, That when there shall be but one dependent parent surviving such parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

§15-2-28l.  

Dependent child or children—Qualifications.

In any case where under the terms of this article benefits are provided for “dependent child or children” such phrase
shall mean any child or children born to or adopted by a
member of the department of public safety under the age of
eighteen or where such child or children after reaching eigh-
teen years of age continues as a full time student in an ac-
credited high school, college, university, business or trade
school, until such child reaches the age of twenty-three years
or where such child or children is an invalid as long as such
child or children remains an invalid, such benefits provided
for shall be paid. Benefits provided under the terms of this
article for "dependent child or children" shall be paid for so
long as they meet the foregoing qualifications and no longer.

CHAPTER 114
(H. B. 1677—By Mr Donley)

[Passed March 13, 1976: in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing and empowering the West Virginia department
of public safety to trade a certain parcel of land with the S.
George Company, a West Virginia corporation doing business in
West Virginia, in return for another certain parcel of land of
equal appraised value.

Be it enacted by the Legislature of West Virginia:

DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO TRANSFER
LAND IN BROOKE COUNTY.

§1. Transfer and conveyance of certain tract of land with S. George
Company, a West Virginia corporation.

The Legislature hereby finds and declares that in order
to provide adequate facilities for the department of public
safety detachment located in Wellsburg, Brooke County, it is
necessary to obtain a certain tract of land located adjacent
to the parcel of land now occupied and leased by the depart-
ment of public safety in Wellsburg, which the department of
public safety has agreed to purchase from the department of
highways.
The department of public safety is hereby authorized, upon obtaining such from the department of highways, to trade that certain parcel of real property situate in Wellsburg district, Brooke County, West Virginia, with and to the S. George Company, a West Virginia corporation doing business in West Virginia, more particularly bounded and described as follows:

Beginning at a point in the western revised right-of-way line of West Virginia Route 2, said point being in the division line between the Penn Central Railroad Company and the West Virginia department of highways and forty-two feet radially left of Centerline Station 4+00; Project F-175 (17), Brooke County, West Virginia;

Thence, northwesterly with said division line, seventy-six feet, more or less, to a point one hundred eighteen feet radially left of Centerline Station 4+04;

Thence, northeasterly continuing with said division, one hundred sixteen feet, more or less, to a point in the common corner to the Penn Central Railroad Company, Mary E. Mechling, and the West Virginia department of highways, said point being one hundred eleven feet radially left of Centerline Station 5+23;

Thence, southeasterly with the division line between Mary E. Mechling and the West Virginia department of highways, in a reverse centerline direction, seventy feet, more or less, to a point in the western revised right-of-way line of West Virginia Route 2, said point being forty-two feet, radially left of Centerline Station 5+17;

Thence, southwesterly with said revised right-of-way line, one hundred sixteen feet, more or less, to the place of beginning and containing twenty one-hundredths acre, more or less, and also being parts of the same property conveyed to the party of the first part by two deeds, the first from Anna L. McCollough Mossgrove and husband dated January thirty-first, one thousand nine hundred fifty-eight, of record in the office of the clerk of the county commission of said Brooke County in Deed Book 133, page 440; and the second from Margaret F. McCreary and husband dated April twenty-third,
one thousand nine hundred fifty-eight, of record in said clerk's office in Deed Book 134, page 407.

In consideration of the above described property conveyed by the department of public safety to the S. George Company, the department of public safety is hereby authorized to accept that certain parcel of land owned in fee by the S. George Company, measuring approximately eighty-seven feet by one hundred seventy-five feet, being rectangular in shape, situate on the westerly side of the property now owned by the department of highways and leased to the department of public safety in the town of Wellsburg, Wellsburg Tax District, Brooke County, West Virginia, and containing approximately thirty-three one-hundredths acres.

Both parcels of property described are of approximate equal value as appraised by the department of highways.

CHAPTER 115

(H. B. 893—By Mr. Speaker, Mr. McManus, and Mr. Caudle)

[Passed February 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article eleven, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fair trade act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FAIR TRADE ACT.

§1. Repeal of article establishing the fair trade act.

1 Article eleven, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.
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 seventeen, relating to the regulation of business practices between motor vehicle manufacturers, distributors and dealers; jurisdiction of nonresident manufacturers and distributors; definitions; certain acts prohibited; remedies; liabilities for damages; dealer's duties; writing required; checklists and repairs; warranty work; and claims procedure.

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 seventeen, to read as follows:

ARTICLE 17. REGULATION OF BUSINESS PRACTICES BETWEEN MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS AND DEALERS.

§47-17-1. Legislative findings.

The Legislature finds and declares that the distribution and sale of motor vehicles in this state vitally affects the general economy and the public welfare and that in order to promote the public welfare and in exercise of its police power, it is necessary to regulate motor vehicle
§47-17-2. Governing law.

In accord with the settled public policy of this state to protect the rights of its citizens, it is hereby enacted as the law of West Virginia that each franchise or agreement between a manufacturer or distributor and a dealer who is a resident of West Virginia, to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the state of West Virginia, regardless of the state in which it was made or executed and of any provision in such franchise or agreement to the contrary.

The provisions of this article shall apply only to any such franchise or agreement which is entered into or renewed subsequent to the effective date of this article.

§47-17-3. Actions against nonresident manufacturers and distributors.

Any franchise between a nonresident manufacturer or distributor and a dealer who is a resident of West Virginia to be performed in substantial part in West Virginia shall subject such nonresident manufacturer or distributor to the jurisdiction of the circuit courts of this state as hereinafter provided. The secretary of state shall be the true and lawful attorney of such nonresident manufacturer or distributor upon whom all lawful process or service may be made in any action or procedure.

§47-17-4. Definitions.

As used in this article:

(a) "Person" means individual, firm, partnership,
3 association, joint stock company, corporation, trust or any
4 combination of individuals.
5 (b) "Dealer" means a person engaged in the business
6 of selling, displaying, offering for sale, or dealing in new
7 motor vehicles at the retail level.
8 (c) "Manufacturer" means a person who manufac-
9 tures, assembles, or imports new motor vehicles.
10 (d) "Distributor" means a person who sells or dis-
11 tributes new motor vehicles to franchise dealers or who
12 maintains subdistributors or representatives who sell
13 or distribute new motor vehicles to franchise dealers.
14 (e) "Franchise" means a contract, agreement or any
15 other legal device or means used to describe and establish
16 the contractual relationship between manufacturers, dis-
17 tributors and dealers of new motor vehicles.
18 (f) "Coerce" means to induce action or inaction by
19 threats.
20 (g) "Just cause" means reasonable cause based on
21 reasonable grounds, and requires a fair and honest cause
22 or reason based on good faith.
23 (h) "Area of influence or responsibility" means the
24 geographical area which a franchise dealer can document
25 he significantly services in respect to sales and servicing
26 of new motor vehicles.

§47-17-5. Certain acts prohibited.
1 Notwithstanding the terms, provisions or conditions of
2 any franchise, no manufacturer or distributor shall:
3 (a) Terminate, cancel or fail to renew a franchise
4 without just cause, except with the prior consent of the
5 dealer. Notwithstanding the provisions of any franchise
6 setting forth prima facie grounds or just cause for ter-
7 minating, canceling or failing to renew a franchise, such
8 determination of just cause shall be made by a court of
9 law after due consideration of, but without being bound
10 by the prima facie grounds or definition of just cause
11 contained in such franchise. The burden of proof of just
12 cause shall be on the manufacturer or distributor.
(b) Refuse without just cause to accept as successor dealer the widow, son or other member of the family of a deceased dealer, who succeeds to the deceased person's place in the dealership business. However, no member of the family may succeed to a franchise unless the manufacturer has been given written notice of the identity, financial ability and qualifications of such member of the family and in no event shall the successor be refused acceptance until after two months' notice in writing is first given by the manufacturer or distributor to the successor dealer.

(c) Sell, lease or rent goods, motor vehicles, or render any service normally performed and required of dealers under the franchise agreement with the manufacturer in unfair competition with such dealer, except that this subdivision does not apply to a sale, lease or rental to, or service performed for, an agency of federal, state or local government.

(d) Require any dealer to participate in or contribute to any local or national advertising fund, or participate in any contests, "giveaways" or other sales devices, without the dealer's consent.

(e) Withhold or delay delivery of motor vehicles out of the ordinary course of business.

(f) Discriminate against any dealer in the allocation of, or through withholding from delivery of, certain models of motor vehicles ordered by the dealer out of the ordinary course of business.

(g) Amend unilaterally a dealer's allotment of motor vehicles or quota in sales contests without reasonable cause.

(h) Coerce, attempt to coerce a dealer, or act other than honestly in accordance with reasonable standards for fair dealing, with respect to the dealer's right to sell, assign, transfer or otherwise dispose of his business, in all or in part: Provided, That the dealer shall have no right to sell, assign or transfer the franchise without the manufacturer's consent.
(i) Coerce or attempt to coerce any dealer by any of
the following methods: (1) Threaten to refuse or fail to
renew or extend a lease of premises controlled by a manu-
ufacturer, (2) threaten to award an additional franchise
or agreement to another person for the sale of the same
product as a dealer in that dealer's area of influence or
responsibility, (3) threaten to withhold or delay the
delivery of motor vehicles, parts or other saleable goods,
(4) threaten to terminate, cancel or fail to renew a
dealer's franchise or agreement, or (5) any other method
of coercion as follows: (i) Expand a dealer's facilities,
increase a dealer's sales personnel, purchase more parts or
accept programs for sales and the operation of a dealer's
business, (ii) accept delivery of any motor vehicle, parts,
accessories or other similar commodities not ordered by a
dealer, (iii) consent to participate and participate in or
contribute to any local or national advertising fund, or
participate in any contests, "giveaways" or other sales
devices, (iv) compel a dealer to yield to demands of a
manufacturer or distributor for increased sales, expansion
of facilities or improvement of operations inconsistent
with good business practices.

Nothing in this section shall prohibit or prevent a
manufacturer or distributor from performing, or requiring
the performance by a dealer of any of the provisions of
the franchise where such performance or requirement is
fair, reasonable and equitable under all the surrounding
circumstances, and consistent with good business practices
on the part of both dealer and manufacturer or dis-
tributor.

§47-17-6. Remedies.

Any circuit court of this state shall have jurisdiction
to hear and determine all issues or disputes arising under
a franchise, or under the provisions of this article. In
addition to general relief, the court shall have specific
authority to: (a) Grant injunctions against violations or
threatened violations of any provision of the franchise
or of this article; (b) by declaratory judgment or other-
wise determine the rights and remedies of each party;
(c) as a condition to ordering or authorizing the termina-
tion, cancellation or failure to renew a franchise for just cause, but without the consent of the dealer, to require the manufacturer or distributor to purchase from the dealer (1) at full and fair market value all or any portion of the machinery, materials, and equipment of the dealer reasonably utilized in the marketing of the manufacturer's goods or services which were acquired by the dealer at the written request of manufacturer or distributor; and (2) to purchase from the dealer all or any portion of the dealer's inventory of goods, specialized tools, sales aids, current parts and accessories purchased by the dealer in accordance with the requirements of the manufacturer, at net cost less freight and cartage; (d) to assess and fix the value of any item required to be purchased as provided in this section; (e) to order that a dealer shall remain in business until a final disposition by the courts of such case pending under this section; and (f) to assess and award damages in favor of the party entitled thereto under this article.

In any action arising over the question of the termination, cancellation or failure to renew a franchise or agreement, the burden of proof to show the manufacturer's or distributor's just cause shall be on the manufacturer or distributor. Any such action hereunder shall be brought in the circuit court of the county wherein the dealer has his principal place of business.

§47-17-7. Liability for damages.

1 Any manufacturer or distributor who directly or through an officer, employee or agent violates any of the provisions of this article shall be liable to the dealer injured by such violation for all reasonable damages sustained by the dealer that are the proximate result of a violation by the manufacturer or its officer, employee or agent.

§47-17-8. Dealer's duties.

1 A dealer having an agreement or franchise shall maintain adequate physical facilities and personnel so that the manufacturer's product is at all times properly represented in the dealer's sales area so that the reputation
and trademark of the manufacturer shall be protected and so that the general public will receive adequate servicing of manufacturer's products, and the dealer shall act at all times in good faith.

§47-17-9. Writing required.

The following actions shall be in writing and signed by the manufacturer, distributor or its authorized representative: (a) The creation, modification, interpretation or termination of the franchise; (b) failure to renew or extend such franchise; (c) the original investment or the increasing or supplementing of the investment by the dealer; (d) the franchise and its stipulations as to facilities, purchases of goods, vehicles, accessories, parts or commodities by the dealer from the manufacturer; (e) the sufficiency of the dealer's performance as a dealer; (f) advertising and promotional activity by the dealer; and (g) the dealer's right to sell, assign or transfer, or otherwise dispose of his business.

§47-17-10. Repair checklist; repairs; warranty work; claims procedure.

Each manufacturer shall furnish to each of its dealers and franchisees a checklist of authorized work which the manufacturer obligates the dealer to perform in preparing a motor vehicle for retail sale and which the dealer is required to perform.

Each manufacturer shall reasonably compensate its dealers for work and services the dealers are required to perform in connection with the dealer's delivery and preparation obligations according to the manufacturer's checklist.

Each manufacturer shall compensate its dealers for all warranty work performed. The rate of pay for such warranty work shall be mutually agreed upon by the dealer and manufacturer. In the event the dealer and manufacturer shall not mutually agree as to the rate of pay, the rate shall be determined by any circuit court as authorized by this article.
Each manufacturer shall pay or credit each dealer for preparation work for retail sales and warranty work performed by the dealer within thirty days after claim for compensation has been approved by the manufacturer. All claims shall be approved or disapproved by the manufacturer within thirty days after the request thereof.

CHAPTER 117

(Com. Sub. for H. B. 1257—By Mr. Albright and Mr. Farley)

(Passed March 9, 1976; in effect ninety days from passage. Disapproved by the Governor, and repassed notwithstanding his objections.)

AN ACT to amend and reenact article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state administrative procedures and rule making; defining rule or regulation; providing for rules of procedure; relating to validity of rules or regulations; providing for the establishment and maintenance by the secretary of state of a state register; providing for notice of hearing and taking of evidence; providing for filing findings and determinations for administrative regulations in state register and for evidence to be deemed public record; providing for filing of proposed rules and regulations in the state register and with the governor and Legislature; relating to notification of opportunity to submit data, etc., to proposed rules or regulations; providing for opportunity to submit such data, etc., providing that prior rules or regulations are to remain in effect; providing for the creation of a state legislative rule-making review committee and effective date for rules or regulations; providing for submission of all approved or disapproved rules or regulations to the Legislature and their approval or disapproval by the Legislature; relating to the withdrawal of proposed rules or regulations; and providing for temporary rules or regulations and the procedure for promulgation thereof.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twenty-nine-a of the code of West Vir-
 ARTICLE 3. RULE MAKING.

§29A-3-1. Definition of rule or regulation.

§29A-3-2. Rules of procedure required.

§29A-3-3. Validity of rules or regulations.

§29A-3-4. Establishment and maintenance of a state register by secretary of state.

§29A-3-5. Notice of hearing and taking of evidence.

§29A-3-6. Filing findings and determinations for administrative regulations in state register; evidence deemed public record.

§29A-3-7. Filing of proposed rules and regulations in state register and Legislature.

§29A-3-8. Notification of opportunity to submit data, amendments, etc., to proposed rule or regulation.

§29A-3-9. Opportunity for interested persons to submit data, etc., concerning proposed rule or regulation.

§29A-3-10. Final adoption of proposed rules and regulations.

§29A-3-11. Legislative rule-making review committee; when rule or regulation becomes effective.

§29A-3-12. Submission of rules to Legislature.

§29A-3-13. Withdrawal of proposed rules or regulations.

§29A-3-14. Temporary rules or regulations; procedure for promulgation; judicial review.

§29A-3-15. Prior rules or regulations remain in effect.

§29A-3-1. Definition of rule or regulation.

1 As used in this article, "rule or regulation" means a rule as defined in section one, article one of this chapter.

§29A-3-2. Rules of procedure required.

1 In addition to other rule-making requirements imposed by law:

3 (a) Each agency shall adopt rules or regulations governing the formal and informal procedures prescribed or authorized by this chapter. Such rules or regulations shall include rules of practice before the agency, together with forms and instructions.

8 (b) To assist interested persons dealing with it, each agency shall so far as deemed practicable supplement its rules or regulations with descriptive statements of its procedures.
§29A-3-3. Validity of rules or regulations.

1 Any rules or regulations promulgated after the effective date of this section and any amendment promulgated hereafter to any rule or regulation heretofore promulgated under the delegation of the power of the Legislature or otherwise shall only be effective if promulgated in accordance with the provisions of this article.

§29A-3-4. Establishment and maintenance of a state register by secretary of state.

1 For the purpose of providing a compilation of the rules and regulations of the various agencies, and for providing notice of proposed rules or regulations or the taking of evidence with respect thereto, the secretary of state shall establish and maintain a state register. Every proposed rule or regulation, every finding and determination for a rule or regulation and every rule or regulation filed with the secretary of state shall be admitted to record in the state register.

2 Within ninety days after the effective date of this section, the secretary of state shall arrange all rules or regulations heretofore filed with him in a volume or record and shall add thereto such proposed rules or regulations, notices, amendments, whether by the agency or the Legislature, and all resolutions disapproving or amending rules or regulations, in whole or in part, in such form and fashion as may in his discretion be suitable. This state register and supplements thereto shall be duplicated and furnished on a subscription basis to any person who shall apply therefor. The cost of subscription shall be determined from time to time by the secretary of state who shall fix the price therefor at a level he considers sufficient to defray the cost of preparing and distributing the register and supplements thereto on a weekly basis. The register shall be divided into proposed and final effective rules or regulations and notices or other materials considered by the secretary of state to be suitable. From time to time but at least biennially, the secretary of state shall publish permanent volumes of the rules or regulations promulgated and made effective since the last such publication.

§29A-3-5. Notice of hearing and taking of evidence.

1 Except for a rule or regulation of the type described in
subsection (a), section seven of this article, if a statute
requires that an agency make certain findings and determina-
tions as a condition precedent to promulgation of a rule or
regulation, the agency shall cause to be filed in the state register
a notice of hearing for the taking of evidence upon the issues
to be found, which notice shall state the time and place of the
hearing and generally describe the issues to be decided. In
addition, the agency may cause to be published in every county
of the state as a Class I legal publication a notice of such
hearing which notice shall state the time and place of the
hearing and describe generally the issues to be decided. The
agency may limit the presentations at such hearing to written
matter or may permit oral presentations. Every citizen or other
interested party may appear and be heard at such hearing. If
only written statements are received, the date of hearing shall
be the last day upon which statements may be filed with the
agency.

§29A-3-6. Filing findings and determinations for administrative
regulations in state register; evidence deemed public
record.

Before any rules or regulations mentioned in section five
shall be effective, the agency shall promulgate the findings
and determinations required and state fully and succinctly
the reasons therefor and file such findings and determina-
tions in the state register. The statement of reasons and
a transcript of all evidence received pursuant to notice
shall be public records and shall be carefully preserved by
the agency and be open for public inspection and copying
for a period and term of not less than five years from the
date of the hearing.

§29A-3-7. Filing of proposed rules and regulations in state register
and Legislature.

(a) If a proposed rule or regulation fixes rules of pro-
cedure, practice or evidence for dealings with or proceed-
ings before the agency a copy thereof shall be filed in the
state register.

(b) All other rules or regulations shall be filed in the
state register, with the governor, and with the legislative rule-
making committee in accordance with section eleven of this article.

§29A-3-8. Notification of opportunity to submit data, amendments, etc., to proposed rule or regulation.

When a proposed rule or regulation is filed in the state register there shall be attached thereto a notice of the time, date and place at which interested parties may submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule or regulation, which notice must be given not less than thirty nor more than sixty days prior to the date fixed. An agency may, in its discretion, also publish the required notice, at the expense of the agency. If an agency determines to give notice also by publication, the notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be determined by the agency. No rule or regulation hereafter adopted is valid unless adopted in substantial compliance with the provisions of this section.

§29A-3-9. Opportunity for interested persons to submit data, etc., concerning proposed rule or regulation.

On the date and at the time and place specified in the notice required by section eight of this article an opportunity shall be afforded all interested persons to submit data, objections, suggested amendments, views, evidence and arguments orally or in writing concerning the proposed rule or regulation.

§29A-3-10. Final adoption of proposed rules and regulations.

After the hearing provided in section nine, the agency shall either finally adopt the rule or regulation as proposed, amend and finally adopt the proposed rule and regulation, as amended, or withdraw the proposed rule or regulation. No amendment may change the main purpose of the proposed rule or regulation.

The agency shall file in the state register a notice of its action, including the text of the rule or regulation as finally adopted, and a proposed effective date. Except in the
10 case of a rule or regulation issued pursuant to section fourteen
11 of this article such proposed effective date shall not be less
12 than thirty days after the date of filing of such notice. In
13 cases of rules or regulations required to be filed with the
14 legislative rule-making review committee such notice shall also
15 contain a certificate showing the date of presentation of the
16 proposed rule or regulation to such committee.

§29A-3-11. Legislative rule-making review committee; when rule
or regulation becomes effective.

1 (a) There is hereby created a statutory body to be known
2 as the legislative rule-making review committee, to review all
3 rules or regulations of the several agencies following the
4 proposal thereof, except those rules or regulations described
5 in subsection (a), section seven of this article. The com-
6 mittee shall be composed of six members of the Senate, ap-
7 pointed by the president of the Senate, and six members of the
8 House of Delegates, appointed by the speaker of the House of
9 Delegates. In addition, the president of the Senate and the
10 speaker of the House of Delegates shall be ex officio nonvoting
11 members of the committee and shall designate the cochairmen.
12 Not more than four of the voting members of the committee
13 from each house shall be members of the same political party.
14 The members shall serve until their successors shall have been
15 appointed as heretofore provided. Members of the committee
16 shall receive such compensation and expenses as provided in
17 article two-a of chapter four of this code. Such expenses and
18 all other expenses, including those incurred in the employment
19 of legal, technical, investigative, clerical, stenographic, advisory
20 and other personnel shall be paid from an appropriation to be
21 made expressly for the legislative rule-making review commit-
22 tee, but if no such appropriation be made, such expenses shall
23 be paid from the appropriation under “Account No. 103 for
24 Joint Expenses,” but no expense of any kind whatever payable
25 under said Account No. 103 for joint expenses shall be incurred
26 unless first approved by the joint committee on government and
27 finance. The committee shall meet upon call of the cochairmen
28 and may meet at any time, both during sessions of the Legisla-
29 ture and in the interim.

30 (b) No adoption, amendment or repeal of any rule or regu-
31 lation, except a rule or regulation described in subsection (a),
section seven of this article or a rule or regulation issued 
pursuant to section fourteen thereof, shall be effective until 
seventeen copies thereof have been presented to the legislative 
rule-making review committee by the agency proposing such 
rule or regulation at a regular meeting of said committee, and 
approved by the committee. The form of proposed rules or 
regulations which are presented to the committee shall be as 
follows: New language shall be underlined and language to be 
deleted shall be stricken-through but clearly legible. The com-
mittee shall study all proposed rules or regulations and, in its 
discretion, may hold public hearings thereon.

Within six months after the proposed rule or regulation is 
presented to the committee, the committee shall either approve, 
approve in part and disapprove in part, or disapprove the 
proposed rule or regulation and file notice of its action in 
the state register and with the agency. In the event no notice 
of approval or disapproval is filed by the committee in the 
state register within one hundred eighty days after the 
presentation of the proposed rule or regulation to the commit-
tee, the committee shall be deemed to have approved all of the 
proposed rule or regulation for the purposes of this section. To 
the extent that a proposed rule or regulation is approved by the 
committee it shall be effective thirty days after the filing of 
notice of approval or on the effective date proposed by the 
agency, whichever is later, or if no notice is filed, thirty 
days after approval is deemed to have occurred for the purposes 
of this section. The secretary of state shall note every such 
effective date in the state register. To the extent that the 
committee disapproves a proposed rule or regulation no agency 
shall thereafter issue any regulation or directive or take 
other action to implement such disapproved rule or regulation 
except that the Legislature may reverse such disapproval under 
the provisions of section twelve of this article. If the com-
mittee disapproves any rule or regulation proposed for the 
purpose of implementing a federally subsidized or assisted 
program the Legislature shall either sustain or reverse every 
such disapproval.

(c) Any rule or regulation described in subsection (a), 
section seven of this article shall be effective thirty days 
after filing in the state register.
§29A-3-12. Submission of rules to Legislature.

No later than thirty days before the end of each regular session of the Legislature, the cochairmen of the legislative rule-making review committee shall submit to their respective houses of the Legislature for study, copies of all proposed rules or regulations which have been considered by the committee under section eleven of this article which have not been previously submitted to the Legislature for study. Such rules or regulations shall be referred by the speaker of the House of Delegates and by the president of the Senate to an appropriate standing committee of the respective houses for consideration. Such committee, or a subcommittee thereof, shall schedule hearings on any proposed rule or regulation which has been disapproved, in whole or in part, by the legislative rule-making review committee. The Legislature may by concurrent resolution either sustain or reverse, in whole or in part, the action of the legislative rule-making review committee under the provisions of section eleven, except that if the Legislature fails during its regular session to sustain by resolution the disapproval of a rule or regulation proposed for the purpose of implementing a federally subsidized or assisted program, such disapproval shall be deemed reversed for purposes of this section and the proposed rule or regulation shall become effective thirty days after the adjournment sine die of such regular session or on the effective date proposed by the agency, whichever is later. Any action of the Legislature under the provisions of this section shall be effective as of the date on which the concurrent resolution has been adopted by both houses of the Legislature: Provided, That the clerk of the house originating such resolution shall forthwith file a copy thereof in the state register and with the agency; and any rule or regulation or part thereof made effective by such resolution shall only be effective thirty days after such concurrent resolution is filed in the state register or upon the effective date proposed by the agency, whichever is later: Provided, however, That if such concurrent resolution disapproves any rule or regulation or part thereof no agency shall thereafter issue any regulation or directive or take other action to implement such disapproved rule or regulation or part thereof.
§29A-3-13. Withdrawal of proposed rules or regulations.

Any proposed rule or regulation may be withdrawn by the agency at any time before the effective date thereof or thirty days before the expiration of the session of the Legislature at which such rules or regulations may be reviewed, whichever date is sooner.

§29A-3-14. Temporary rules or regulations; procedure for promulgation; judicial review.

Any agency may, without hearing, find that an emergency exists requiring that temporary rules or regulations be promulgated. Such temporary rules or regulations, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and such temporary rules or regulations shall be effective immediately, except that no such rule or regulation shall remain in effect longer than ninety days unless there is compliance with all the provisions of sections five through nine and section eleven of this article.

§29A-3-15. Prior rules or regulations remain in effect.

Every rule or regulation heretofore lawfully promulgated pursuant to the prior provisions of this article shall remain in full force and effect, except as the same shall be amended pursuant to this article, until revoked by appropriate action of the agency or operation of law.

CHAPTER 118

(H. B. 1508—By Mr. Lohr and Mr. Brown)

[Passed March 13, 1976; in effect ninety days 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 raising the amount of the surety bond required by correspondence, business, occupational and trade schools to ten thousand dollars; making such schools responsible for liability; extending indemnification
to persons suffering loss as a result of schools inability to meet contractual agreements; and increasing the fee for a permit for such schools to ten dollars.

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; surety bond; penalty and enforcement.

Except for those correspondence, business, occupational and trade schools that are members of nationally recognized accrediting associations approved by the West Virginia board of education, 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 the school first obtains a permit from the West Virginia board of education in the manner and on the terms herein prescribed.

All schools 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 practices which are inconsistent with this section or with rules and regulations issued pursuant thereto.

All correspondence, business, occupational and trade schools located in this state, including those schools which are not required to secure permits under this section, shall make annual reports to the state board of education, on forms furnished by the board, providing such appropriate information as the board reasonably may require.

The application for a permit shall be made on forms to be
furnished by the board. The application shall be accompanied by a fee of ten dollars and by a surety bond in the penal sum of ten thousand dollars. Such bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment, or failure of the school to meet contractual obligations. The bond shall be given by the school itself as a blanket bond covering all of its representatives. The surety on any such bond may cancel the same upon giving thirty days' notice in writing to the principal on said bond and to the state board of education and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation.

A permit shall be valid for one year from the date on which it is issued, and, upon application, accompanied by a fee of ten dollars and the surety bond as herein required, may be renewed.

All fees collected for the issuance or renewal of such permits shall be deposited in the state treasury to the credit of the general school fund.

All correspondence, business, occupational or trade schools which have been issued a permit, or who have been authorized because of their exempt status, to sell courses to residents of this state shall furnish to the West Virginia board of education a list of its official representatives. Each school shall be issued a certificate of identification by the state board of education for each of its official representatives.

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, asserting 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 or any proprietor or chief administrative
officer of any school 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 im-
prisoned in the county jail not more than sixty days, or both
fined and imprisoned. No correspondence, business, occupa-
tional 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 if the school 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 at-
torney, at the request of the state board of education or upon
his own motion, may bring any appropriate action or pro-
ceeding in any court of competent jurisdiction for the en-
forcement of the provisions of this section relating to permits,
bonds and sureties.

CHAPTER 119
(H. B. 918—By Mr. Harman)

[Passed March 5, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and nine, article seven-a,
chapter eighteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to increasing the
number of elective members of the teachers retirement board;
making the commissioner of finance and administration and the
state treasurer members of the board; removing the director of
the budget; and making it possible for a majority of the members
to call a meeting.

Be it enacted by the Legislature of West Virginia:

That sections five and nine, 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-5. Members of retirement board; terms of office; vacancies.

§18-7A-5. Members of retirement board; terms of office; vacancies.

The retirement board shall consist of the following nine
members: (a) The governor, who shall be ex officio chair-
man; (b) the state superintendent of free schools; (c) the
commissioner of finance and administration; (d) the state in-
surance commissioner; (e) the state treasurer; and (f) four
members of the retirement system.

The teachers, who are now serving as board members, shall
serve the terms for which they were elected by the members
of the retirement system. The new elective member shall be
elected for a four-year term. The election shall be held
prior to the first day of July, one thousand nine hundred
seventy-six, and the new elective member shall begin his
first term on that date; thereafter, all elections shall be for
six-year terms and all elective terms shall begin on the first day
of July. The manner and mode of such election shall be
determined by the retirement board.

Vacancies occurring in the terms of the elected membership
of the retirement board shall be filled within sixty days for
unexpired periods by the retirement board. If the retirement
board does not fill such vacancy within sixty days, the chairman
shall appoint a member of the retirement system to serve for
the remainder of the unexpired term.

Before exercising any authority or performing any duties
as a member of the retirement board, each member shall
qualify as such by taking and subscribing to the oath of
office prescribed by section five, article four of the constitu-
tion, the certificates whereof shall be filed with the secretary
of state.

1 The retirement board shall hold meetings in the state capitol at least four times during each school year.

2 Upon written request by at least a majority of the members of the retirement board, the executive secretary shall call a meeting of the retirement board to be held within thirty days of such request.

CHAPTER 120

(S. B. 576—Originating in the Senate Committee on Education)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to contributions by members to the state teachers retirement system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-14. Contributions by members.

1 At the end of each month every member of the retirement system shall contribute six percent of his monthly earnable compensation to the retirement board: Provided, that in no case shall the contribution of any member employed by the West Virginia board of regents at an institution of higher education under its control exceed two hundred eighty-eight dollars in any fiscal year.

2 Annually, the contributions of each member shall be credited to his account in the teachers accumulation fund. The contributions shall be deducted from the salaries of the members as herein prescribed, and every member
shall be deemed to have given his consent to such deductions. No deductions, however, shall be made from the earnable compensation of any teacher who retired because of age or service, and then resumed service as a teacher.

The aggregate of employer contributions, due and payable under this article, shall equal annually the total deductions from the earnable compensation of members required by this section. All employer contributions shall be credited to the employers accumulation fund.

Payment by an employer to a member of the sum specified in the employment contract minus the amount of the employee's deductions shall be deemed to be a full discharge of the employer's contractual obligation as to earnable compensation.

Each contributor shall file with the retirement board or with the employer to be forwarded to the retirement board an enrollment form showing his date of birth and other data needed by the retirement board. Upon notice from the retirement board to the employer that a contributor has failed to file such forms as prescribed, the employer shall withhold the salary of the contributor until the needed form is filed with the retirement board.

CHAPTER 121
(H. B. 1163—By Mr. Donley)

[Passed March 6, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state teachers retirement system; statement and computation of teacher's service; providing for service credit not exceeding two years for approved absence where a member or retired teacher is serving or has served as an officer with a statewide professional teaching association when the member or retired teacher pays double the amount of contribution for the time absent.
Be it enacted by the Legislature of West Virginia:

That section seventeen, 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-17. Statement and computation of teachers' service.

1 Under such rules and regulations as the retirement board may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit.

2 The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month's duration during which a member was absent without pay, nor shall it credit for more than one year service performed in any calendar year.

3 For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal selective service act was in effect. For purposes of this section, "armed forces" shall include Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

4 For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory the retirement board shall grant credit to the same extent and on the same conditions, if any, as a retirement system established for teachers in such employment would grant credit for service as a teacher in the public schools of West Virginia.
No member shall be deemed absent from service as a teacher while serving as a member of the Legislature of the state of West Virginia during any duly constituted session of that body.

No member shall be deemed absent from service as a teacher while serving on leave of absence as an officer with a statewide professional teaching association, or who has served in such capacity, and no retired teacher, who served on such leave of absence while a member, shall be deemed to have been absent from service as a teacher by reason of such service on leave of absence: Provided, That the period of service credit granted for such service on leave of absence shall not exceed two years: Provided, however, That such member or retired teacher who is serving or has served as an officer of a statewide professional teaching association shall make deposits to the teachers retirement board, for the time of any such absence, in an amount double the amount which he would have contributed in his regular assignment for a like period of time.

The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who have been contributing members for more than three years, for service previously credited by the public employees retirement system, and (1) shall require the transfer of the member's contributions to the teachers retirement system or (2) shall require a repayment of the amount withdrawn any time prior to the member's retirement: Provided, That there shall be added by the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he would have made had the member been under the teachers retirement system during the period of his membership in the public employees retirement system. Payments for absence as provided in section thirteen of this article, shall be paid in addition to the above amount, if applicable.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.
Subject to the above provisions, the board shall verify as soon as practicable, the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.

CHAPTER 122

(H. B. 1303—By Mr. Damron, 10th District, and Mr. Lewis)

[Passed March 12, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article five, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section four-a, relating to authorization of school boards to approve attendance and pay expenses of auxiliary and service personnel while attending educational conventions, conferences or school service meetings or in visitation to another school system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-4a. Educational or service meetings.


1 A county board of education may approve the attendance of any or all teachers at educational conventions, conferences, or other professional meetings of teachers on school days
when in the judgment of the superintendent it is necessary or desirable. Attendance at such meetings may be substituted for an equal amount of teaching or employment and teachers attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of expenses of any personnel whom it may designate to represent the board at any such professional or educational meetings or in visitation to another school system.

§18A-5-4a. Educational or service meetings.

A county board of education may approve the attendance of any or all auxiliary and service personnel at educational conventions, conferences, or school service meetings of auxiliary and service personnel on school days when in the judgment of the superintendent it is necessary or desirable. Attendance at such meetings may be substituted for an equal amount of employment and auxiliary and service personnel so attending shall not suffer loss of pay. Further, the board is authorized to pay all or any part of expenses of any personnel whom it may designate to represent the board at any such educational conventions, conferences or school service meetings or in visitation to another school system.

CHAPTER 123

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]
one thousand nine hundred seventy-six and during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven.

Be it enacted by the Legislature of West Virginia:

That section one, chapter two hundred five, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be amended and reenacted to read as follows:

ISSUANCE AND SALE OF SCHOOL BUILDINGS BONDS.

§ 1. School buildings bonds; amount; when may issue.

Bonds of the state of West Virginia, under authority of the better school buildings amendment of 1972, of the par value not to exceed fifty million dollars during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven, are hereby authorized to be issued and sold, at some date subsequent to the first day of August, one thousand nine hundred seventy-six, for the sole purpose of raising funds for distribution to county boards of education that qualify by meeting conditions, qualifications and requirements as are prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling, and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such time, after the first day of August, one thousand nine hundred seventy-six, bearing such date or dates, as the governor may determine, based upon an examination of the needs of the various county boards of education which justify the issuance by the governor of said bonds, and shall become due and payable serially, annually or semi-annually, in such amounts and mature in such years as the governor may determine. Such bonds shall mature within and not exceeding twenty-five years from their date. The governor must offer said bonds for competitive bids from recognized financial investment institutions before said bonds may be sold.
AN ACT to amend and reenact section twenty-one, article four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the five thousand dollar assessed value exemption on real estate for persons over sixty-five years of age; requiring registration only once for such exemption.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-21. Five thousand dollar assessed value exemption for persons over sixty-five and otherwise qualified; ascertainment of eligibility; supplying of instructions and forms and promulgation of regulations.

Beginning with the first day of July, one thousand nine hundred seventy-four, and every July first thereafter the assessor shall ascertain each person in his county who owns real property, wholly or partially, including, but not limited to, a person who owns a life estate or a consummate dower interest therein, and who occupies such real property as his primary residence and who is sixty-five years of age or older. An exemption from ad valorem tax of the first five thousand dollars of assessed valuation of all such property is hereby granted when owned and occupied by any such qualified person.

The exemption of the first five thousand dollars shall be shown on the land book against the total assessed value, and
taxes shall be extended against the net amount of the assessed
value for the calendar tax year one thousand nine hundred
seventy-five and every calendar tax year thereafter in which
the owner and the property remains qualified under this sec-
tion. Only one exemption shall be granted for each owner-
occupied residence regardless of the number of qualified per-
sons, sixty-five or older, residing therein.

When the five thousand dollar exemption is greater than
the total assessed value of the residence, no taxes will be levied;
and the sheriff shall issue a statement to the landowner show-
ing that no taxes are due.

Only those homeowners sixty-five years of age or older
on the July first assessment date will be eligible for the exemp-
tion provided by this section for the following calendar tax
year. The exemption shall attach to the real estate occupied by
the qualified homeowner on the July first assessment date. An
exemption shall not be transferred to another parcel of real
estate until the following July first. If the property of a home-
owner qualified under this section is transferred by deed, will
or otherwise to an owner who will not be at least sixty-five
years of age on the next July first assessment date, the five
thousand dollar exemption will be removed from the property
when next assessed.

In addition to the listing made by the assessor, every home-
owner who is qualified shall have the right to appear before
the assessor and register his right to the exemption provided by
this section. Any person who does not appear before the as-
soever, by himself or his personal representative, or who
does not in any way contact the assessor's office to register his
right to an exemption on or before the first day of October
following a July first assessment day, shall not be entitled to
any exemption for the following calendar tax year. A person
need only register his right to an exemption one time for any
qualified real estate.

The tax commissioner shall prescribe and supply all neces-
sary instructions and forms and shall promulgate all necessary
regulations to effectuate the purpose of this section.
AN ACT to amend and reenact sections one, four and eleven, article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article eleven by adding thereto a new section, designated section twenty-eight, all relating to inheritance and transfer taxes; providing for taxation of a transfer of an estate in property coupled with a general or limited power of appointment; providing for taxation of a transfer by the exercise or nonexercise of a general power of appointment; providing for exemption of annuity or other payments receivable by beneficiaries from decedents under pension and similar type plans, contracts or policies; providing for increasing the amount of exemptions from tax of property transferred to certain specified transferees; providing for accelerating payment and collection of tax; imposing an additional tax on the transfer of property of resident decedents to equal the maximum allowable federal estate tax credit available to an estate under the estate tax imposed by the revenue laws of the United States; and specifying certain effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. INHERITANCE AND TRANSFER TAXES.

§11-11-1. When imposed.
§11-11-4. Exemptions.

§11-11-1. When imposed.

1 A tax, payable into the treasury of the state, shall be
2 imposed upon the transfer, in trust, or otherwise, of any
property, or interest therein, real, personal, or mixed, if such transfer be:

(a) By will or by laws of this state regulating descent and distribution from any person who is a resident of the state at the time of his death and who shall die seized or possessed of property.

(b) By will or by laws regulating descent and distribution of property within the state, or within its taxing jurisdiction, and the decedent was a nonresident of the state at the time of his death.

(c) By a resident, or by a nonresident owning taxable property within the state or within its jurisdiction, by deed, grant, sale or gifts, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death, or where any change in the use or enjoyment of property included in such transfer, or the income thereof, may occur in the lifetime of the grantor, vendor or donor, by reason of any power reserved to, or conferred upon, the grantor, vendor or donor, either solely or in conjunction with any person or persons, to alter, or to amend, or to revoke any transfer, or any portion thereof, as to the portion remaining at the time of death of the grantor, vendor or donor, thus subject to alteration, amendment or revocation. If any one of the transfers mentioned in this subdivision is made for valuable consideration, the portion of the transfer for which the grantor, or vendor receives equivalent monetary value is not taxable, but the remaining portion thereof is taxable. Every transfer by deed, grant, sale or gift, made within three years prior to the death of the grantor, vendor or donor, without adequate valuable consideration, shall be presumed to have been made in the contemplation of death within the meaning of this subdivision.

(d) By any person who shall transfer any property which he owns, or shall cause any property to which he is absolutely entitled to be transferred to or vested in himself and any other person jointly, with the right of survivorship, in whole or in part, in such other person, a transfer shall be deemed to occur and to be taxable under the provisions of this article upon the vesting of such title in the survivor: Provided, That this sub-
division shall not apply to bank accounts and to shares or savings accounts in federal savings and loan associations or
organized under the federal home owners’ loan act of one thou-
sand nine hundred thirty-three, as amended, or in building and loan associations organized under article six, chapter thirty-one of this code, payable to the class designated in clause (a), section two of this article in a total amount of twenty-five hundred dollars or less: Provided, however, That in the case of a surviving spouse, not more than fifty per centum of the value of any transfer mentioned in this subdivision (d) shall be included and taxed in any such decedent’s estate.

(e) To any person deriving an estate in property coupled with a general or limited power of appointment.

(1) General power.—Any transfer involving the creation of a general power of appointment shall be treated as transferring to the donee of the power a fee or equivalent interest in the property which is subject to the power.

(2) Limited power.—Any transfer involving the creation of any other power of appointment shall be treated as transferring to the donee of the power a life estate or term of years in the property which is subject to the power and as transferring remainder or reversionary interests therein to those who would take if the power is not exercised. The portion of tax which is imposed on any person entitled in remainder or reversion shall be payable in the same manner, and within the same time, as if such person’s interest had vested in possession. Unless otherwise provided by the decedent, the tax on such temporary interests and on such remainder or reversionary interests shall be payable out of the corpus of the property which is subject to the power.

(f) By the exercise or nonexercise of a general power of appointment.

(1) Power that remains unexercised at time of death.—If at the time of his death a decedent has a general power of appointment with respect to property, the exercise of that power is subject to tax as a transfer of the property from the decedent to the person to whom the property is appointed. The failure of the decedent to exercise a general power of appointment is subject to tax as a transfer of the property from the decedent
to the person to whom the property passes by virtue of the non-
exercise of the power. For purposes of this paragraph the
power of appointment shall be considered to exist on the date
of the decedent's death even though the exercise of that power
is subject to a precedent giving of notice or even though the
exercise of the power takes effect only on the expiration of a
stated period after its exercise, whether or not on or before the
date of the decedent's death, notice has been given or the power
has been exercised.

(2) Exercise or release by decedent of power during his
lifetime.—The exercise or release by the decedent during his
lifetime of a general power of appointment is a transfer subject
to tax if the exercise or release is of such a nature that if it were
a transfer of property owned by the decedent, such transfer
would be subject to tax under this article. A disclaimer or
renunciation of such a power of appointment shall not be
deemed a release of such power.

(3) Definition.—For purposes of subdivisions (e) and
(f), the term "general power of appointment" and the term
"lapse of power" shall have the same meaning as when used in
section 2041 of the Internal Revenue Code.

(g) By the terms of any annuity or investment contracts,
or similar type or form of contract or policy, and shall be on
the amount payable under any such contract or policy, on
account of a death, to named beneficiaries, to his estate or in
trust for the benefit of any individual or individuals, in-
cluding (1) all such policies or contracts hereafter issued,
and (2) all such policies or contracts now in force: Pro-
vided, That there shall be exempt from the provisions of this
subdivision the proceeds of such contracts or policies:

(i) When the premiums on such policies or contracts were
paid by the beneficiary named in such policy or contract, to
the extent only of the ratio of premiums paid by the bene-
iciary bear to the total premiums paid;

(ii) When the proceeds of such policies or contracts
have been assigned by the decedent for a valuable consideration
either in form absolute or as collateral security for the
payment of a bona fide indebtedness of the decedent, to the
extent that the proceeds thereof shall be necessary to pay
and satisfy such indebtedness: Provided, however, That no
annuity settlement or arrangement accepted in lieu of cash
settlement of a life insurance policy, whereby the proceeds
of such policy are payable in installments, shall be subject
to taxation under the provisions of this article, nor shall
the provisions of this article apply to the proceeds of any
policy of life or accident insurance payable to a named bene-
ficiary or beneficiaries whether directly or in trust or other-
wise.

Where annuity or investment contracts or policies are
left by a decedent in such manner that the proceeds thereof
cannot be subjected to the payment of his debts, and where
the proceeds of such annuity or investment contracts are
received by beneficiaries thereof, the fact that the decedent
may have been insolvent and that a portion of his debts may
remain unpaid shall not affect the liability for inheritance
tax on such proceeds.

Notwithstanding anything contained herein to the contrary,
there shall be exempt from tax hereunder the proceeds of an
annuity or other payment, whether attributable to employer
contribution, employee contribution or otherwise, receivable by
any beneficiary under:

(1) An employees' trust (or under a contract purchased
by an employees' trust) forming part of a pension, stock bonus,
or profit-sharing plan, including self-employed plans, which,
at the time of the decedent's separation from employment
(whether by death or otherwise), or at the time of termination
of the plan if earlier, met the requirements of section 401(a)
of the Internal Revenue Code;

(2) A retirement annuity contract purchased by an em-
ployer (and not by an employees' trust) pursuant to a plan
which, at the time of decedent's separation from employment
(by death or otherwise), or at the time of termination of the
plan if earlier, was a plan described in section 403(a) of the
Internal Revenue Code;

(3) A retirement annuity contract purchased for an em-
ployee by an employer which is an organization referred to in
section 170(b)(1)(A)(ii) or (vi) of the Internal Revenue
Code, or which is a religious organization (other than a trust),
and which is exempt from tax under section 501(a) of the Internal Revenue Code;

(4) Annuity under the Retired Serviceman's Family Protection Plan or Survivor Benefit Plan pursuant to chapter 73 of Title 10 of the United States Code;

(5) A retirement savings plan for which a deduction has been allowed under section 219 of the Internal Revenue Code.

All references to the Internal Revenue Code shall be to the Internal Revenue Code of 1954, as amended, as in effect on the first day of January, one thousand nine hundred seventy-six. All references to the United States Code shall be to the United States Code in effect on the first day of January, one thousand nine hundred seventy-six.

§11-11-4. Exemptions.

(a) All property transferred to the state or to any county, school district, or municipal corporation thereof, for public purposes, shall be exempt from taxation under this article.

(b) No transfer of two hundred dollars, or less, shall be taxable under this article. For this purpose, all transfers from a decedent to the same transferee shall be treated as a unit.

(c) In computing the tax upon property transferred to a widow, or a widower of a deceased person, an exemption of thirty thousand dollars shall be allowed.

(d) In computing the tax upon property transferred to the father, mother, child or stepchild of the decedent, there shall be allowed an exemption of ten thousand dollars; from property transferred to a grandchild of the decedent there shall be allowed an exemption of five thousand dollars.

(e) In computing the tax upon property transferred to the brother, sister, half brother or half sister of the decedent, if at the time of death the decedent was unmarried, there shall be allowed an exemption of ten thousand dollars.

(f) There shall be exempt from taxation under this article, all property transferred to a person or corporation, foreign or domestic, in trust or for the use solely for educational, literary, scientific, religious or charitable purposes: Provided, That the
property so transferred to the person resident of another
date or to a foreign corporation, in trust or for the purposes
herein mentioned, shall be exempt only so far as the laws of the
date where such person or foreign corporation is domiciled
would exempt like property transferred from that state to
date a person or corporation in this state in trust and for similar
date purposes.

The provisions of this subsection as hereby amended shall
apply to all future devises, bequests and gifts for such pur-
date, and shall be retroactive in applying to all past devises,
bequests and gifts for such purposes, where the final payment
do of transfer or inheritance taxes has not been made to the
date state of West Virginia.


All taxes imposed by this article shall be due and payable at
date the death of the transferor and if paid within ten months after
date the death of the transferor a discount of three percent shall
be allowed and deducted. If not paid within eleven months
after the death of the transferor taxes due under this article
shall bear interest at the rate of ten per centum per annum, to
be computed from the expiration of eleven months from the
date of the death of the transferor until paid, and a penalty of
date five percent shall be added. The tax commissioner may suspend
payment of such taxes, penalties and interest if there be neces-
date sary litigation pending at the time such taxes are due and pay-
date able, which involves the estate, or for other good and suffi-
date cient cause. Suits and actions brought for the purpose of de-
date feating the payment of any such taxes, penalties and interest
shall not be deemed necessary litigation within the meaning of
date this section.

The provisions of this section as hereby amended shall ap-
date ly to the estates of all decedents dying on or after the first
date day of July, one thousand nine hundred seventy-six and the
provisions of this section eleven, article eleven, chapter eleven
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, in effect prior to the enactment here-
date of shall apply to the estates of all decedents dying before said
date date.

(a) Imposition of Tax.—A tax in addition to that imposed by section one of this article is hereby imposed upon the transfer of property of every person who, after the effective date of this section, shall die a resident of this state, the amount of which shall be a sum equal to the excess (if any) of:

1. The maximum amount of the credit, allowable under the applicable revenue laws of the United States imposing an estate tax, for estate, inheritance, legacy and succession taxes paid to the several states of the United States, over

2. The total amount of all constitutionally valid estate, inheritance, legacy and succession taxes actually paid to the several states of the United States (other than this state) and paid to this state under section one of this article. The purpose of this section is to secure for the state of West Virginia the maximum benefit in all cases of the credit allowed under the provisions of the estate tax imposed by the revenue laws of the United States, to the extent that this state may be entitled thereto, and this section shall be liberally construed to effect such purpose.

(b) Apportionment of tax.—The tax imposed by this section shall be apportioned and paid in the same manner as the federal estate tax is apportioned and paid pursuant to the provisions of section sixteen-a, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended. The provisions of said section sixteen-a shall in all respects apply to the apportionment and payment of the tax imposed by this section, and those persons paying the tax imposed by this section shall have all the rights in respect to the tax imposed by this section which are accorded by said section sixteen-a to those persons paying the federal estate tax. Said section sixteen-a shall be construed in all respects to apply as fully to the tax imposed by this section as if said sixteen-a specifically referred to and included the tax imposed by this section.

(c) Administration.—The tax imposed by this section shall be paid in full by the personal representative, regard-
less of whether or not the property transferred is subject to his control. In no event, however, shall the personal liability of the personal representative exceed the assets of the estate coming within his control. If there is no personal representative appointed, qualified and acting within the state, then any person in actual or constructive possession of any property includable in the gross estate of the decedent shall be liable for the tax imposed by this section to the extent of the value of such property at the date of the decedent’s death. The term “gross estate” as used herein shall include all property subject to the estate tax imposed under the revenue laws of the United States.

(d) Effective date.—The provisions of this section shall apply to the transfer of the estate of every decedent who shall die a resident of this state on or after the first day of July, one thousand nine hundred seventy-six.

CHAPTER 126
(H. B. 1088—By Mr. Burke)

[Passed May 15, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-I, article thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the business and occupation tax and imposing an additional tax upon the business of severing, extracting, reducing to possession and producing for sale any coal; providing the rate of tax and measure thereof; providing that such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution; providing for distribution of such additional tax to entitled counties and municipalities; providing for reporting and remittance as elsewhere in said article thirteen; providing for promulgation of rules and regulations; creating funds in the office of state treasurer; providing for deposit into and distribution from such funds; providing for transfer from separate account into “all counties and municipalities
revenue fund”; specifying formulas for determining amounts to which counties and municipalities are entitled; creating special funds and expenditure limitations for moneys distributed to counties and municipalities; providing for special budgets for such counties and municipalities and reports thereon by state tax commissioner, and authorizing the state tax commissioner to retain a certain amount of the tax as a fee for administration and distribution.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

**§11-13-2l.** Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) 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 coal, the amount of such tax to be equal to the value of the coal produced as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent, and the tax imposed by section two of this article in conjunction with this subsection (a) shall be in addition to the tax imposed by said section two in conjunction with section two-a of this article, and the tax imposed by section two of this article in conjunction with this subsection (a) is hereinafter in this
section referred to as “such additional tax.” The measure of such additional 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.

(b) Such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution. Seventy-five percent of the net proceeds of such additional tax shall, after appropriation thereof by the Legislature, be distributed by the state treasurer to the various counties in this state in which the coal upon which such additional tax is imposed was located at the time it was severed from the ground, such counties being hereinafter in this section referred to as the “coal-producing counties,” and the remaining twenty-five percent of the net proceeds of such additional tax shall be distributed, after appropriation, among all the counties and municipalities of this state without regard to coal having been produced therein.

(c) Such additional tax shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section two in conjunction with said section two-a of this article and all of the enforcement and other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-two, article two, chapter twenty-two of this code, the state tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules and regulations requiring the furnishing by producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section. The state tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax to such coal-producing counties, there is hereby created in the state treasurer’s office a special fund to be known as the “county coal revenue fund”, and in order to provide
a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such additional tax to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the “all counties and municipalities revenue fund.”

Seventy-five percent of the net proceeds of such additional tax shall be deposited in the “county coal revenue fund” and twenty-five percent of such net proceeds shall be deposited in the “all counties and municipalities revenue fund,” from time to time as such proceeds are received by the state tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section: Provided, That those moneys heretofore received and maintained in a separate account in the state treasurer's office, constituting twenty-five percent of the net proceeds of such additional tax received prior to the creation of the “all counties and municipalities revenue fund” shall be transferred to such fund and promptly distributed from such fund to all counties and municipalities of this state according to their respective entitlement.

(e) The moneys in the “county coal revenue fund” and the moneys in the “all counties and municipalities revenue fund” shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the “county coal revenue fund” shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the “all counties and municipalities revenue fund” shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and sub-
section (g) of this section the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the state auditor for the sum due to such county or municipality shall issue and a check drawn thereon making payment of such sum shall thereafter be distributed to such county or municipality.

(f) The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined by (i) dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter, and (ii) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

(g) The amount to which each county and municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection, "population" shall mean the population as determined by the most recent decennial census taken under the authority of the United States.

The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county shall be the county's "base share."

Each county's "base share" shall then be subdivided into two portions. One portion shall be determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion shall be determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share." The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage
which the population of each municipality within the county
bears to the total population of all municipalities within
the county.

(h) All counties and municipalities shall create a “coal
severance tax revenue fund” which shall be the depository for
moneys distributed to any county or municipality under the
provisions of this section, from either or both special funds.
Moneys in such “coal severance tax revenue funds,” in com-
pliance with subsection (i), may be expended by the county
commission or governing body of the municipality for such
public purposes as the county commission or governing body
shall determine to be in the best interest of the people of its
respective county or municipality: Provided, That a line item
budgeted amount from the current levy estimate for a county
shall be funded at one hundred percent of the preceding year’s
expenditure from the county general fund prior to the use of
coal severance tax revenue fund moneys for the same general
purpose: Provided, however, That said coal severance tax
revenue fund moneys shall not be budgeted for personal
services in an amount to exceed one fourth of the total funds
available in such fund.

(i) On or before July fifteenth, one thousand nine hundred
seventy-six, each county commission or governing body of a
municipality receiving such revenue funds for fiscal year one
thousand nine hundred seventy-six—one thousand nine hun-
dred seventy-seven, shall budget the intended use of such funds
on forms provided by the state tax commissioner. Such budget
shall be followed unless the state tax commissioner approves
a subsequent amendment. On or before June fifteenth, one
thousand nine hundred seventy-seven, and each June fifteenth
thereafter, each county commission or governing body re-
ceiving such revenue shall submit to the state tax commissioner
on forms provided by the state tax commissioner a special
budget, detailing how such revenue is to be spent during the
subsequent fiscal year. Such budget shall be followed in
expending such revenue unless a subsequent budget is approved
by the state tax commissioner. All unexpended balances re-
maining in said special fund at the close of a fiscal year shall
be reappropriated to the budget for the subsequent fiscal year.
Such reappropriation shall be entered as an amendment to the
new budget and submitted to the tax commissioner on or be-
fore July fifteenth of the current budget year.

(j) On or before December fifteenth, one thousand nine
hundred seventy-six, and each December fifteenth thereafter,
the state tax commissioner shall deliver to the clerk of the
Senate and the clerk of the House of Delegates a consolidated
report of the special budgets, created by subsection (i) of this
section, for all county commissions and municipalities as of July
fifteenth of the current year.

(k) The state tax commissioner shall retain for the benefit
of the state from the additional tax collected the amount of
thirty-five thousand dollars annually as a fee for the ad-
ministration of such additional tax by the state tax commis-
sioner and the distribution of the net proceeds thereof by the
state treasurer.

CHAPTER 127

(H. B. 763—By Mr. Smith and Mr. Childers)

[Passed March 2, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article fourteen, chap-
ter eleven of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the refund of tax
paid on fuel because of certain nonhighway uses; time for
filing of application for refund of tax paid on gasoline used for
agricultural purposes; and to further amend said article by
adding thereto a new section, designated section eleven-a, re-
lating to the refund of tax paid on fuel used by volunteer fire
departments, nonprofit ambulance services and emergency rescue
services; time for filing of application for refund; and certification
by county commission to state tax commissioner that organiza-
tion is a bona fide nonprofit organization.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUEL EXCISE TAX.

§11-14-11. Refund of tax because of certain nonhighway uses.
§11-14-11a. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.

§11-14-11. Refund of tax because of certain nonhighway uses.

1 The tax imposed by this article shall be refunded to any person who shall buy in quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed for the following purposes:

 (1) As a special fuel for internal combustion engines not operated upon highways of this state, or

 (2) Gasoline consumed to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the highways of this state, or

 (3) Gasoline used by any railway company, subject to regulation by the public service commission of West Virginia, for any purpose other than upon the highways of this state, or

 (4) Gasoline consumed in the business of manufacturing or producing natural resources or in mining or drilling therefor, or in the transportation of natural resources solely by means of unlicensed vehicles or vehicles licensed under the motor vehicle laws of this state, either as a motor fuel or for any other purpose and which gasoline is not in any part used upon the highways of this state, or

 (5) Gasoline consumed in motor boats or other water-craft operated upon the navigable waters of this state.

Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or
special fuel purchased and consumed by such user, other than upon any highways of this state, and how used; and the commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax paid on gasoline or special fuel purchased and consumed as aforesaid.

The right to receive any refund under the provisions of this section shall not be assignable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the application for such refund is filed with the commissioner, upon forms prescribed by the commissioner, within four months from the month of purchase or delivery of the gasoline or special fuel, except that any application for refund made under authority of subdivision (2) above shall be filed within twelve months from the month of purchase or delivery of such gasoline or special fuel. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment.

§11-14-11a. Refund of tax used by volunteer fire departments, nonprofit ambulance services and emergency rescue services.

Upon certification by the county commission to the state tax commissioner that an organization in the county is a bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service, the tax imposed by this article and paid by such organization shall be refunded.

Such tax shall be refunded upon presentation to the commissioner of an affidavit accompanied by the original or top copy sales slips or invoices, or certified copies thereof, from the distributor or producer or retail dealer, showing such purchases, together with evidence of payment thereof, which affidavit shall set forth the total amount of such gasoline or special fuel purchased and consumed by such user, and the commissioner upon the receipt of such affidavit and such paid sales slips or invoices shall cause to be refunded such tax
paid on gasoline or special fuel purchased and consumed as aforesaid.

The right to receive any refund under the provisions of this section shall not be assignnable and any assignment thereof shall be void and of no effect, nor shall any payment be made to any person other than the original person entitled thereto using gasoline or special fuel as hereinbefore in this section set forth. The commissioner shall cause a refund to be made under the authority of this section only when the application for such refund is filed with the commissioner, upon forms prescribed by the commissioner, no later than the thirty-first day of August for purchases of fuel made during the preceding fiscal year ending the thirtieth day of June. Any claim for a refund not timely filed shall not be construed to be or constitute a moral obligation of the state of West Virginia for payment.

CHAPTER 128

(S. B. 489—By Mr. Hatfield and Miss Herndon)

[Passed March 4, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to soft drinks tax, providing definitions for "natural undiluted fruit juice," "natural undiluted vegetable juice" or "sweetener."

Be it enacted by the Legislature of West Virginia:

That section one, article nineteen, 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 19. SOFT DRINKS TAX.

§11-19-1. Definitions.

1 As used in this article:

2 (1) "Bottled soft drinks" shall include any and all
nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, coca cola, lime cola, pepsi cola, doctor pepper, root beer, carbonated water, orange-ade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, or any other type of container, envelope, package or bottle, whether manufactured with or without the use of any syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been added, or natural undiluted fruit juice or vegetable juice.

(2) "Natural undiluted fruit juice" shall mean the liquid resulting from the pressing of fruit with or without sweetener being added, or the liquid resulting from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice with or without sweetener being added.

(3) "Natural undiluted vegetable juice" shall mean the liquid resulting from the pressing of vegetables with or without sweetener being added or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice with or without sweetener being added.

(4) "Sweetener" shall mean sugar only, artificial or natural, which singularly flavors the taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

(5) "Soft drink syrups and powders" shall include the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink, among such syrups being such products as coca cola syrup, chero cola syrup, pepsi cola syrup, doctor pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or
used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as kool aid, oh boy drink, tip top, miracle aid and all other similar products.

(6) "Simple syrup" shall mean the making, mixing, compounding or manufacturing, by dissolving sugar and water or any other mixtures that will create simple syrup to which may or may not be added concentrates or extracts.

(7) "Person" shall mean and include an individual, firm, partnership, association or corporation.

(8) "Wholesale dealer" includes only those persons who sell any bottled soft drink or soft drink syrup to retail dealers for the purpose of resale.

(9) "Retail dealer" includes every person other than a wholesale dealer mixing, making, compounding or manufacturing any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

(10) "Distributor" shall mean any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

(11) "Commissioner" means the state tax commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him.

CHAPTER 129

(Com. Sub. for H. B. 904—By Mr. Tonkovich and Mr. Wiedebusch)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia personal income tax exemption of retirement income; exempting
survivorship annuities derived from all forms of military retirement income; increasing the exemption of retirement income received by persons over sixty-five, and providing such exemption shall apply to retirement income received by the surviving spouse of such person regardless of age.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income.

(c) Modifications reducing federal adjusted gross income.
—There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-five, by any person who has attained the age of sixty-five or the surviving spouse of such person regardless of age, from any source other than those enumerated in subdivision (5) of this subsection to the extent
includible in gross income for federal tax purposes: Provided, That the total modification for all retirement income received from such sources other than those enumerated in subdivision (5) of this subsection shall be limited to an amount in the aggregate not to exceed eight thousand dollars per person; and

(7) Any pay or allowances received after the thirty-first day of December, one thousand nine hundred seventy-three, by West Virginia residents as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars.

(d) Modification for West Virginia fiduciary adjustment. —There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen.

(f) Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

CHAPTER 130
(H. B. 1702—By Mr. Burke)

[Passed March 17, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia corporation net income tax act.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

PART I. DEFINITIONS, IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.


(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-six, 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-six, 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-six, 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) The term “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
AN ACT to amend and reenact section eight, article one, chapter eleven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real and personal property taxes; notice of time and place for payment; requiring sheriff to mail a copy of taxpayer’s tax ticket to such taxpayer’s last known address; providing for comparison of delinquent list with land books and mailing of copy of tax ticket to transferee shown on delinquent list.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.


1 The sheriff may give notice by posting at not less than six public places in each magisterial district, for at least ten days before the time appointed, that between July fifteenth and August thirty-first he will attend at one or more of the most public and convenient places in each district, such places to be specified in the notice, for the purpose of receiving taxes due by the people residing or
paying taxes in such district. The notice shall also state that those who pay the first installment of their taxes on or before September first will be entitled to a discount of two and one-half percent. Like notice may be given that between January fifteenth and February twenty-eighth he will again appear in each district for the collection of taxes, and that those who pay their second installment on or before March first will be entitled to the same discount. Failure of the sheriff to post such lists shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes, or the methods of enforcing the payment of such taxes, interest or penalty.

The county commission of any county may order that the above notice shall also be given by advertisement. Such an order, once entered, shall continue in effect until rescinded by the county commission. Upon entry of such order, the sheriff shall, besides posting as required above, publish the proper notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the fifteenth day of July or the fifteenth day of January as the case may be. For every failure so to advertise, the sheriff shall forfeit one hundred dollars.

Notwithstanding the foregoing provisions, the sheriff shall send to every person owing real or personal property taxes a copy of such taxpayers annual tax ticket or tickets showing what tax is due and how such tax may be paid. Such copy shall be sent to the last known address of such taxpayer by first class United States mail.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes, or the method of enforcing the payment of such taxes, interest or penalty.

At such time as the sheriff prepares the delinquent list for real property, he shall compare such list with a copy of the land books most recently delivered by the assessor to the
board of review and equalization pursuant to section nineteen, article three of this chapter. The assessor shall make a copy of said land books available to the sheriff. If property on the delinquent list should appear as a transfer on said land books with the delinquent owner as the transferor, the sheriff shall send to the transferee at his last known address by first class United States mail a copy of the annual tax ticket or tickets showing what taxes are due upon the real property of such transferee and how they may be paid as prescribed in this section.

Failure of the sheriff to send or failure of the taxpayer to receive such copy shall not impair the right to collect such taxes, the right to collect any interest or penalty imposed as a result of the failure to pay such taxes, or the method of enforcing the payment of such taxes, interest or penalty.

CHAPTER 132
(Com. Sub. for H. B. 1422—By Mr. Holmes and Mr. Tompkins)

[Passed March 13, 1976; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one; 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, relating to unemployment compensation; definitions; disqualification for benefits; and total and partial unemployment.

Be it enacted by the Legislature of West Virginia:

That section three, article one; 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 to read as follows:

Article
6. Employee Eligibility; Benefits.
ARTICLE 1. DEPARTMENT OF EMPLOYMENT SECURITY.


1. As used in this chapter, unless the context clearly requires otherwise:

2. "Administration fund" means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

3. "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.

4. "Average annual payroll" means the average of the last three annual payrolls of an employer.

5. "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.

6. "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.

7. "Base period wages" means wages paid to an individual during the base period by all his base period employers.

8. "Benefit year" with respect to an individual means the fifty-two week period beginning with the first day of the calendar week in which a valid claim is effective and thereafter the fifty-two week 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.

9. "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 an 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 "employ-
ment" 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 "employ-
ment" 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, per-
formed 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 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, 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 independently 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 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 instrumentalities (or in the employ of this state and one or more other states or their instrumentalities), when such service 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 "employment" 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 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 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December thirty-one, one thousand nine hundred seventy-one, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivisions four, five or six of this definition of "employment" or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer," for purposes of this subdivision
(11), means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state.

Notwithstanding the foregoing definition of "employment," 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 re-funded 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” 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 agreement 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 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, processing, 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 horticultural 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 organization of which such operators are members) in the performance 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 canning 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 commodity, and orchards, and the terms "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 eighteen 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 operations of the vessel operating on navigable water within or without the United States are ordinarily and regularly 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 (1) the
employment of such spouse to perform such service is pro-
vided 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 unemploy-
ment 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 or-
ganized 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 defi-
nition of "employment," services, except agricultural la-
bor 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 estab-
lished 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 graduation 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 fifteen
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 remunera-
tion 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 in-
dividual 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 em-
ployment shall be credited to the individual and included
in his computation of base period wages: *Provided*, That
notwithstanding the foregoing provisions, on and after Jan-
uary 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, 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, however, 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 further, That if the definition of the term "wages" as contained in section 3306(b) of the "Internal Revenue Code of 1954" as 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 employer subject to this article
or his predecessor with respect to employment during any
525 calendar year up to an amount equal to the amount of
526 remuneration taxable under the “Federal Unemployment Tax
527 Act”;

528 (2) The amount of any payment made after December
529 thirty-one, one thousand nine hundred fifty-two (including
530 any amount paid by an employer for insurance or annuities,
531 or into a fund, to provide for any such payment), to, or on
532 behalf of, an individual in its employ or any of his de-
533 pendents, under a plan or system established by an em-
534 ployer which makes provision for individuals in its employ
535 generally (or for such individuals and their dependents), or
536 for a class or classes of such individuals (or for a class
537 or classes of such individuals and their dependents), on
538 account of (A) retirement, or (B) sickness or accident dis-
539 ability, or (C) medical or hospitalization expenses in con-
540 nection with sickness or accident disability, or (D) death;

541 (3) Any payment made after December thirty-one, one
542 thousand nine hundred fifty-two, by an employer to an
543 individual in its employ (including any amount paid by an
544 employer for insurance or annuities, or into a fund, to
545 provide for any such payment) on account of retirement;

546 (4) Any payment made after December thirty-one, one
547 thousand nine hundred fifty-two, by an employer on account
548 of sickness or accident disability, or medical or hospitaliza-
549 tion expenses in connection with sickness or accident dis-
550 ability, to, or on behalf of, an individual in its employ
551 after the expiration of six calendar months following the last
552 calendar month in which such individual worked for such
553 employer;

554 (5) Any payment made after December thirty-one, one
555 thousand nine hundred fifty-two, by an employer to, or on
556 behalf of, an individual in its employ or his beneficiary
557 (A) from or to a trust described in section 401(a) which
558 is exempt from tax under section 501(a) of the “Federal
559 Internal Revenue Code” at the time of such payment unless
560 such payment is made to such individual as an employee of
561 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;

(10) Vacation pay, severance pay, or savings plans received by an individual after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: Provided, however, That the term totally or partially unemployed shall not be interpreted to include employees who are on vacation by reason of their request, or the request of their duly authorized agent for a vacation at a specific time, which request is acceded to by their employer;

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 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) 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 subdivision, 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 di-
rected to do so by the commissioner, and for the four weeks
which immediately follow 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 satis-
fied 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 di-
rectly 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 operation or dismisses his employees in order to
force wage reduction, 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 termi-
nation of said labor dispute, did not exist because of said labor
dispute; and in such event the burden shall be upon the em-
ployer 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;

(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 least 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 indi-
vidual'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 article. For each
week of disqualification he shall be disqualified an additional
five weeks and his maximum benefit amount shall be re-
duced by an amount equal to five 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 indi-
vidual shall not be disqualified under this subdivision for a
period of more than fifty-two consecutive weeks: And pro-
vided 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 ac-
count shall not be charged under any of the following condi-
tions: When benefits are paid for unemployment immediately
after the expiration of a period of disqualification for (a) leav-
ing 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-em-
ployment 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 earns in excess of twenty-five dollars as a result of odd-job or subsidiary work in any benefit week shall be paid benefits for such week in accordance with the provisions of this chapter pertaining to benefits for partial unemployment.

TABLE A

<table>
<thead>
<tr>
<th>Wage Class (Column A)</th>
<th>Wages in Base Period (Column B)</th>
<th>Weekly Benefit Rate (Column C)</th>
<th>Maximum Benefit in Benefit Year for Total and/or Partial Unemployment (Column D)</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>Under $700.00</td>
<td>Ineligible</td>
<td>---</td>
</tr>
<tr>
<td>19</td>
<td>1 700.00</td>
<td>12.00</td>
<td>$312.00</td>
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<tr>
<td>20</td>
<td>2 800.00</td>
<td>13.00</td>
<td>338.00</td>
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<td>21</td>
<td>3 900.00</td>
<td>14.00</td>
<td>364.00</td>
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<td>22</td>
<td>4 1,000.00</td>
<td>15.00</td>
<td>390.00</td>
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<tr>
<td>23</td>
<td>5 1,150.00</td>
<td>16.00</td>
<td>416.00</td>
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<td>24</td>
<td>6 1,300.00</td>
<td>17.00</td>
<td>442.00</td>
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<td>25</td>
<td>7 1,450.00</td>
<td>18.00</td>
<td>468.00</td>
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<td>26</td>
<td>8 1,600.00</td>
<td>19.00</td>
<td>494.00</td>
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<td>27</td>
<td>9 1,750.00</td>
<td>20.00</td>
<td>520.00</td>
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<td>28</td>
<td>10 1,900.00</td>
<td>21.00</td>
<td>546.00</td>
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<td>29</td>
<td>11 2,050.00</td>
<td>22.00</td>
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<tr>
<td>30</td>
<td>12 2,200.00</td>
<td>23.00</td>
<td>598.00</td>
</tr>
<tr>
<td>(Column A)</td>
<td>(Column B)</td>
<td>(Column C)</td>
<td>(Column D)</td>
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<tr>
<td>31 13</td>
<td>2,350.00</td>
<td>2,499.99</td>
<td>24.00</td>
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<tr>
<td>32 14</td>
<td>2,500.00</td>
<td>2,599.99</td>
<td>25.00</td>
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<td>33 15</td>
<td>2,600.00</td>
<td>2,699.99</td>
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<td>34 16</td>
<td>2,700.00</td>
<td>2,799.99</td>
<td>27.00</td>
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<tr>
<td>35 17</td>
<td>2,800.00</td>
<td>2,899.99</td>
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<td>36 18</td>
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<td>37 19</td>
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<td>38 20</td>
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<td>39 21</td>
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<td>40 22</td>
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<td>41 23</td>
<td>3,500.00</td>
<td>3,649.99</td>
<td>34.00</td>
</tr>
<tr>
<td>42 24</td>
<td>3,650.00</td>
<td>3,799.99</td>
<td>35.00</td>
</tr>
</tbody>
</table>

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred sixty-seven, the maximum weekly benefit rate shall be forty 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, 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.

Notwithstanding any of the foregoing provisions of this section, on and after July one, one thousand nine hundred seventy-three, the maximum weekly benefit rate shall be fifty-five 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 forego-
Ch. 132] Unemployment Compensation 615

ing 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.

Notwithstanding any of the foregoing provisions of this section, including Table A, on and after July one, one thousand nine hundred seventy-four:

(1) The maximum weekly benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

(2) The weekly benefit rate [Column (C) of said Table A] in each and every wage class, one through twenty-four, both inclusive [Column (A) of said Table A], shall be increased two dollars, and the maximum benefit in benefit year for total and/or partial unemployment [Column (D) of said Table A] in each and every wage class [Column (A) of said Table A], shall be increased fifty-two dollars.

(3) The commissioner, after he has determined the maximum weekly benefit rate upon the basis of the formula set forth in subdivision (1) above, shall establish as many additional wage classes as are required, increasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty percent of one fifty-second of the median dollar amount of wages in base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. 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 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 calen-
dar 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 aforesaid
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 ef-
flective on a July one, shall apply only to a new claim estab-
lished 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.

CHAPTER 133
(Com. Sub. for S. B. 173—By Mr. Oates and Mr. Nelson)

[Passed March 13, 1976; in effect July 1, 1976. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, eight
and nine, article twenty-six, 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 two new sections, designated sections nine-a and nine-b, all relating to the West Virginia board of regents, its membership, terms, appointment of members, meetings, powers and duties in regard to budget submissions and advisory boards; creating the advisory council of faculty and the advisory council of students and specifying the elections of such councils and the meetings and procedures of such councils.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six, eight and nine, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re- enacted; and that said article be further amended by adding thereto two new sections, designated sections nine-a and nine-b, all to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-4. Composition of board; terms of members; qualifications of members.

§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18-26-6. Meetings; quorum; per diem and expenses of members.


§18-26-9a. Advisory council of faculty.

§18-26-9b. Advisory council of students.

§18-26-4. Composition of board; terms of members; qualifications of members.

The board shall consist of twelve members, of whom one shall be the state superintendent of schools, ex officio, who shall not be entitled to vote, one shall be the chairman of the advisory council of students, ex officio, who shall not be entitled to vote, and one shall be the chairman of the advisory council of faculty, ex officio, who shall not be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of six years, except that three of the original appointments shall be for terms of two years, three of the original appointments shall be for terms of
13 four years, and three of the original appointments shall
14 be for terms of six years.

15 Each of the members appointed to the board by the
16 governor shall be especially qualified in the field of
17 higher education by virtue of his knowledge, learning,
18 experience or interest in the field.

19 Except for the ex officio members, no person shall be
20 eligible for appointment to membership on the board who
21 is an officer, employee or member of an advisory board
22 of any state college or university, or an officer or member
23 of any political party executive committee, or the holder
24 of any other public office or public employment under the
25 federal government or under the government of this state
26 or any of its political subdivisions, or an appointee or
27 employee of the board. Of the nine members appointed
28 by the governor from the public at large, not more than
29 five thereof shall belong to the same political party and
30 at least one member of the board shall be appointed from
31 each congressional district.

32 Except as provided in this section, no other person may
33 be appointed to the board.

§18-26-5. Commencement of terms of members; vacancies;
eligibility for reappointment; oath of office; removal
from office.

1 The governor shall appoint the nine members of the
board to be appointed by him as soon after the effective
date of this article as is practicable, and the original
terms of the nine members appointed by the governor
and of the one member, who is such by virtue of being
the state superintendent of schools, shall commence on
July one, one thousand nine hundred sixty-nine. The
chairman of the advisory council of students, ex officio
and the chairman of the advisory council of faculty, ex
officio, shall serve one-year terms, beginning on the first
day of September, one thousand nine hundred seventy-
six, and annually thereafter; these members shall be
eligible to succeed themselves. All members of the board
of regents serving as of the effective date of this enact-
ment shall continue to serve until the end of their term as provided for above.

The governor shall appoint a member to fill any vacancy among the nine members of the board appointed by the governor, by and with the advice and consent of the Senate, which member appointed to fill such vacancy shall serve for the unexpired term of the vacating member.

All members of the board appointed by the governor shall be eligible for reappointment. A person who has served as a member during all or any part of the two consecutive terms shall be ineligible to serve as a member for a period of three years immediately following the second of the two consecutive terms.

Before exercising any authority or performing any duties as a member of the board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article four of the state constitution, the certificate whereof shall be filed with the secretary of state.

No member of the board appointed by the governor may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality and then only in the manner prescribed by law for the removal by the governor of state elective officers.

§18-26-6. Meetings; quorum; per diem and expenses of members.

The board shall hold at least six meetings in every fiscal year commencing July one and ending the following June thirty, one of which meetings, to be known as the annual meeting, shall be held in July, or as soon thereafter as practicable, in the year one thousand nine hundred sixty-nine and in June of each subsequent year. Annual meetings, as well as the five additional required meetings in each fiscal year, shall be held on such dates and at such places as the board may prescribe, subject only to the requirement that the annual meeting shall be held in
June. In addition to the statutorily required meetings, the board 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 board.

Of the nine appointed, five members of the board shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the board.

The members of the board shall be paid fifty dollars per diem for actual time spent in the performance of duties under this article, and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the board.


On and after the effective date of this article, the general determination, control, supervision and management of the financial, business and educational policies and affairs of all state colleges and universities shall be under the control, supervision and management of the board. In addition, the board is fully authorized and empowered to make studies and recommendations relating to all aspects of higher education in the state; it shall, upon reasonable basis, prescribe and allocate among the state colleges and universities specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication; and it shall consider, revise, and submit to the appropriate agencies of the executive and legislative branches of state government separate budget requests on behalf of the state colleges and universities or the board may, in its discretion, submit a single budget for the state colleges and universities and allocate among them appropriations made for the state colleges and universities, but, if a single budget is submitted, it shall be accompanied by a tentative schedule of proposed allocations of funds to the separate colleges and universities.
The power herein given to the board to prescribe and allocate among the state colleges and universities specific functions and responsibilities to meet the higher educational needs of the state and avoid unnecessary duplication shall not be restricted by any provision of law assigning specified functions and responsibilities to designated state colleges and universities but such power shall supersede any such provision of law: Provided, That the board may delegate, with prescribed standards and limitations, such part of its power and control over the business affairs of a particular university or state college to the president or other administrative head of such university or college in any case where it deems such delegation necessary and prudent in order to enable such institution to function in a proper and expeditious manner. Any such delegation or power and control may be rescinded by the board at any time, in whole or in part.

The board is authorized and empowered, from time to time, to promulgate such rules and regulations as it may deem necessary and convenient to insure the full implementation of its powers and duties.


Each state college and university president or other administrative head shall be authorized to appoint an advisory board, consisting of seven members, to serve as advisors and consultants to him.

The appointments shall be for terms of seven years, except that the original appointments shall be for terms of one, two, three, four, five, six and seven years. Thereafter each member shall be appointed to serve for a term of seven years or until his successor is appointed. An appointment to fill a vacancy shall be for the unexpired term of the vacating member.

Members of advisory boards shall be eligible to succeed themselves. Members of advisory boards shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.
The advisory boards created pursuant to this section as it existed in chapter one hundred thirty, acts of the Legislature, one thousand nine hundred sixty-nine, are hereby abolished; members of those advisory boards shall be eligible for appointment to the advisory boards created by this section.

§18-26-9a. Advisory council of faculty.

During the month of September, one thousand nine hundred seventy-six, and annually thereafter, each state college, community college, including Potomac State College of West Virginia University, and university president or other administrative head shall convene a meeting of all faculty members at his institution. At these meetings, the faculty members of each such college and university shall elect one faculty member to serve on the advisory council of faculty, which is hereby created, consisting of one faculty member, so elected, from each such college and university. Terms of the members of such council shall be for one year and shall begin on the first day of October of each year.

The advisory council of faculty shall meet at least once each quarter, and shall meet during each month of October, at which meeting the council shall elect a chairman, who shall be, by virtue of his office, a member of the West Virginia board of regents.

The advisory council of faculty, through its chairman and in any other appropriate manner, shall consult and advise the board of regents in matters of higher education in which the faculty members of this state's colleges and universities may have an interest.

Members of the advisory council shall be eligible to succeed themselves. Members of the advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.

The board of regents shall furnish a secretarial service
to the advisory council, and the advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any faculty member of this state's colleges and universities.

§18-26-9b. Advisory council of students.

The elected head, or president, of the student government organization at each state college, community college, including Potomac State College of West Virginia University, and university shall serve on the advisory council of students which is hereby created, consisting of each student government head, or president, elected from each such college or university. Terms of the members of such council shall be for one year and shall begin on the first day of August of each year.

The advisory council of students shall meet at least once each quarter, and shall meet during each month of October, at which meeting, the council shall elect a chairman, who shall be, by virtue of his office, a member of the West Virginia board of regents.

The advisory council of students, through its chairman and in any other appropriate manner, shall consult and advise the board of regents in matters of higher education in which the students of this state's colleges and universities may have an interest.

Members of the advisory council shall be eligible to succeed themselves. Members of the advisory council shall serve without compensation, but shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of the duties of their office to be paid by the state college or university served.

The board of regents shall furnish a secretarial service to the advisory council, and the advisory council shall cause to be prepared minutes of its meetings, which minutes shall be available, upon request, to any student in this state's colleges and universities.
AN ACT to repeal section seven, 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 and nine, article two; sections one, one-c, three, six, nine, fourteen and eighteen, article four; sections one, two, three and eight, article four-a, all of chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article four by adding thereto a new section, designated section one-d; relating to exemptions from compulsory coverage, charges to be assessed in fatal and total permanent disability cases, contributions to disabled workmen's relief fund by self-insured employers; to whom compensation fund disbursed; initial payment of temporary total disability benefits, method and time of payments for permanent disability; charges to be assessed for medical benefits awarded, limitation on a period for filing bills for medical services, force and effect of a finding of the occupational pneumoconiosis board, dollar limitation on expenditures for rehabilitation services, and computation of benefits.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
4. Disability and Death Benefits.
4A. Disabled Workmen's Relief Fund.
ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-1. Employers subject to chapter.
§23-2-4. Classification of industries; accounts; rate of premiums.
§23-2-9. Election of employer to provide own system of compensation.

§23-2-1. Employers subject to chapter.

1 The state of West Virginia and all governmental agencies or departments created by it, including county boards of education, political subdivisions of the state, any duly incorporated volunteer fire department or company and emergency service organizations organized under article five, chapter fifteen of this code, and all persons, firms, associations and corporations regularly employing another person or persons for the purpose of carrying on any form of industry, service or business in this state, are employers within the meaning of this chapter and are hereby required to subscribe to and pay premiums into the workmen's compensation fund for the protection of their employees and shall be subject to all requirements of this chapter and all rules and regulations prescribed by the commissioner with reference to rates, classification and premium payment, provided that such rates will be adjusted by the commissioner to reflect the demand on the compensation fund by the covered employer.

This chapter shall not apply to:

(1) Employers of employees in domestic services; or
(2) Employers of five or fewer full-time employees in agricultural service; or
(3) Employers of employees while said employees are employed without the state except in cases of temporary employment without the state; or
(4) Casual employers. An employer is deemed to be a casual employer when the number of his employees does not exceed three and the period of employment is temporary, intermittent and sporadic in nature and does not exceed ten calendar days in any calendar quarter.

If an employer is a partnership, or sole proprietorship,
such employer may elect to include as an "employee"
within this chapter, any member of such partnership, or
the owner of the sole proprietorship. In the event of
such election, the employer shall serve upon the com-
missioner written notice naming the persons to be covered
and shall include such "employee's" remuneration for
premium purposes in all future payroll reports, and no
such partner or proprietor shall be deemed an employee
within the meaning of this chapter until such notice
has been served.

Notwithstanding any other provision of this chapter
to the contrary, whenever there are churches in a circuit
which employ one individual clergyman and the pay-
ments to such clergyman from such churches constitute
his full salary, such circuit or group of churches shall
be considered a single employer for purposes of premium
payment into the workmen's compensation fund.

Employers who are not required to subscribe to the
workmen's compensation fund may voluntarily choose
to subscribe to and pay premiums into the fund for the
protection of their employees and in such case shall be
subject to all requirements of this chapter and all rules
and regulations prescribed by the commissioner with
reference to rates, classifications and premium payments
and shall afford to them the protection of this chapter,
including section six of this article, but the failure of such
employers to choose to subscribe to and to pay premiums
into the fund shall not impose any liability upon them
other than such liability as would exist notwithstanding
the provisions of this chapter.

Any foreign corporation employer whose employment
in this state is to be for a definite or limited period which
could not be considered "regularly employing" within the
meaning of this section may choose to pay into the
workmen's compensation fund the premiums herein pro-
vided for and, at the time of making application to the
commissioner, such employer shall furnish a statement
under oath showing the probable length of time the
employment will continue in this state, the character
of the work, an estimate of the monthly payroll and any
other information which may be required by the commissioner. At the time of making application such employer shall deposit with the state compensation commissioner to the credit of the workmen's compensation fund the amount required by section five of this article, which amount shall be returned to the employer if his application be rejected by the commissioner. Upon notice to such employer of the acceptance of his application by the commissioner, he shall be an employer within the meaning of this chapter and subject to all of its provisions.

Any foreign corporation employer choosing to comply with the provisions of this chapter and to receive the benefits hereunder shall, at the time of making application to the commissioner, in addition to other requirements of this chapter, furnish such commissioner with a certificate from the secretary of state, where such certificate is necessary, showing that it has complied with all the requirements necessary to enable it legally to do business in this state and no application of such foreign corporation employer shall be accepted by the commissioner until such certificate is filed.

§23-2-4. Classification of industries; accounts; rate of premiums.

The commissioner shall distribute into groups or classes the employments subject to this chapter, in accordance with the nature of the business and the degree of hazard incident thereto. And the commissioner shall have power, in like manner, to reclassify such industries into groups or classes at any time, and to create additional groups or classes. The commissioner may make necessary expenditures to obtain statistical and other information to establish the classes provided for in this section.

The commissioner shall keep an accurate account of all money or moneys paid or credited to the compensation fund, and of the liability incurred and disbursements made against same; and an accurate account of all money or moneys received from each individual subscriber, and of the liability incurred and disbursements made on account of injuries and death of the employees of each
subscriber, and of the receipts and incurred liability of each group or class.

In compensable fatal and total permanent disability cases, other than occupational pneumoconiosis, the amount charged against the employer's account shall be such sum as is estimated to be the average incurred loss of such cases to the fund. The amount charged against the employer's account in compensable occupational pneumoconiosis claims for total permanent disability or for death shall be such sum as is estimated to be the average incurred loss of such occupational pneumoconiosis cases to the fund.

It shall be the duty of the commissioner to fix and maintain the lowest possible rates of premiums consistent with the maintenance of a solvent workmen's compensation fund and the creation and maintenance of a reasonable surplus in each group after providing for the payment to maturity of all liability incurred by reason of injury or death to employees entitled to benefits under the provisions of this chapter. A readjustment of rates shall be made yearly on the first day of July, or at any time the same may be necessary. The determination of the lowest possible rates of premiums within the meaning hereof and of the existence of any surplus or deficit in the fund, shall be predicated solely upon the experience and statistical data compiled from the records and files in the commissioner's office under this and prior workmen's compensation laws of this state for the period from the first day of June, one thousand nine hundred thirteen, to the nearest practicable date prior to such adjustment: Provided, That any expected future return, in the nature of interest or income from invested funds shall be predicated upon the average realization from investments to the credit of the compensation fund for the two years next preceding. Any reserves set up for future liabilities and any commutation of benefits shall likewise be predicated solely upon prior experience under this and preceding workmen's compensation laws and upon expected realization from investments determined by the respective past periods, as aforesaid.
The commissioner may fix a rate of premiums applicable alike to all subscribers forming a group or class, and such rates shall be determined from the record of such group or class shown upon the books of the commissioner: Provided, That if any group has a sufficient number of employers with considerable difference in their degrees of hazard, the commissioner may fix a rate for each subscriber of such group, such rate to be based upon the subscriber's record on the books of the commissioner for a period not to exceed three years ending December thirty-first of the year preceding the year in which the rate is to be effective; and the liability part of such record shall include such cases as have been acted upon by the commissioner during such three-year period, irrespective of the date the injury was received; and any subscriber in a group so rated, whose record for such period cannot be obtained, shall be given a rate based upon his record for any part of such period as may be deemed just and equitable by the commissioner; and the commissioner shall have authority to fix a reasonable minimum and maximum for any group to which this individual method of rating is applied, and to add to the rate determined from the subscriber's record such amount as is necessary to liquidate any deficit in the schedule as to create a reasonable surplus.

It shall be the duty of the commissioner, when he changes any rate, to notify every employer affected thereby of that fact and of the new rate and when the same takes effect. It shall also be his duty to furnish to each employer yearly, or more often if requested by the employer, a statement giving the name of each of his employees who were paid for injury and the amounts so paid during the period covered by the statement.

§23-2-9. Election of employer to provide own system of compensation.

Notwithstanding anything contained in this chapter, employers subject to this chapter who are of sufficient financial responsibility to insure the payment of compensation to injured employees and the dependents of fatally injured employees, whether in the form of pecu-
niary compensation or medical attention, funeral expenses
or otherwise as herein provided, of the value at least
equal to the compensation provided in this chapter, or em-
ployers of such financial responsibility who maintain their
own benefit funds, or system of compensation, to which
their employees are not required or permitted to contrib-
ute, or such employers as shall furnish bond or other
security to insure such payments, may, upon a finding of
such facts by the compensation commissioner, elect to pay
individually and directly, or from such benefit funds, de-
partment or association, such compensation and expenses
to injured employees or fatally injured employees' de-
pendents. The compensation commissioner shall require
security or bond from such employer, to be approved by
him, and of such amount as is by him considered adequate
and sufficient to compel or secure to such employees, or
their dependents, payment of the compensation and ex-
penses herein provided for, which shall in no event be
less than the compensation paid or furnished out of the
state workmen's compensation fund in similar cases to
injured employees or the dependents of fatally injured
employees whose employers contribute to such fund. Any
employer electing under this section shall on or before
the twentieth day of the first month of each quarter, for
the preceding quarter, file with the commissioner a
sworn statement of the total earnings of all his employees
subject to this chapter for such preceding quarter, and
shall pay into the workmen's compensation fund a sum
sufficient to pay his proper proportion of the expenses of
the administration of this chapter, and a sum sufficient
to pay his proper portion of the expenses for claims for
those employers who are delinquent in the payment of
premiums, and a sum sufficient to pay his fair portion of
the expenses of the disabled workmen's relief fund, as
may be determined by the commissioner. The commis-
sioner shall make and publish rules and regulations gov-
erning the mode and manner of making application, and
the nature and extent of the proof required to justify the
finding of facts by the commissioner, to consider and pass
upon such election by employers subject to this chapter,
which rules and regulations shall be general in their
application. Any employer subject to this chapter who
shall elect to carry his own risk and who has complied
with the requirements of this section and the rules of the
compensation commissioner shall not be liable to respond
in damages at common law or by statute for the injury or
death of any employee, however occurring, after such
election and during the period that he is allowed by the
commissioner to carry his own risk.

Any employer whose record upon the books of the
compensation commissioner shows a liability against the
workmen's compensation fund incurred on account of in-
jury to or death of any of his employees, in excess of pre-
miums paid by such employer, shall not be granted the
right, individually and directly or from such benefit funds,
department or association, to compensate his injured
employees and the dependents of his fatally injured
employees until he has paid into the workmen's compen-
sation fund the amount of such excess of liability over
premiums paid, including his proper proportion of the
liability incurred on account of explosions, catastrophes or
second injuries as defined in section one, article three of
this chapter, occurring within the state and charged
against such fund.

All employers who have heretofore elected, or shall
hereafter elect, to pay compensation and expenses directly
as provided in this section, shall, unless they give the
catastrophe and second injury security or bond herein-
after provided for, pay into the surplus fund referred to in
section one, article three of this chapter, upon the same
basis and in the same percentages, subject to the limita-
tions herein set forth, as funds are set aside for the main-
tenance of the surplus fund out of payments made by
premium-paying subscribers, such payments to be made
at the same time as hereinbefore provided with respect to
payment of proportion of expenses of administration. In
case there be a catastrophe or second injury, as defined in
section one, article three of this chapter, to the employees
of any employer making such payments, the employer
shall not be liable to pay compensation or expenses arising from or necessitated by the catastrophe or second injury, and such compensation and expenses shall not be charged against such employer, but such compensation and expenses shall be paid from the surplus fund in the same manner and to the same extent as in the case of premium-paying subscribers.

If an employer elect to make payments into the surplus fund as aforesaid, then the bond or other security required by this section shall be of such amount as the commissioner considers adequate and sufficient to compel or secure to the employees or their dependents payment of compensation and expenses, except any compensation and expenses that may arise from, or be necessitated by, any catastrophe or second injury, as defined in section one, article three of this chapter, which last are secured by and shall be paid from the surplus fund as hereinbefore provided.

If any employer elect not to make payments into the surplus fund, as hereinbefore provided, then, in addition to bond or security in the amount hereinbefore set forth, such employer shall furnish catastrophe and second injury security or bond, approved by the commissioner, in such additional amount as the commissioner shall consider adequate and sufficient to compel or secure payment of all compensation and expenses arising from, or necessitated by, any catastrophe or second injury that might thereafter ensue.

All employers hereafter making application to carry their own risk under the provisions of this section, shall with such application, make a written statement as to whether such employer elects to make payments as aforesaid into the surplus fund or not to make such payments and to give catastrophe and second injury security or bond hereinbefore in such case provided for.

All employers who have heretofore elected to carry their own risk under the provisions of this section shall be deemed to have elected to make payments into the surplus fund unless, within thirty days after the effective date of
this act, they notify the commissioner in writing to the contrary: Provided, That such employers, as have heretofore elected, under the rules heretofore promulgated by the commissioner, not to make payments into the surplus fund, shall be deemed to have elected to give the catastrophe and second injury security or bond hereinbefore provided for and not to make payments into the surplus fund. Any catastrophe and second injury security or bond heretofore given under rules and regulations promulgated by the commissioner and approved by him shall be valid under this section, and any election heretofore made under rules and regulations of the commissioner to make payments into the surplus fund shall be valid and protective to the person so electing from and after the date of such election.

In any case under the provisions of this section that shall require the payment of compensation or benefits by an employer in periodical payments, and the nature of the case makes it possible to compute the present value of all future payments, the commissioner may, in his discretion, at any time compute and permit or require to be paid into the workmen's compensation fund an amount equal to the present value of all unpaid compensation for which liability exists, in trust; and thereupon such employer shall be discharged from any further liability upon such award, and payment of the same shall be assumed by the workmen's compensation fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in “injury” and “personal injury”; definition of occupational pneumoconiosis and other occupational diseases.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.

§23-4-1d. Method and time of payments for permanent disability.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

§23-4-6. Classification of disability benefits.

§23-4-9. Physical and vocational rehabilitation.
§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases.

Subject to the provisions and limitations elsewhere in this chapter set forth, the commissioner shall disburse the workmen's compensation fund to the employees of employers subject to this chapter, which employees have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of such employees in case death has ensued, according to the provisions hereinafter made; and also for the expenses of the administration of this chapter, as provided in section two, article one of this chapter.

For the purposes of this chapter the terms "injury" and "personal injury" shall include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and the commissioner shall likewise disburse the workmen's compensation fund to the employees of such employers in whose employment 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, or for any five of the fifteen years immediately preceding the date of such last ex-
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 succeeding 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.

In determining the presence of occupational pneumoconiosis, X-ray evidence may be considered but shall not be accorded greater weight than any other type of evidence demonstrating 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 connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

No award shall be made under the provisions of this chapter for any occupational disease contracted prior to the first day of July, one thousand nine hundred forty-nine. An employee shall be deemed to have contracted an occupational disease within the meaning of this paragraph if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

Claims for occupational disease as hereinbefore defined, except occupational pneumoconiosis, shall be processed in like manner as claims for all other personal injuries.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payments of benefits during protest; right of commissioner to collect payments improperly made.

Upon a finding by the commissioner that a claimant has sustained a compensable injury within the meaning of section one of this article, and upon proof by proper
physician’s report, or otherwise, that disability will last longer than three days as provided in section five of this article, the commissioner shall immediately commence payment of temporary total disability benefits to the claimant in the amounts provided for in sections six and fourteen of this article, without waiting for the expiration of the thirty-day period during which objections may be filed to such findings as provided in section one, article five of this chapter. The commissioner shall give immediate notice to the employer of his findings and of the commencement of such payments.

The commissioner shall determine whether or not the claimant has sustained a compensable injury within the meaning of section one of this article, and shall commence payment of temporary total disability benefits as provided herein within fifteen days of receipt of the employee's or employer's report of injury, whichever is received sooner, and receipt of either a proper physician’s report or any other information necessary for a determination.

Upon receipt of the first report of injury in a claim, the commissioner shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish the commissioner with this information within fifteen days from the date the commissioner received the first report on injury in the case, the employee shall be paid total temporary disability benefits for lost time at the maximum rate. The commissioner shall adjust the rate prospectively upon receipt of proper information; however, notwithstanding any other provision of this section, the employer shall not be entitled to a credit or refund for previous overpayments caused by his failure to provide proper wage information. If the employee had more than one employer during the twelve months preceding the injury, any overpayment resulting from the provisions of this paragraph shall be charged only against the employer or employers who failed to supply wage information.
Where the employer is a subscriber to the workmen's compensation fund under the provisions of article three of this chapter, and upon the findings aforesaid, the commissioner shall mail all workmen's compensation checks paying temporary total disability benefits directly to the claimant and not to the employer for delivery to the claimant.

Where the employer has elected to carry his own risk under section nine, article two of this chapter, and upon the findings aforesaid, the commissioner shall immediately issue a pay order directing the employer to pay such amounts as are due the claimant for temporary total disability benefits. The self-insured employer shall commence such payments by mailing or delivering the payments directly to the employee within ten days of the date of the receipt of the pay order by the employer. If the self-insured employer believes that his employee is entitled to benefits, he may start payments before receiving a pay order from the commissioner.

In the event that an employer files a timely objection to any finding or order of the commissioner, as provided in section one, article five of this chapter, with respect to the payment or continued payment of temporary total disability benefits, as provided herein, the commissioner shall continue to pay to the claimant such benefits during the period of such disability unless it is subsequently found by the commissioner that the claimant was not entitled to receive the temporary total disability benefits, or any part thereof, so paid, in which event the commissioner shall, where the employer is a subscriber to the fund, credit said employer's account with the amount of the overpayment; and, where the employer has elected to carry his own risk, the commissioner shall refund to such employer the amount of the overpayment. The amounts so credited to a subscriber or repaid to a self-insurer shall be charged by the commissioner to the surplus fund created by section one, article three of this chapter. If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him pursuant to a prior decision, such amount of
benefits so paid shall be deemed overpaid. The com-
missioner may recover such amount by civil action or in
any manner provided in this code for the collection of
past-due payment and shall withhold, in whole or in part,
as determined by the commissioner, any future benefits
payable to the individual and credit such amount against
the overpayment until it is repaid in full.

§23-4-1d. Method and time of payments for permanent dis-
ability.

(a) If the commissioner makes an award for per-
manent partial or permanent total disability, the com-
missioner or self-insured employer shall start payment
of benefits by mailing or delivering the amount due
directly to the employee within fifteen days from the
date of the award.

(b) If the employer files a timely protest to the
award, as provided in section one of article five, the
commissioner or self-insured employer shall continue
to pay to the claimant such benefits during the period
of such disability unless it is subsequently found
by the commissioner that the claimant was not entitled
to receive the benefits, or any part thereof, so paid, in
which event the commissioner shall, where the em-
ployer is a subscriber to the fund, credit said employer's
account with the amount of the overpayment; and,
where the employer has elected to carry his own
risk, the commissioner shall refund to such employer
the amount of the overpayment. The amounts so cred-
ited to a subscriber or repaid to a self-insurer shall
be charged by the commissioner to the surplus fund
created by section one, article three of this chapter. If
the final decision in any case determines that a claim-
ant was not lawfully entitled to benefits paid to him
pursuant to a prior decision, such amount of benefits
so paid shall be deemed overpaid. The commissioner
may recover such amount by civil action or in any man-
ner provided in this code for the collection of past-due
payment and shall withhold, in whole or in part, as
determined by the commissioner, any future benefits
§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; charges in excess of scheduled amounts not to be made; contract by employer with hospital, physician, etc., prohibited; penalties.

The commissioner shall establish, and alter from time to time as he may determine to be appropriate a schedule of the maximum reasonable amounts to be paid to physicians, surgeons, hospitals or other persons, firms or corporations for the rendering of treatment to injured employees under this chapter.

The commissioner shall disburse and pay from the fund for such personal injuries to such employees as may be entitled thereto hereunder as follows:

(a) Such sums for medicines, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices, as may be reasonably required.

(b) Payment for such medicine, medical, surgical, dental and hospital treatment, crutches, artificial limbs and such other and additional approved mechanical appliances and devices authorized under subdivision (a) hereof may be made to the injured employee, or to the person, firm or corporation who or which has rendered such treatment or furnished any of the items specified above, or who has advanced payment for same, as the commissioner may deem proper, but no such payments or disbursements shall be made or awarded by him unless duly verified statements on forms prescribed by the commissioner shall be filed with the commissioner within two years after the cessation of such treatment or the delivery of such appliances:

Provided, That no payment hereunder shall be made unless such verified statement shows no charge for or with respect to such treatment or for or with respect to any of the items specified above has been or will be made payable to the individual and credit such amount against the overpayment until it is repaid in full.
against the injured employee or any other person, firm or corporation, and when an employee covered under the provisions of this chapter is injured in the course of and as a result of his employment and is accepted for medical, surgical, dental or hospital treatment, the person, firm or corporation rendering such treatment is hereby prohibited from making any charge or charges therefor or with respect thereto against the injured employee or any other person, firm or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount set forth therefor in the commissioner's schedule established as aforesaid.

(c) No employer shall enter into any contracts with any hospital, its physicians, officers, agents or employees to render medical, dental or hospital service or to give medical or surgical attention therein to any employee for injury compensable within the purview of this chapter, and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental or hospital service within such hospital for such compensable injury. Any employer violating this section shall be liable in damages to his employees as provided in section eight, article two of this chapter, and any employer or hospital or agent or employee thereof violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand dollars or undergo imprisonment not exceeding one year, or both.

(d) When an injury has been reported to the commissioner by the employer without protest, the commissioner may pay, or order an employer who or which made the election and who or which received the permission mentioned in section nine, article two of this chapter to pay, within the maximum amount provided by schedule established by the commissioner as aforesaid, bills for medical or hospital services
without requiring the injured employee to file an appli- 
cation for benefits.

(e) The commissioner shall provide for the replace-
ment of artificial limbs, crutches, hearing aids, eye-
glasses and all other mechanical appliances provided in
accordance with this section which later wear out, or
which later need to be refitted because of the progression
of the injury which caused the same to be originally
furnished, or which are broken in the course of and as
a result of the employee’s employment. The fund or
self-insured employer shall pay for these devices, when
needed, notwithstanding any time limits provided by
law.

§23-4-6. Classification of disability benefits.

Where compensation is due an employee under the
provisions of this chapter for personal injury, such com-
pensation 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 there-
of 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 per-
cent; on or after July one, one thousand nine hundred
seventy-three, sixty percent; on or after July one, one
thousand nine hundred seventy-four, eighty 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; not less than thirty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-one; not less than forty dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-three; not less than forty-five dollars per week for injuries occurring on or after July one, one thousand nine hundred seventy-four; and for injuries occurring on or after July one, one thousand nine hundred seventy-six, thirty-three and one-third percent of the average weekly wage in West Virginia.

(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 total disability, 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. A permanent disability of eighty-five percent or more shall be deemed a permanent total disability for the purpose of this section.

(e) If the injury causes permanent disability less than permanent total 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, at the following maximum or minimum benefit rates: 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; on or after July one, one thousand nine hundred seventy-three, sixty percent; on or after July one, one thousand nine hundred seventy-five, sixty-six and two-thirds percent.

The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) 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 by the commissioner, with the following table establishing the minimum percentage of disability. In determining the percentage of disability, the commissioner may be guided by but shall not be limited to the disabilities enumerated in the following table, and in no event shall the disability be less than that specified in the following table:

- 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 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 percentages 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.

(g) Should a claimant to whom has been made a permanent partial award of from one percent to eighty-four percent, both inclusive, die from sickness or non-compensable injury, the unpaid balance of such award shall be paid to claimant's dependents as defined in this chapter, if any; such payment to be made in the same installments that would have been paid to claimant if living: Provided, 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.

(h) For the purposes of this chapter, a finding of the occupational pneumoconiosis board shall have the force and effect of an award.

(i) 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 the same proportion and shall be computed and allowed by the commissioner.

(j) The percentage of all permanent disabilities other than those enumerated in subdivision (f) of this section shall be determined by the commissioner, and awards made in accordance with the provisions of subdivision (d) or (e) 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 (f) of this section.

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.
(l) Temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) 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.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

- Loss of both eyes or the sight thereof.
- Loss of both hands or the use thereof.
- Loss of both feet or the use thereof.
- Loss of one hand and one foot or the use thereof.

In all other cases permanent disability shall be determined by the commissioner in accordance with the facts in the case, and award made in accordance with the provisions of subdivision (d) or (e).

(n) A disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability.

§23-4-9. Physical and vocational rehabilitation.

In cases where an employee has sustained a permanent disability, or has sustained injuries likely to result in permanent disability, and such fact has been determined by the commissioner, and the employee can be physically and vocationally rehabilitated and returned to remunerative employment by vocational training, by the use of crutches, artificial limbs, or other approved mechanical appliances, or by medicines, medical, surgical, dental or
hospital treatment, the commissioner shall forthwith, after due notice to the employer, expend such an amount as may be necessary for the aforesaid purposes: Provided, that such expenditure for vocational rehabilitation shall not exceed ten thousand dollars for any one injured employee: Provided, however, That no payment shall be made for such purposes as provided by this section unless authorized by the commissioner prior to the rendering of such physical or vocational rehabilitation.

In every case in which the commissioner shall order physical or vocational rehabilitation of a claimant as provided herein, the claimant shall, during the time he is receiving any vocational rehabilitation or rehabilitative treatment that renders him totally disabled during the period thereof, be compensated on a temporary total disability basis for such period.


The average weekly wage earnings, wherever earned, of the injured person at the date of injury, and the average weekly wage in West Virginia as determined by the commissioner of employment security, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

In cases involving occupational pneumoconiosis or other occupational diseases, the "date of injury" shall be the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

In computing benefits payable on account of occupational pneumoconiosis, the commissioner shall deduct the amount of all prior workmen's compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

The expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury," within the meaning of this chapter, shall be computed
based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or twelve months immediately preceding the date of the injury, whichever is most favorable to the injured employee.

The expression "average weekly wage in West Virginia," within the meaning of this chapter, shall be the average weekly wage in West Virginia as determined by the commissioner of employment security in accordance with the provisions of sections ten and eleven, article six, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and other applicable provisions of said chapter twenty-one-a.

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.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except by this section provided compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section five, article five of this chapter. Payments may be made in such periodical installments as may seem best to the
9 commissioner in each case but in no event less frequently
10 than semimonthly for any temporary award and monthly
11 for any permanent award. Payment for permanent disa-
12 bility shall be paid on or before the third day of the
13 month in which they are due. In all cases where compen-
14 sation is awarded or increased, the amount thereof shall
15 be calculated and paid from the date of disability.

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-8. Disabled workmen's relief fund; how funded.

§23-4A-1. Disabled workmen's relief fund created.

1 For the relief of persons who are receiving benefits
2 pursuant to a permanent total disability award in amounts
3 less than two hundred twenty-four dollars per month,
4 and for the relief of widows who are receiving benefits on
5 account of the death of an employee in amounts less than
6 two hundred ten dollars per month, and for the relief of
7 other persons who are receiving dependents' benefits
8 on account of the death of an employee in amounts less
9 than the specific monetary amounts set forth in
10 section ten, article four of this chapter and in effect
11 as of July one, one thousand nine hundred seventy-
12 three, there is hereby created a separate fund to be
13 known as the "Disabled Workmen's Relief Fund," which
14 fund shall consist of such sums as are from time to time
15 made available to carry out the objects and purposes
16 of this article. Said fund shall be in the custody of
17 the state treasurer and disbursements therefrom shall
18 be made upon requisition signed by the commissioner
19 to those persons entitled to participate therein and in
20 such amounts to each participant as is provided in sec-
21 tion three of this article.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workmen's
2 relief fund, an individual must be receiving workmen's
3 compensation benefits by virtue of and under the laws
4 of this state in amounts less than those set forth in
section one of this article, and be receiving such benefits
under a permanent total disability award or be re-
ceiving such benefits because of the death of an employee.


Each individual entitled to participate in the disabled
workmen's relief fund shall be entitled to receive pay-
ments 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 amounts set forth in section one of this article, and
the amount said individual is in fact receiving by vir-
tue 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 on August
one, one thousand nine hundred seventy-six and subse-
quent payments shall be made during the period there-
after in which such participant shall be entitled to
workmen's compensation benefits by virtue of and under
the laws of this state.

§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 in-
vestments held by the workmen's compensation fund,
and out of the amount assessed against self-insured em-
ployers pursuant to the provisions of article two,
section nine, an amount estimated by the commis-
sioner 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.
AN ACT to amend and reenact chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy-two, relating to authorizing the creation of the Potomac Highlands Airport Authority, specifying its powers and duties, membership, tax exemption for its property, funds and obligations, permitting the Mineral County commission, and county commissions of West Virginia counties contiguous to Mineral County, to enter into intergovernmental agreements with the state of Maryland, Allegheny County, Maryland, Maryland counties contiguous to Allegheny County, the city of Cumberland, Maryland, and other Maryland municipalities in such Maryland counties pertaining to the operation of an airport situated in Mineral County, West Virginia.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred thirty-four, acts of the Legislature, regular session, one thousand nine hundred seventy-two, be amended and reenacted to read as follows:

POTOMAC HIGHLANDS AIRPORT AUTHORITY.

§1. County commissions empowered to enter into intergovernmental agreements with Potomac Highlands Airport Authority.

§2. Potomac Highlands Airport Authority authorized.

§3. Authority a corporation.

§4. Purposes.

§5. Members of authority.


§7. Participation.

§8. Funds and accounts.

§9. Property and obligations of authority exempt from taxation.

§10. Sale or lease of property.

§11. Employees to be covered by workmen's compensation.

§12. Liberal construction of act.


§14. When act goes into effect.
§1. **County commissions empowered to enter into intergovernmental agreements with Potomac Highlands Airport Authority.**

The county commissions of Mineral County and of counties contiguous to Mineral County, and the governing bodies of municipalities situate in such counties, are hereby authorized and empowered to enter into intergovernmental agreements with the state of Maryland, Allegheny County, Maryland, and Maryland counties contiguous to Allegheny County, Cumberland, Maryland, and other municipalities situate in such Maryland counties, and the Potomac Highlands Airport Authority regarding the operation and use of the Cumberland municipal airport, and situate in Mineral County, West Virginia. Such agreements shall be reciprocal in nature and may include, but shall not be limited to, conditions governing the operation, use, maintenance of airport facilities, taxation of aircraft owned by Maryland residents and others, and user fees.

§2. **Potomac Highlands Airport Authority authorized.**

The county commissions of Mineral County and other counties contiguous thereto, and the governing bodies of municipalities situate in such counties, or any one or more of them, jointly and severally, are hereby authorized to create and establish, with proper governmental units of the state of Maryland, Allegheny County, Maryland, and other counties contiguous to Allegheny County, Cumberland, Maryland, and other municipalities situate in such Maryland counties, or any one or more of them, a public agency to be known as the "Potomac Highlands Airport Authority" in the manner and for the purposes hereinafter set forth.

§3. **Authority a corporation.**

The authority when created, and the members thereof, shall constitute a public corporation and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, and have and use a common seal.

§4. **Purposes.**

The authority is hereby authorized and empowered to acquire, equip, maintain, and operate an airport or landing field and appurtenant facilities in Mineral County on the
Potomac River near Ridgeley, West Virginia, to serve the area in which it is located.

§5. Members of authority.

The management and control of the Potomac Highlands Airport Authority, its property, operations, business and affairs shall be lodged in a board of seven or more persons who shall be known as members of the authority and who shall be appointed for terms of three years each by such counties, municipalities or other governmental units situate in West Virginia and Maryland as contribute to the funds of the authority, in such proportion between such states and such counties, municipalities and units, and in such manner, as may from time to time be provided in the bylaws adopted by the authority: Provided, That the first board shall be appointed as follows:

(1) The county commission of Mineral County shall appoint two members for terms of two and three years, respectively;

(2) The governing official or body of the municipality of Cumberland, Maryland, shall appoint three members for terms of one, two and three years, respectively;

(3) The governing official or body of Allegheny County, Maryland, shall appoint two members for terms of one and two years, respectively.


The Potomac Highlands Airport Authority is hereby given power and authority as follows:

(1) To make and adopt all necessary bylaws, rules and regulations for its organization and operations not inconsistent with law;

(2) To take all legal actions necessary or desirable in relation to the general operation, governance, capital expansion, management and protection of the Cumberland municipal airport;

(3) To increase the number of members of the authority,
and to set the terms of office and appointment procedures for such additional members;

(4) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(5) To enter into contracts with any person, firm or corporation, and generally to do anything necessary for the purpose of acquiring, equipping, expanding, maintaining and operating an airport as aforesaid;

(6) To delegate any authority given to it by law to any of its officers, committees, agents or employees;

(7) To apply for, receive and use grants in aid, donations and contributions from any sources;

(8) To take or acquire lands by purchase, holding title thereto in its own name;

(9) To purchase, own, hold, sell and dispose of personal property and to sell and dispose of any real estate which it may have acquired and may determine not to be needed for its purposes;

(10) To borrow money;

(11) To extend its funds in the execution of the powers and authority hereby given;

(12) To take all necessary steps to provide for proper police protection at the airport; and

(13) To inventory airplanes and other personal property at the airport and provide the assessor of Mineral County and other proper governmental officials with full particulars in regard thereto.

§7. Participation.

The county commissions of Mineral County and of counties contiguous thereto, and the governing bodies of municipalities situate in such counties, or any one or more of them, jointly and severally, are hereby authorized and empowered to appoint members of the said authority and to contribute to the
cost of acquiring, equipping, maintaining and operating the said airport and appurtenant facilities.

Any of the foregoing county commissions or municipal corporations is hereby authorized and empowered to transfer and convey to the said authority property of any kind here-before acquired by said county commission or municipal corporation for airport purposes.

§8. Funds and accounts.

Contributions may be made to the authority from time to time by the various bodies contributing to its funds and shall be deposited in such bank or banks as a majority of the members of the authority may direct and shall be withdrawn therefrom in such manner as the authority may direct.

The authority shall keep strict account of all of its receipts and expenditures and shall make quarterly reports to the public and private bodies contributing to its funds containing an itemized account of its operations in the preceding quarter. The accounts of the authority shall be regularly examined by the state tax commissioner in the manner required by article nine, chapter six of the code of West Virginia.

§9. Property and obligations of authority exempt from taxation.

The authority shall be exempt from the payment of any taxes or fees to the state of West Virginia or any subdivisions thereof or to any officer or employee of the state or other subdivision thereof. The property of the authority shall be exempt from all local and municipal taxes. Notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, shall be exempt from taxes.

§10. Sale or lease of property.

In the event all of the public corporations contributing to the funds of the authority shall so determine the authority shall make sale of all of its properties and assets and distribute the proceeds thereof among those contributing to its funds; or in the event such of the supporting corporations contributing a majority of the funds of said authority shall so determine the
authority may lease all of its property and equipment upon such
terms and conditions as the authority may fix and determine.

§11. Employees to be covered by workmen's compensation.

All employees of the authority eligible thereto shall be
deemed to be within the workmen's compensation act of
West Virginia and premiums on their compensation shall be
paid by the authority as required by law.

§12. Liberal construction of act.

It is the purpose of this act to provide for the maintenance
and operation of an airport in a prudent and economical
manner and this act shall be liberally construed as giving
to the authority full and complete power reasonably required
to give effect to the purposes hereof. The provisions of this
act are in addition to and not in derogation of any power
existing in the county commissions and municipal corporations
herein named under any constitutional, statutory or charter
provisions which they or either of them may now have, or
may hereafter acquire or adopt.


The several sections and provisions of this act are severable,
and if any section or provision hereof shall be held uncon-
stitutional, all the remaining sections and provisions of the
act shall nevertheless remain valid.

§14. When act goes into effect.

This act shall become effective immediately upon the enact-
ment by the state of Maryland of legislation, similar in nature
to this act, providing for the Potomac Highlands Airport
Authority.
RESOLUTIONS

CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

Authorizing and continuing legislative interim studies:

(Since these resolutions take the same general form, they are listed herein by number showing the subject of studies authorized thereby. They may be found in the House and Senate Journals of the session, and are indexed in the Journals under tabular indices of House and Senate Concurrent Resolutions.)

Senate Concurrent

11. Employment Classification, Salary, Employment Benefits, etc., of Persons Receiving Compensation From the State

27. Retirement Systems for Municipal Firemen and Policemen

29. Coal Mine Health and Safety Laws


HOUSE CONCURRENT RESOLUTION NO. 44

(By Mr. Lohr, Mr. Christian, Mr. McNeely, Mr. Shiflet and Mr. Wells)

[Adopted March 17, 1976]

Memorializing the Congress of the United States to recognize the extreme hazardous and unsafe conditions of the West Virginia Turnpike and urging it to appropriate or authorize the release of federal highway construction funds sufficient to meet the federal government's share of the cost of upgrading the turnpike to interstate standards.

WHEREAS, The West Virginia Turnpike is becoming the most important section of the interstate highway system of this nation because it is an integral part of two of its major trade routes. Agri-
cultural products, oil products and raw materials from the west and the midwest traverse interstate route sixty-four to the eastern manufacturing and population centers while machinery and products of commerce are transported back to the west and midwest, and produce and citrus products are transported northward along interstate highway seventy-seven and seventy-nine to the highly populated northern midwest and northwest and many families travel these highways southward to vacations in West Virginia and other areas of the south; and

WHEREAS, These important trade and travel routes are almost complete, but are connected by the most atrocious highway in the country—the West Virginia Turnpike which stretches for 88 miles and which was the scene last year of 199 traffic accidents, 23 fatalities and 76 injuries; and

WHEREAS, The West Virginia Turnpike is a two lane highway with poor warning signals and signs, deteriorating bridges, poor pavement conditions and treacherous curves; and

WHEREAS, The people of the State of West Virginia are willing and waiting to contribute their share of the cost of upgrading this roadway to interstate standards; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby memorialized to recognize the extreme hazardous and unsafe conditions of the West Virginia Turnpike and urge it to appropriate or authorize the release of federal highway construction funds sufficient to meet the federal government's share of the cost of upgrading this turnpike to interstate standards; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the clerk of the United States Senate and the clerk of the House of Representatives and West Virginia's representatives in the Congress.

HOUSE CONCURRENT RESOLUTION NO. 50
(By Mrs. Neal)
[Adopted March 10, 1976]

Directing the Forest Management Review Commission to encourage, direct and coordinate a study and joint effort by the Department of Natural Resources, the Department of Agriculture, West
Virginia University and other appropriate state and federal agencies to determine the cause, treatment and eradication of chestnut blight.

WHEREAS, Native chestnuts in West Virginia often exceeded a height of one hundred feet before the advent of the chestnut blight; and

WHEREAS, The chestnut is a valuable hardwood tree and food source which because of the blight has become an endangered species; and

WHEREAS, Concerned private persons and groups are putting forth commendable efforts to cultivate, treat and proliferate the chestnut tree; and

WHEREAS, Radiation is one of approximately five techniques currently being used in efforts to develop blight resistant trees; and

WHEREAS, This process changes or modifies the plant cells to produce a mutation which is expected ultimately to produce a blight free or blight resistant American chestnut; and

WHEREAS, Private persons and groups are not financially and otherwise equipped to wage the research needed to conquer the chestnut blight; therefore, be it

Resolved by the Legislature of West Virginia:

That the Forest Management Review Commission encourage, direct and coordinate a study and joint effort by the Department of Natural Resources, the Department of Agriculture, West Virginia University and other appropriate state and federal agencies to eliminate the chestnut blight; 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 and state agencies, as aforesaid; and, be it

Further Resolved, That the expenses necessary to encourage, direct and coordinate these efforts shall be paid from legislative appropriations by the Joint Committee on Government and Finance; and, be it

Further Resolved, That the Clerk of the House be directed to cause copies of this resolution to be forwarded to the United States Department of Agriculture, United States Forest Service, West
RESOLUTIONS

Virginia Congressional Delegation and the state agencies, as aforesaid.

HOUSE CONCURRENT RESOLUTION NO. 56
(By Mr. Speaker, Mr. McManus, and Mr. Shiflet)
[Adopted March 11, 1976]

Extending the regular session of the Legislature, 1976.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:

That the regular session of the Legislature, 1976, is hereby extended until midnight, the 30th day of June, 1976, pursuant to Section 22, Article 6 of the Constitution of the State of West Virginia, for consideration of the budget, budget bills, supplementary appropriation bills, conference committee reports on bills or joint resolutions in conference on adjournment of the Senate and House of Delegates on March 13, 1976, and action on those conference committee reports and bills and joint resolutions on which conference committee reports are received; for reconsideration of any bills vetoed or disapproved by the Governor and any budget bill or supplementary appropriation bill vetoed, disapproved or reduced by the Governor as to any item or part or as to the entire bill; and for consideration of or action upon bills and resolutions introduced on or before the 50th day of the regular session of the Legislature or on the official calendar of the Senate or House of Delegates on their adjournment on March 13, 1976.

HOUSE CONCURRENT RESOLUTION NO. 62
(By Mr. Speaker, Mr. McManus)
[Adopted March 17, 1976]

Providing for an adjournment of the Legislature until the 14th day of May, 1976 and for reconvening prior thereto by the Committees on Rules of the Senate and of the House of Delegates.
Resolved by the Legislature of West Virginia:

That when adjournment is taken by the two Houses of the Legislature at the close of their respective sessions on the 17th day of March, 1976, such adjournment shall be until the 14th day of May, 1976, at 6:00 P.M., pursuant to Article VI, Section 23 of the Constitution of the State of West Virginia, unless the Legislature is called to reconvene prior thereto by a majority vote of the Committee on Rules of the Senate and by a majority vote of the Committee on Rules of the House of Delegates, in which event such adjournment shall be until the date and time of reconvening specified by said Committees; and that the Legislature hereby expressly authorizes said Committees on Rules, to which this authority is hereby expressly delegated, to call the Legislature to reconvene this session prior to the 14th day of May, 1976, as herein provided.

SENATE CONCURRENT RESOLUTION NO. 20
(By Mr. Brotherton, Mr. President, and Mr. Rogerson)

[Adopted March 17, 1976]

Approval of a program for observation of the West Virginia Legislature by undergraduate college and university students.

WHEREAS, There is a growing interest among undergraduate college and university students to visit the West Virginia Legislature during its annual regular sessions to observe and to learn more about the legislative branch of state government; and

WHEREAS, These students and the Legislature can best receive real benefits from these visitations only through an organized program; and

WHEREAS, The Joint Committee on Government and Finance has reviewed and approved a tentative proposal for such a program with participation open to all public and private universities, colleges and community colleges in the State and with legislative participation, along with representatives at the institutions, in planning, coordinating and conducting this annual program, contemplating visits by 50 students divided between two one-week periods; therefore, be it
Resolved by the Legislature of West Virginia:

That approval is hereby expressed for a program to facilitate observation of future regular sessions of the West Virginia Legislature by selected undergraduate students attending West Virginia's public and private universities, colleges and community colleges and that the Joint Committee on Government and Finance is authorized to cooperate with these institutions in organizing and implementing this program.

SENATE CONCURRENT RESOLUTION NO. 22

(By Mr. Brotherton, Mr. President, Mr. Palumbo, Mr. Galperin and Mr. Savilla)

[Adopted March 4, 1976]

Designating the period from the evening of July 2 through July 3, 1976, as the official West Virginia Capital City Bicentennial Celebration and inviting all West Virginia residents to attend such.

WHEREAS, The Charleston-Kanawha Valley Bicentennial Commission, in cooperation with several civic-minded organizations, has arranged an extensive series of festive events for the weekend of July 2-5, 1976, the weekend of our Nation's Bicentennial Celebration; and

WHEREAS, Events of particular interest to the State of West Virginia as a whole will be occurring in Charleston on Friday and Saturday, July 2 and 3; and

WHEREAS, These events begin the evening of July 2 with a colonial dress ball featuring the Glenn Miller Orchestra, and continue Saturday, July 3, with: (1) A 10:30 a.m. parade featuring bands and floats from across the State and Senior United States Senator Jennings Randolph as Parade Marshal; (2) a 2:30 p.m. ceremony commemorating the Declaration of Independence featuring Sissy Farenthold, Chairperson of the National Women’s Political Caucus, a Vice Presidential nominee in 1972, and President of Wells College in Aurora, New York, as the guest speaker and Judge Thornton Berry, Jr., of the West Virginia Supreme Court of Appeals reading and commenting on the Declaration of Independence; (3) the 8:00
p.m. revival of the “Rhododendron North-South Football Classic,” featuring outstanding high school football players from throughout the State; and

WHEREAS, The Kanawha County Delegation to the West Virginia Legislature desires that all West Virginians be invited to the Capital City of Charleston for these events; therefore, be it

Resolved by the Legislature of West Virginia:

That the period from the evening of July 2 through July 3, 1976, be designated as the official West Virginia Capital City Bicentennial Celebration, and that all West Virginia residents are hereby invited to attend these events; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the Charleston-Kanawha Valley Bicentennial Commission.
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-six, to the Governor's Office, McMechen and Stonewood Relief, Account No. 127, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and
WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 127, the designated line item, and language of appropriation.

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

EXECUTIVE

3 12-A—Governor's Office—McMehen and Stonewood Relief

Acct. No. 127

For relief and aid to the City of McMehen, W. Va., and the Town of Stonewood, W. Va., resulting from state natural disasters and presently not eligible for federal disaster funding, there is hereby appropriated for such purpose the sum of $750,000 for the City of McMehen, W. Va., and the sum of $200,000 for the Town of Stonewood, W. Va. Such funds to be used within the boundaries of the City of McMehen, W. Va., and the Town of Stonewood, W. Va., or the immediate vicinities thereof, for correction of landslides, earth movement, mud flow and drainage.

Any or all of the above appropriation may be expended solely or in conjunction with any federal funds or federal aid programs, and any part of this appropriation may be transferred to any department for such purposes.

The purpose of this bill is to supplement the aforesaid budget bill with a new account, item and language of ap-
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-six, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,
Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 641, the designated line items, and language of appropriation.

1. TITLE II—APPROPRIATIONS.

2. Section 1. Appropriations from General Revenue.

PROTECTION

4. 129-B—State Department of Highways

Acct. No. 641

1. Maintenance—Expressway, Trunkline and Feeder $5,715,138

2. Elmore Bridge—Wyoming County $4,000,000

Any or all of the above appropriation may be transferred to the State Road Fund for disbursement.

The purpose of this bill is to supplement the aforesaid budget bill with a new account, item and language of appropriation, the amount of the same being available for expenditure upon the effective date of the bill and in the current fiscal year of 1975-76.

CHAPTER 3

(H. S. 175—Originating in the House Committee on Finance)

[Passed August 5, 1975; 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-six, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for Senate Bill No. 23,
enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenues, available cash balance, and estimated expirations, as provided by the Governor in the Executive Budget Document heretofore enacted a budget bill for the fiscal year 1975-76, thereby making appropriations to the various accounts of state spending units, which total appropriations were well within the total of funds available for appropriation for the fiscal year 1975-76; and

WHEREAS, The Legislature, after enactment of the budget bill for the fiscal year 1975-76, enacted certain supplementary appropriation bills to various accounts of state spending units, which appropriations were well within the estimates of revenue, as reduced by the appropriations in the budget bill; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by his estimates submitted in the General Revenue Financial Statement of the Governor on July 29, 1975, amending and supplementing the budget document, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new Account 641, the designated line item and language of appropriation.

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 PROTECTION

4 129-B—State Department of Highways

5 Acct. No. 641

6 3 Maintenance—State Local Service .......... $8,780,465
Any or all of the above appropriation may be transferred to the State Road Fund for disbursement.

The purpose of this bill is to supplement the aforesaid budget bill with a new account, item and language of appropriation, the amount of the same being available for expenditure upon the effective date of the bill and in the current fiscal year of 1975-76.

CHAPTER 4
(S. B. 37—By Mr. Rogerson)

[Passed November 5, 1975; 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-six, to West Virginia Railroad Maintenance Authority, Account No. 569, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the “Budget Bill.”

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, 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 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,
Be it enacted by the Legislature of West Virginia:

That chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following new account, designated Account No. 569:

1. TITLE II—APPROPRIATIONS.

2. Section I. Appropriations from General Revenue.

CONSERVATION AND DEVELOPMENT

4. 111-A—West Virginia Railroad Maintenance Authority

Acct. No. 569

6. 1 Unclassified .................................................. $ 50,000

7. The purpose of this bill is to add the aforesaid account and item therein for expenditure in the fiscal year 1975-76.

CHAPTER 5

(Com. Sub. for S. B. 65—By Mr. Oates, Mr. Hamilton, Miss Herndon and Mr. Williams)

[Passed November 5, 1973; 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-six, to West Virginia Board of Regents (Control), Account No. 279, an act, Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, 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 1975-76; and
WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 279, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 EDUCATIONAL

4 32—West Virginia Board of Regents (Control)

5 Acct. No. 279

6 23a West Virginia School of Osteopathic Medicine—Land Purchase $558,000

The purpose of this bill is to acquire all the real property and all facilities and equipment of the existing Greenbrier College of Osteopathic Medicine, located at Lewisburg, Greenbrier county, West Virginia. The above appropriation is for expenditure during the fiscal year 1975-76.

CHAPTER 6

(H. B. 190—Originating in the House Committee on Finance)

[Passed November 4, 1975; 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-six, to the State Department of Education—Professional Educators—Account No. 290, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1975, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1974, and funds transferred from the Department of Welfare after the close of fiscal year 1974; and further included the estimate of revenues for fiscal year 1974-75, less net appropriation balances forwarded and regular appropriations for fiscal year 1974-75, which said regular appropriations are offset by estimated expirations for fiscal year 1974-75; and

WHEREAS, The Governor's Executive Budget Document further included estimates of revenues for fiscal year 1975-76 of $558,750,000 available for appropriation; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted certain supplementary appropriation bills for fiscal year 1974-75, a Budget Bill for fiscal year 1975-76, Enrolled Committee Substitute for Senate Bill No. 23, and certain supplementary appropriation bills for 1975-76, all well within the Governor's overall estimates of available revenues thereby leaving general revenues available for further appropriation; and

WHEREAS, It thus appearing from the aforesaid and the Governor's Executive Budget Document that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 290, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EDUCATIONAL

State Department of Education—

Professional Educators

Acct. No. 290

Professional Educators $16,201,672

Such amount is appropriated to increase each professional educator's basic salary by $700 over and above that specified in chapter eighteen, article four, sections two and two-a of the code. The number of professional educators so affected shall be that number employed by the various county boards of education as of the end of the third school month of the 1975-76 school year, exclusive of such educators employed with federal funds. Included in the sum are sufficient dollars to cover the fixed charges of matching social security payments and workmen's compensation costs.

CHAPTER 7

(S. B. 32—By Mr. Rogerson)

[Passed November 5, 1975; 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-six, to State Board of Education—Rehabilitation Division, Account No. 440, an act, Enrolled Committee Substitute for Senate Bill No. 23, enacted by the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, 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 1975-76; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475, as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

That Account No. 440, Enrolled Committee Substitute for Senate Bill No. 23, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 HEALTH AND WELFARE

4 85—State Board of Education—Rehabilitation Division

5 Acct. No. 440

6 9A Rehabilitation Center Construction $600,000

7 The purpose of this bill is to supplement the aforesaid account and item therein for expenditure in the fiscal year 1975-76.

CHAPTER 8

(S. B. 36—By Mr. Rogerson)

[Passed November 5, 1975; in effect ninety days 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-six, to the Public Land Corporation, Account No. 566, an act, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor has stated that he will be able to acquire federal moneys to match any appropriation of state moneys for the purpose of providing for a National Track and Field Hall of Fame; and

WHEREAS, The Legislature intends that any expenditure of this appropriation be contingent upon receipt by the Governor of the aforesaid federal funds; and

WHEREAS, The Legislature, basing its action upon the estimate of revenue as provided by the Governor and the available cash balance, enacted a budget bill for the fiscal year 1975-76, 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 1975-76; and

WHEREAS, In the regular session, one thousand nine hundred seventy-five, the Legislature enacted a supplementary appropriation bill, designated House Bill No. 1426, with the language of such bill, when considered in light of its effective date, subjecting the bill to being construed as void or voidable; and

WHEREAS, It is the intent of the Legislature that passage of this supplementary appropriation bill shall constitute a total voiding, repealing and nullification of said House Bill No. 1426 and to stand fully in lieu thereof in order to obviate any possible double-funding of this item and account; and

WHEREAS, The Governor has determined that there is an estimated surplus balance in the General Revenue Fund of $47,606,475 as substantiated by estimates submitted by the Governor, which said surplus is available for appropriation and expenditure during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six; a portion of which surplus balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,
Be it enacted by the Legislature of West Virginia:

That Account No. 566, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following purpose and sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 CONSERVATION AND DEVELOPMENT

4 110—Public Land Corporation

5 Acct. No. 566

6 National Track and Field Hall of Fame $852,500

7 The purpose of this bill is to provide state general revenue moneys to match federal funds in providing for a National Track and Field Hall of Fame, the land and buildings of such to be in the name of the state of West Virginia and a public agency thereof. Such moneys may be transferred to a special fund to match and aid federal funds.

CHAPTER 9

(S. B. 58—By Mr. Kusis, Mr. Sherpe, Mr. Steptoe, Mr. Rogers, Mr. Saville, Mr. Davis, Mr. Nealey, Miss Herndon and Mr. Nelson)

[Passed November 3, 1975; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to horse and dog racing; relating generally to the authorization and regulation of dog racing; relating to the West Virginia racing commission, its organization, opera-
tion and increased duties; providing for the regulation and control of horse and dog racing; requiring a license to hold or conduct a horse or dog race meeting; requiring a permit to engage in certain types of employment in connection with a horse or dog race meeting and establishing certain citizenship and residency requirements; providing definitions, adding definition of dog racing; establishing qualifications for members of the West Virginia racing commission; specifying and increasing the powers and authorities of the West Virginia racing commission; providing for the applications for and the issuance of licenses and permits; authorizing the West Virginia racing commission to promulgate reasonable rules and regulations; providing that the West Virginia racing commission may by reasonable rules and regulations authorize stewards, and other racing officials to impose reasonable fines or other sanctions and stewards to rule individuals off the grounds of any horse or dog racetrack; relating to the compensation and increasing the same of the commissioners; relating to the expenses of the members of the racing commission; relating to the compensation and expenses of other employees of the West Virginia racing commission; relating to the purses in connection with horse or dog race meetings; authorizing the West Virginia racing commission to refuse, suspend or revoke a license or permit and establishing the grounds therefor; authorizing stewards to suspend or revoke a permit; relating to the determination of racing dates; authorizing the pari-mutuel system of wagering upon horse or dog races held or conducted under the regulation and control of the West Virginia racing commission and excepting such wagering from the gaming statutes; prohibiting minors from wagering at any horse or dog racetrack; establishing the maximum commission which may be deducted from pari-mutuel pools by licensees of the West Virginia racing commission; providing for a specified deduction from the commission to establish regular purses for thoroughbred racing; providing for certain payments out of the maximum commission to be paid to counties in which thoroughbred or harness racetracks are located; establishing different maximum commissions
which may be deducted from pari-mutuel pools resulting from thoroughbred racing, harness racing and dog racing; imposing a daily license tax for thoroughbred racing, harness racing and dog racing; imposing different pari-mutuel pool taxes on thoroughbred racing, harness racing and dog racing conducted under the regulation and control of the West Virginia racing commission; relating to the remitting of all daily license taxes and the pari-mutuel pool taxes to the West Virginia racing commission; relating to the payment of such taxes to a special account to fund teachers salaries; providing that such license tax is in lieu of all other taxes except a license tax which may be imposed by a municipality on a horse racetrack located within such municipality; relating to the financial responsibility of the licensees of the West Virginia racing commission; relating to the retention and ultimate disposition of funds for the payment of outstanding and unredeemed pari-mutuel tickets; establishing procedures for making such tickets unredeemable and providing for certain payments from the resulting funds; authorizing the West Virginia racing commission to hold hearings on the issuance, suspension or revocation of licenses and permits; providing expressly that the provisions of chapter twenty-nine-a of the code shall govern the promulgation of all reasonable rules and regulations and the holding of hearings; authorizing the West Virginia racing commission to issue subpoenas and subpoenas duces tecum; relating to hearing costs; providing an automatic stay or suspension of execution of certain orders; providing for judicial review of the decisions of the West Virginia racing commission made following hearings; relating to the stay or suspension of execution of decisions pending judicial determination; relating to the construction and establishment of horse or dog racetracks for horse or dog race meetings; requiring construction permit therefor; relating to administrative procedures and hearings in connection therewith; providing for local option elections and procedures in connection with and incidental to the construction and establishment of horse or dog racetracks; relating to criminal offenses and providing criminal penalties
Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen, sixteen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three and twenty-six, article twenty-three, 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 23. HORSE AND DOG RACING.

PART I. LICENSE REQUIRED FOR HORSE AND DOG RACING AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED FOR CERTAIN HORSE AND DOG RACETRACK POSITIONS.

§19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.

§19-23-2. Permits required for horse and dog racetrack positions; residency requirements for employees of licensees.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.

§19-23-4. West Virginia racing commission continued as a public corporation; composition; terms; vacancies; qualifications, compensation and expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.

PART III. RACING SECRETARY AND OTHER PERSONNEL AND EMPLOYEES OF RACING COMMISSION.

§19-23-5. Racing secretary and other personnel; qualifications; terms; powers and duties; compensation and expenses.

PART IV. POWERS AND AUTHORITY OF RACING COMMISSION.


PART V: LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.
PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED; COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES.

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

§19-23-11. Revenues from horse racing and dog racing to be paid into the general revenue fund; revenues from horse racing and dog racing to be paid into special account to fund teachers salaries.

§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF OUTSTANDING AND UNREDEEMED PARI-MUTUEL TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding and unredeemed pari-mutuel tickets; publication of notice; irredeemable tickets; awards to resident owners, etc., of winning horses and dogs.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Investigation by racing commission; suspension or revocation of license or permit.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

PART XI. CONSTRUCTION AND ESTABLISHMENT OF HORSE AND DOG RACETRACKS.

§19-23-18. Horse and dog racetrack construction permits; application therefor.

§19-23-19. Tentative approval of application for construction permit; denial of application; publication of notice.

§19-23-20. Petition for local option election.

§19-23-21. Local option election procedure; form of ballots or ballot labels.

§19-23-22. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of a construction permit.

§19-23-23. Further elections restricted.

PART XIII. OFFENSES AND PENALTIES.

§19-23-26. Offenses and penalties.
PART I. LICENSE REQUIRED FOR HORSE AND DOG RACING AND PARI-MUTUEL WAGERING IN CONNECTION THEREWITH; PERMITS REQUIRED FOR CERTAIN HORSE AND DOG RACETRACK POSITIONS.

§19-23-1. License required for horse and dog racing and pari-mutuel wagering in connection therewith; exception.

(a) No association shall hold or conduct any horse or dog race meeting at which horse or dog racing is permitted for any purse unless such association possesses a license therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of this article shall not be construed to prevent in any way the use without a license of any grounds, enclosure or racetrack owned and controlled by any association for any local, county or state fair, horse show or agriculture or livestock exposition, even though horse or dog racing be there conducted, if the pari-mutuel system of wagering upon the results of such horse or dog racing is neither permitted nor conducted with the knowledge or acquiescence of the association conducting such horse or dog racing.

§19-23-2. Permits required for horse and dog racetrack positions; residency requirements for employees of licensees.

(a) No person not required to be licensed under the provisions of section one of this article shall participate in or have anything to do with horse or dog racing for a purse or a horse or dog race meeting at any licensee's horse or dog racetrack, place or enclosure, where the pari-mutuel system of wagering upon the results of such horse or dog racing is permitted or conducted, as a horse owner, dog owner, jockey, apprentice jockey, exercise boy, kennel keeper, trainer, groom, plater, stable foreman, valet, veterinarian, agent, clerk of the scales, starter, assistant
starter, timer, judge or pari-mutuel employee, or in any other capacity specified in reasonable rules and regulations of the racing commission unless such person possesses a permit therefor from the West Virginia racing commission and complies with the provisions of this article and all reasonable rules and regulations of such racing commission:

(b) At least eighty percent of the individuals employed by a licensee at any horse or dog race meeting must be citizens and residents of this state and must have been such citizens and residents for at least one year. For the purpose of this subsection, citizens and residents of this state shall be construed to mean individuals who maintain a permanent place of residence in this state, and have been bona fide residents and citizens of this state for a period of one year immediately prior to the filing of their applications for employment. The provisions of this subsection shall not apply to individuals engaged in the construction of a horse or dog racetrack or in the equipping of same, nor to racing officials designated by the racing commission or racing officials designated by the executive officials of a licensee.

PART II. DEFINITIONS; WEST VIRGINIA RACING COMMISSION—ORGANIZATION AND OPERATION.


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

(1) "Horse racing" means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

(2) "Thoroughbred racing" means flat or running type horse racing in which each horse participating therein is a thoroughbred and is mounted by a jockey;

(3) "Harness racing" means horse racing in which the horses participating therein are harnessed to a sulky, carriage or other vehicle, and shall not include any form of horse racing in which the horses are mounted by jockeys;
(4) "Horse race meeting" means the whole consecutive period of time, Sundays excluded, for which a license is required by the provisions of section one of this article;

(5) "Dog racing" means any type of dog racing, including, but not limited to, greyhound racing;

(6) "Purse" means any purse, stake or award for which a horse or dog race is run;

(7) "Racing association" or "person" means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

(8) "Applicant" means any racing association making application for a license under the provisions of this article, or any person making application for a permit under the provisions of this article, or any person making application for a construction permit under the provisions of this article, as the case may be;

(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";
(16) "Racing commission" means the West Virginia racing commission;

(17) "Stewards" means the steward or stewards representing the racing commission, the steward or stewards representing a licensee and any other steward or stewards, whose duty it shall be to supervise any horse or dog race meeting, all as may be provided by reasonable rules and regulations of the racing commission, and such reasonable rules and regulations shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;

(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pool" means a combination of interests in a joint wagering enterprise, or a stake in such enterprise;

(20) "Legitimate breakage" is the percentage left over in the division of a pool;

(21) "To the dime" means that wagers shall be figured and paid to the dime; and

(22) "Code" means the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended.

§19-23-4. West Virginia racing commission continued as a public corporation; composition; terms; vacancies; qualifications, compensation and expenses of members; principal office; meetings; election of officers; quorum; inspection of records; annual report.

(a) The "West Virginia racing commission," heretofore created, shall continue in existence as a public corporation, and, as such, may contract and be contracted
with, plead and be impleaded, sue and be sued and have
and use a common seal.

(b) The racing commission shall consist of three
members, not more than two of whom shall belong to
the same political party, to be appointed by the gov-
ernor by and with the advice and consent of the Senate.
The term of office for the members of such racing com-
mission shall be four years, and until their successors
have been appointed and have qualified, and members of
the racing commission may serve any number of suc-
cessive terms. The members of the racing commission
in office on the effective date of this article shall, unless
removed by the governor after the effective date of this
article, continue to serve until their terms expire and
until their successors have been appointed and have
qualified. Any vacancy in the office of a member of the
racing commission shall be filled by appointment by
the governor for the unexpired term of the member
whose office shall be vacant. No individual shall be
eligible for appointment to or to serve upon the racing
commission:

(1) Unless he is an actual and bona fide resident of
this state, shall have resided in this state for a period
of at least five years next preceding his appointment,
shall be a qualified voter of this state and be not less
than twenty-five years of age;

(2) Who directly or indirectly, or in any capacity,
owns or has any interest, in any manner whatever, in
any racetrack where horse or dog race meetings may
be held, including, but not limited to, an interest as
owner, lessor, lessee, stockholder or employee;

(3) While serving as a member of the Legislature or
as an elective officer of this state; or

(4) Who has been or shall be convicted of an offense
which, under the law of this state or any other state or
of the United States of America, constitutes a felony,
or is a violation of article four, chapter sixty-one of this
code.
(c) Each member of the racing commission shall receive a salary of five thousand dollars per annum to be paid in monthly installments and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the racing commission.

(d) The racing commission shall have its principal office at the seat of government, and shall meet annually at its principal office in the month of January, and at such other times and places as shall be designated by its chairman. At such annual meeting the racing commission shall elect from its membership a chairman and such other officers as may be desired. Other meetings of the racing commission may be called by the chairman on such notice to the other members as may be prescribed by the racing commission.

(e) A majority of the members of the racing commission shall constitute a quorum for the transaction of its business or the exercise of any of its powers and authority. No individual not a bona fide member of the racing commission shall vote upon or participate in the deliberations of the racing commission on any matter which may come before it. All racing commission records, except as otherwise provided by law, shall be open to public inspection during regular office hours.

(f) As soon as possible after the close of each calendar year, the racing commission shall submit to the governor a report of the transactions of the racing commission during the preceding calendar year.

PART III. RACING SECRETARY AND OTHER PERSONNEL AND EMPLOYEES OF RACING COMMISSION.

§19-23-5. Racing secretary and other personnel; qualifications; terms; powers and duties; compensation and expenses.

(a) The racing commission shall appoint a racing secretary to represent the racing commission and such racing secretary shall possess such powers and authority and perform such duties as the racing commission may
direct or prescribe. The racing secretary shall preserve at
the racing commission's principal office all books, maps,
records, documents and other papers of the racing
commission. The racing secretary shall, in addition to all
other duties imposed upon him by the racing commission,
serve in a liaison capacity between licensees and the
racing commission. The racing commission may also em-
ploy, direct and define the duties of an assistant racing
secretary and such stenographers, clerks and other office
personnel as it may deem necessary to carry out the duties
imposed upon it under the provisions of this article.

(b) In addition to the employees referred to above, the
racing commission shall employ, direct and define the
duties of a chief clerk, director of security, director of
audit, chief chemist, stewards to represent the racing
commission, supervisors of the pari-mutuel wagering
conducted under the provisions of this article, veteri-
narians, inspectors, accountants, guards and all other em-
ployees deemed by the racing commission to be essential
in connection with any horse or dog race meeting. The
director of audit shall be a certified public accountant or
experienced public accountant.

(c) No individual shall knowingly be employed or be
continued in employment by the racing commission in any
capacity whatever:

(1) Who directly or indirectly, or in any capacity,
owns or has any interest, in any manner whatever, in any
racetrack where horse or dog race meetings may be held,
including, but not limited to, an interest as owner, lessor,
lessee, stockholder or employee;

(2) Who at the time is or has been within one year
prior thereto a member of the Legislature or an elective
officer of this state, unless he is experienced and qualified
as a racing official; or

(3) Who has been or shall be convicted of an offense
which, under the law of this state or any other state or of
the United States of America, constitutes a felony, or is a
violation of article four, chapter sixty-one of this code.
Any steward employed by the racing commission or by a
licensee shall be a person of integrity, and experienced and
qualified for such position by the generally accepted
practices and customs of horse or dog racing in the United
States.

(d) The racing secretary and all other employees of the
racing commission shall serve at the will and pleasure of
the racing commission. The racing secretary and the other
employees referred to in this section as employees of the
racing commission shall receive such compensation as may
be fixed by the racing commission within the limit of
available funds, and shall be reimbursed for all reasonable
and necessary expenses actually incurred in the perfor-
mance of their official duties.

(e) All compensation and reimbursement for expenses
of the members of the racing commission, the racing
secretary and all other employees of the racing commis-
sion shall be paid from the funds in the hands of the state
treasurer collected under the provisions of this article and
shall be itemized in the budget in the same manner as all
other departments of state government, but no reim-
bursement for expenses incurred shall be paid unless an
itemized account thereof, under oath, be first filed with
the state auditor.

PART IV. POWERS AND AUTHORITY OF
RACING COMMISSION.


(a) The racing commission shall have full jurisdiction
over and shall supervise all horse race meetings, all
dog race meetings and all persons involved in the holding
or conducting of horse or dog race meetings, and, in
this regard, it shall have plenary power and authority:

(1) To investigate applicants and determine the eligi-
bility of such applicants for a license or permit or con-
struction permit under the provisions of this article;

(2) To fix, from time to time, the annual fee to be
paid to the racing commission for any permit required
under the provisions of section two of this article;
(3) To promulgate reasonable rules and regulations implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the racing commission under the provisions of this article, including, but not limited to, reasonable rules and regulations under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the racing commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules and regulations are being complied with, and for this purpose, the racing commission, its racing secretary, representatives and employees may visit, investigate and have free access to any such office, horse racetrack, dog racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of this article, its reasonable rules and regulations, orders and final decisions and to take appropriate disciplinary action against any licensee or permit holder or construction permit holder for the violation thereof or institute appropriate legal action for the enforcement thereof or take such disciplinary action and institute such legal action;

(9) By reasonable rules and regulations, to authorize stewards, starters and other racing officials to impose reasonable fines or other sanctions upon any person
connected with or involved in any horse or dog racing
or any horse or dog race meeting; and to authorize
stewards to rule off the grounds of any horse or dog
racetrack any tout, bookmaker or other undesirable indi-
vidual deemed inimicable to the best interests of horse
and dog racing or the pari-mutuel system of wagering
in connection therewith;

(10) To require at any time the removal of any
racing official or racing employee of any licensee, for
the violation of any provision of this article, any reason-
able rule and regulation of the racing commission or
for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or
to provide by contract for the maintenance and operation
of, a testing laboratory and related facilities, for the
purpose of conducting saliva, urine and other tests on
the horse or dog or horses or dogs run or to be run in
any horse or dog race meeting, and to purchase all equip-
ment and supplies deemed necessary or desirable in
connection with the acquisition, establishment, main-
tenance and operation of any such testing laboratory
and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race,
the payment of any purse, pending a final determination
of the results thereof;

(13) To require each licensee to file an annual balance
sheet and profit and loss statement pertaining to such
licensee's horse or dog racing activities in this state,
together with a list of each such licensee's stockholders
or other persons having any beneficial interest in the
horse or dog racing activities of such licensee;

(14) To issue subpoenas for the attendance of wit-
nesses and subpoenas duces tecum for the production
of any books, records and other pertinent documents,
and to administer oaths and affirmations to such wit-
nesses, whenever, in the judgment of the racing com-
mission, it is necessary to do so for the effective dis-
charge of its duties under the provisions of this article;
To keep accurate and complete records of its proceedings and to certify the same as may be appropriate; and

To take such other action as may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules and regulations.

(b) The racing commission shall not interfere in the internal business or internal affairs of any licensee.

PART V. LICENSE AND PERMIT PROCEDURES.

§19-23-7. Application for license; forms; time for filing; disclosure required; verification; bond; application for permit.

(a) Any racing association desiring to hold or conduct a horse or dog race meeting, where the pari-mutuel system of wagering is permitted and conducted, during any calendar year, shall file with the racing commission an application for a license to hold or conduct such horse or dog race meeting. A separate application shall be filed for each separate license sought for each horse or dog race meeting which such applicant proposes to hold or conduct. The racing commission shall prescribe blank forms to be used in making such application. Such application shall be filed on or before a day to be fixed by the racing commission and shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;

(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) The dates such applicant intends to hold or conduct
such horse or dog race meeting (which shall be successive weekdays, excluding Sundays);

(5) The location of the horse or dog racetrack, place or enclosure where such applicant proposes to hold or conduct such horse or dog race meeting;

(6) Whether the applicant, any partner, member, officer or director has previously applied for a license under the provisions of this article or for a similar license in this or any other state, and if so, whether such license was issued or refused, and, if issued, whether it was ever suspended or revoked; and

(7) Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(b) Such application shall be verified by the oath or affirmation of the applicant for such license, if an individual, or if the applicant is a partnership, firm, association or corporation, by a partner, member or officer thereof, as the case may be. When required by the racing commission, an applicant for a license shall also furnish evidence satisfactory to the racing commission of such applicant's ability to pay all taxes due the state, purses, salaries of officials and other expenses incident to the horse or dog race meeting for which a license is sought. In the event the applicant is not able to furnish such satisfactory evidence of such applicant's ability to pay such expenses and fees, the racing commission may require bond or other adequate security before the requested license is issued.

(c) Any person desiring to obtain a permit, as required by the provisions of section two of this article, shall make application therefor on a form prescribed by the racing commission. The application for any such permit shall be accompanied by the fee prescribed therefor by the racing commission. Each applicant for a permit shall set forth in
the application such information as the racing commission
shall reasonably require.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

(a) The racing commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the racing commission shall make and enter an order either approving or denying such application. The application shall be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the racing commission shall issue a license to conduct a horse or dog race meeting, and shall designate on the face of such license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which such horse or dog race meeting is to be held or conducted (which shall be successive weekdays, or weeknights, excluding Sundays), the location of the horse or dog racetrack, place or enclosure where such horse or dog race meeting is to be held or conducted and such other information as the racing commission shall deem proper. If an application for a permit is approved, the racing commission shall issue a permit and shall designate on the face of such permit such information as the racing commission shall deem proper.

(b) The racing commission shall deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal shall be final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the racing commission finds that the applicant (individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation):
(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with any horse or dog race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of such application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules and regulations of the racing commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the racing commission under the provisions of section seven of this article;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of such applicant.

(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the racing commission shall consider the horse racing circuits and dog racing circuits
with which the horse racetracks and dog racetracks in
this state are associated or contiguous to, and shall also
consider dates which are calculated to increase the
tax revenues accruing from horse racing and dog
racing.

(d) A license issued under the provisions of this
article is neither transferable nor assignable to any other
racing association and shall not permit the holding or
conducting of a horse or dog race meeting at any horse
or dog racetrack, place or enclosure not specified thereon.
However, if the specified horse or dog racetrack, place
or enclosure becomes unsuitable for the horse or dog
race meeting because of flood, fire or other catastrophe,
or cannot be used for any reason, the racing commission
may, upon application, authorize the horse or dog race
meeting, or any remaining portion thereof, to be
conducted at any other racetrack, place or enclosure
available for that purpose, provided that the owner of
such racetrack, place or enclosure willingly consents to
the use thereof.

(e) No type of horse racing or dog racing shall be
conducted by a licensee at any race meeting other than
that type for which a license was issued.

(f) Each permit issued under the provisions of this
section shall be for the period ending December thirty-
first of the year for which it was issued, and shall be
valid at all horse or dog race meetings during the period
for which it was issued, unless it be sooner suspended
or revoked in accordance with the provisions of this
article. A permit issued under the provisions of this
article is neither transferable nor assignable to any other
person.

PART VI. PARI-MUTUEL SYSTEM OF WAGERING AUTHORIZED;
COMMISSIONS DEDUCTED FROM PARI-MUTUEL POOLS.

§19-23-9. Pari-mutuel system of wagering authorized; licensee
authorized to deduct commissions from pari-
mutuel pools; retention of breakage; auditing;
minors.

(a) The pari-mutuel system of wagering upon the
results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized, if and only if such pari-mutuel wagering is conducted by such licensee within the confines of such licensee's horse racetrack or dog racetrack, and the provisions of section one, article ten, chapter sixty-one of this code, relating to gaming, shall not apply to the pari-mutuel system of wagering in manner and form as provided for in this article at any horse or dog race meeting within this state where horse or dog racing shall be permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of such licensee's racetrack at which any horse or dog race meeting is conducted or held.

(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools, as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing shall not exceed seventeen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, and shall deposit five and seventy-five one hundredths percent of such pari-mutuel pools into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, and shall pay one tenth of one percent of such pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (c), section ten of this article, and shall
pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to such municipal general fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing shall not exceed sixteen percent of the total of such pari-mutuel pools for the day. Out of such commission, the licensee shall pay the pari-mutuel pools tax provided for in subsection (d), section ten of this article. The remainder of the commission shall be retained by the licensee.

(c) In addition to any such commission, a licensee of horse race or dog race meetings shall also be entitled to retain the legitimate breakage, which shall be made and calculated to the dime.

(d) The director of audit, and any other auditors employed by the racing commission who shall also be certified public accountants or experienced public accountants, shall have free access to the space or enclosure where the pari-mutuel system of wagering is conducted or calculated at any horse or dog race meeting for the purpose of ascertaining whether or not the licensee is deducting and retaining only a commission as provided in this section and is otherwise complying with the provisions of this section. They shall also, for the same purposes only, have full and free access to all records and papers pertaining to such pari-mutuel system of wagering, and shall report to the racing commission in writing, under oath, whether or not the licensee has deducted and retained any commission in excess of that permitted under the provisions of this section or has otherwise failed to comply with the provisions of this section.

(e) No licensee shall permit or allow any individual under the age of eighteen years to wager at any horse or dog racetrack, knowing or having reason to believe that such individual is under the age of eighteen years.
§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid.

(a) Any racing association conducting thoroughbred racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of two hundred fifty dollars. Any racing association conducting harness racing at any horse racetrack in this state shall pay each day upon which horse races are run a daily license tax of one hundred fifty dollars. Any racing association conducting dog races shall pay each day upon which dog races are run a daily license tax of one hundred fifty dollars. In the event thoroughbred racing, harness racing, dog racing, or any combination of the foregoing are conducted on the same day at the same racetrack by the same racing association, only one daily license tax in the amount of two hundred fifty dollars shall be paid for that day. Any such daily license tax shall not apply to any local, county or state fair, horse show or agricultural or livestock exposition at which horse racing is conducted for not more than six days.

(b) Any racing association licensed by the racing commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article shall, in addition to the aforementioned daily license tax, pay to the racing commission, from the commission deducted each day by such licensee from the pari-mutuel pools on thoroughbred racing, as a tax, five and three-fourths percent of the total contribution to all such pari-mutuel pools conducted or made at any and every thoroughbred race meeting of the licensee licensed under the provisions of this article:

Provided, That any such racing association operating a horse racetrack in this state having an average daily pari-mutuel pool on horse racing of one hundred fifty thousand dollars or less per day for the race meetings of the preceding calendar year shall, in lieu of payment of the five and three-fourths percent pari-mutuel pool tax as afore-
said, be permitted to conduct pari-mutuel wagering at
such horse racetrack on the basis of a daily pari-mutuel
pool tax fixed as follows: On the daily pari-mutuel pool
not exceeding one hundred fifty thousand dollars the
daily pari-mutuel pool tax shall be four thousand dollars
plus five and three-fourths percent of the daily pari-
mutuel pool, if any, in excess of one hundred fifty thou-
sand dollars.

(c) Any racing association licensed by the racing
commission to conduct harness racing and permitting and
conducting pari-mutuel wagering under the provisions of
this article shall, in addition to the aforementioned daily
license tax, pay to the racing commission, from the
commission deducted each day by the licensee from the
pari-mutuel pools on harness racing, as a tax, three per-
cent of the first one hundred thousand dollars wagered, or
any part thereof; four percent of the next one hundred
fifty thousand dollars; and five and three-fourths percent
of all over that amount wagered each day in all such
pari-mutuel pools conducted or made at any and every
harness race meeting of the licensee licensed under the
provisions of this article.

(d) Any racing association licensed by the racing
commission to conduct dog racing and permitting and
conducting pari-mutuel wagering under the provisions of
this article shall, in addition to the aforementioned daily
license tax, pay to the racing commission, from the
commission deducted each day by such licensee from the
pari-mutuel pools on dog racing, as a tax, four percent of
the first fifty thousand dollars or any part thereof of such
pari-mutuel pools, five percent of the next fifty thousand
dollars of such pari-mutuel pools, six percent of the next
one hundred thousand dollars of such pari-mutuel pools,
seven percent of the next one hundred fifty thousand
dollars of such pari-mutuel pools, and eight percent of all
over three hundred fifty thousand dollars wagered each
day.

(e) All daily license and pari-mutuel pools tax
payments required under the provisions of this section
shall be made to the racing commission or its agent after
the last race of each day of each horse or dog race meet-
ring, and the pari-mutuel pools tax payments shall be made
from all contributions to all pari-mutuel pools to each and
every race of the day.

§19-23-11. Revenues from horse racing and dog racing to be paid into the general revenue fund; revenues from horse racing and dog racing to be paid into special account to fund teachers' salaries.

(a) All revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pool taxes on horse racing and dog racing shall be paid by the racing commission to the state treasurer and be deposited by him to the credit of the general revenue fund of the state. Remittance of all such collected and accrued revenues shall be made by the racing commission to the state treasurer at least one time during each thirty-day period of the racing season, and a final remittance as to any particular horse race meeting shall be made within thirty days from and after the close of each such horse race meeting. The provisions of this subsection shall expire June 30, 1976.

(b) Effective July 1, 1976, all revenues collected pursuant to the provisions of this article as license taxes or pari-mutuel pools taxes on horse racing and dog racing shall be paid by the racing commission to the state treasurer, who shall deposit such revenues in a special account to be denominated by him. The revenues in such special account shall be accumulated and used for the sole purpose of providing funding for salaries for professional educators. Remittance of all such collected revenues shall be made by the racing commission to the state treasurer at least one time during each thirty-day period of each racing season, and a final remittance as to any particular dog race meeting shall be made within thirty days from and after the close of each such dog race meeting.

§19-23-12. License tax to be in lieu of all other license, etc., taxes; exception.

The license tax imposed in section ten of this article
shall be in lieu of all other license, income, excise, special
or franchise taxes of this state, and no county or mu-
nicipality or other political subdivision of this state shall
be empowered to levy or impose any license, income,
pari-mutuel, excise, special or franchise tax on any racing
association engaged in the business of conducting a horse
or dog race meeting at which horse or dog races are
run for purses under the jurisdiction of and being
licensed by the racing commission, or on the operation
or maintenance of the pari-mutuel system of wagering,
or on the sale of any commodity during a horse or dog
race meeting at which horse or dog races are run, or
at any such horse or dog racetrack: Provided, That the
foregoing provisions of this section shall in no way affect,
abridge or abolish the authority of a municipality to
impose the license tax authorized by the provisions of
section eight, article thirteen, chapter eight of this
code.

PART VIII. DISPOSITION OF FUNDS FOR PAYMENT OF
OUTSTANDING AND UNREDEEMED PARI-MUTUEL
TICKETS; IRREDEEMABLE TICKETS; AWARDS.

§19-23-13. Disposition of funds for payment of outstanding
and unredeemed pari-mutuel tickets; publication
of notice; irredeemable tickets; awards to resi-
dent owners, etc., of winning horses and dogs.

(a) All moneys held by any licensee for the payment
of outstanding and unredeemed pari-mutuel tickets, if
not claimed within ninety days after the close of the
horse or dog race meeting in connection with which the
tickets were issued, shall be turned over by the licensee
to the racing commission within fifteen days after the
expiration of such ninety-day period, and the licensee
shall give such information as the racing commission
may require concerning such outstanding and unre-
deemed tickets. All such moneys shall be deposited by
the racing commission in a banking institution of its
choice in a special account to be known as "West Vir-
ginia Racing Commission Special Account—Unredeemed
Pari-Mutuel Tickets." Notice of the amount, date and
place of such deposit shall be given by the racing com-
mission, in writing, to the state treasurer. The racing
commission shall then cause to be published a notice
to the holders of such outstanding and unredeemed pari-
mutuel tickets, notifying them to present such tickets
for payment at the principal office of the racing com-
mission within ninety days from the date of the pub-
lication of such notice. Such notice shall be published
within fifteen days following the receipt of said moneys
by the commission from the licensee as a Class I legal
advertisement in compliance with the provisions of ar-
ticle three, chapter fifty-nine of this code, and the pub-
lication area for such publication shall be the county
in which such horse or dog race meeting was
held.

(b) Any such pari-mutuel tickets that shall not be
presented for payment within ninety days from the date
of the publication of the notice shall thereafter be
irredeemable, and the moneys theretofore held for
the redemption of such pari-mutuel tickets shall become
the property of the racing commission, and shall be ex-
pended as follows:

(1) To the owner of the winning horse in any horse
race at a horse race meeting held or conducted by any
licensee, provided that the owner of such horse is at
the time of such horse race a bona fide resident of this
state, a sum equal to ten percent of the purse won by
such horse. The commission may require proof that the
owner was, at the time of the race, a bona fide resident
of this state. Upon proof by the owner that he filed a
personal income tax return in this state for the previous
two years and that he owned real or personal property
in this state and paid taxes in this state on said prop-
erty for the two previous years, he shall be presumed
to be a bona fide resident of this state; and

(2) To the breeder (that is, the owner of the mare)
of the winning horse in any horse race at a horse race
meeting held or conducted by any licensee, provided
that such breeder was at the time such winning horse
was foaled a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse; and

(3) To the owner of the stallion which sired the winning horse in any horse race at a horse race meeting held or conducted by any licensee, provided that the mare which foaled such winning horse was served by such stallion in this state, and the owner of such stallion was at the time of such service a bona fide resident of this state, a sum equal to ten percent of the purse won by such horse; and

(4) When the moneys in the special account, known as the “West Virginia Racing Commission Special Account—Unredeemed Pari-Mutuel Tickets” will more than satisfy the requirements of subdivisions (1) and (2), subsection (b) of this section, the West Virginia racing commission shall have the authority to expend the excess moneys from unredeemed horse racing pari-mutuel tickets as purse money in any race conditioned exclusively for West Virginia bred or sired horses, and to expend the excess moneys from unredeemed dog racing pari-mutuel tickets in supplementing purses and establishing dog racing handicaps at the dog tracks.

(c) Nothing contained in this article shall prohibit one person from qualifying for all or more than one of the aforesaid.

(d) The cost of publication of the notice provided for in this section shall be paid from the funds in the hands of the state treasurer collected from the pari-mutuel pools tax provided for in section ten of this article, when not otherwise provided in the budget; but no such costs shall be paid unless an itemized account thereof, under oath, be first filed with the state auditor.

PART X. HEARING PROCEDURES; JUDICIAL REVIEW.

§19-23-15. Investigation by racing commission; suspension or revocation of license or permit.

(a) The racing commission may conduct an investigation to determine whether any provisions of this article
or any of its reasonable rules and regulations have been
or are about to be violated by a licensee or permit
holder. The racing commission may suspend or revoke
a license or permit if the licensee or permit holder, as
the case may be:

(1) Is convicted of an offense which, under the law
of this state, of any other state or of the United States
of America, shall constitute a felony or a crime involving
moral turpitude;

(2) Is, if a corporation, dissolved under the law of
this state or ceases to be qualified to do business within
this state; or

(3) Has a license or permit to which such licensee
or permit holder is not lawfully entitled.

(b) The racing commission may also suspend or
revoke a license or permit of a licensee or permit holder,
as the case may be, if it finds the existence of any ground
upon which the license or permit could have been re-
fused, or any ground which would be cause for refusing
a license or permit to such licensee or permit holder
were such licensee or permit holder then applying for
the same.

(c) A majority of the stewards at any horse or dog
race meeting may suspend or revoke a permit for any
reason for which the racing commission may suspend
or revoke a permit, as specified in subsections (a) and
(b) of this section, or for any other reason authorized
by reasonable rules and regulations promulgated by the
racing commission.

(d) Whenever a licensee fails to keep the bond re-
quired, if any, under the provisions of section seven of
this article in full force and effect, the license of such
licensee shall automatically be suspended unless and
until a bond or other security, if required, is furnished
to the racing commission, in which event the suspension
shall be vacated.

(e) Any suspension of a license or permit shall con-
tinue for the period specified in the order of suspension,
or until the cause therefor has been eliminated or cor-
rected, as set forth in the order of suspension. Revo-
cation of a license or permit shall not preclude appli-
cation for a new license or permit, which application
shall be processed in the same manner and the application
approved or denied and the license or permit issued or
refused on the same grounds as any other application
for a license or permit is processed, considered and passed
upon, except that any previous suspension and the revo-
cation may be given such weight in deciding whether
to approve or deny such application and issue or refuse
such license or permit as is meet and proper under all
of the circumstances.

§19-23-16. Entry of order suspending or revoking license or
permit; service of order; contents; hearing; deci-
sion to be in writing.

(a) Whenever the racing commission shall deny an
application for a license or a permit or shall suspend or
revoke a license or a permit, it shall make and enter an
order to that effect and serve a copy thereof on the ap-
plicant, licensee or permit holder, as the case may be, in
any manner in which a summons may be served in a
civil action or by certified mail, return receipt requested.
Such order shall state the grounds for the action taken,
and, in the case of an order of suspension or revocation,
shall state the effective date of such suspension or revo-
cation.

(b) Whenever a majority of the stewards at any horse
or dog race meeting shall suspend or revoke a permit,
such suspension or revocation shall be effective immedi-
ately. The stewards shall, as soon as thereafter practicable,
make and enter an order to that effect and serve a copy
thereof on the permit holder, in any manner in which a
summons may be served in a civil action or by certified
mail, return receipt requested. Such order shall state the
grounds for the action taken.

(c) Any person adversely affected by any such order
shall be entitled to a hearing thereon if, within twenty
days after service of a copy thereof if served in any man-
ner in which a summons may be served as aforesaid or
within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the racing commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate to stay or suspend the execution of any order suspending or revoking a permit. The racing commission may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the racing commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the racing commission upon its own motion or for good cause shown by the person demanding the hearing.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the racing commission. For the purpose of conducting any such hearing, any member of the racing commission shall have the power and authority to issue subpoenas and subpoenas duces tecum as provided for in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or
rected, as set forth in the order of suspension. Revo-
cation of a license or permit shall not preclude appli-
cation for a new license or permit, which application
shall be processed in the same manner and the application
approved or denied and the license or permit issued or
refused on the same grounds as any other application
for a license or permit is processed, considered and passed
upon, except that any previous suspension and the revo-
cation may be given such weight in deciding whether
to approve or deny such application and issue or refuse
such license or permit as is meet and proper under all
of the circumstances.

§19-23-16. Entry of order suspending or revoking license or
permit; service of order; contents; hearing; deci-
sion to be in writing.

1 (a) Whenever the racing commission shall deny an
application for a license or a permit or shall suspend or
revoke a license or a permit, it shall make and enter an
order to that effect and serve a copy thereof on the ap-
plicant, licensee or permit holder, as the case may be, in
any manner in which a summons may be served in a
civil action or by certified mail, return receipt requested.
Such order shall state the grounds for the action taken,
and, in the case of an order of suspension or revocation,
shall state the effective date of such suspension or revo-
cation.

12 (b) Whenever a majority of the stewards at any horse
or dog race meeting shall suspend or revoke a permit,
such suspension or revocation shall be effective immedi-
ately. The stewards shall, as soon as thereafter practicable,
make and enter an order to that effect and serve a copy
thereof on the permit holder, in any manner in which a
summons may be served in a civil action or by certified
mail, return receipt requested. Such order shall state the
grounds for the action taken.

(c) Any person adversely affected by any such order
shall be entitled to a hearing thereon if, within twenty
days after service of a copy thereof if served in any man-
ner in which a summons may be served as aforesaid or
within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the racing commission a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license, but a demand for hearing shall not operate to stay or suspend the execution of any order suspending or revoking a permit. The racing commission may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against such person and may be collected by an action at law or other proper remedy.

(d) Upon receipt of a written demand for such hearing, the racing commission shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the racing commission upon its own motion or for good cause shown by the person demanding the hearing.

(e) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(f) Any such hearing shall be conducted by a quorum of the racing commission. For the purpose of conducting any such hearing, any member of the racing commission shall have the power and authority to issue subpoenas and subpoenas duces tecum as provided for in section six of this article. Any such subpoenas and subpoenas duces tecum shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(g) At any such hearing the person who demanded the same may represent such person's own interests or
be represented by an attorney at law admitted to practice before any circuit court of this state. Upon request by the racing commission, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation. The racing commission, with the written approval of the attorney general, may employ special counsel to represent the racing commission at any such hearing.

(h) After any such hearing and consideration of all of the testimony, evidence and record in the case, the racing commission shall render its decision in writing. The written decision of the racing commission shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(i) The decision of the racing commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

PART XI. CONSTRUCTION AND ESTABLISHMENT OF HORSE AND DOG RACETRACKS.

§19-23-18. Horse and dog racetrack construction permits; application therefor.

(a) No person shall construct and establish a horse or dog racetrack where horse or dog race meetings are to be held or conducted and the pari-mutuel system of wagering permitted or conducted without a construction permit issued by the racing commission in accordance with the provisions of this article.

(b) Any person desiring to obtain a construction permit shall file with the racing commission an application therefor. The racing commission shall prescribe blank forms to be used in making such application. Such application shall disclose, but not be limited to, the following:

(1) If the applicant be an individual, the full name and address of the applicant;
(2) If the applicant be a partnership, firm or association, the full name and address of each partner or member thereof, the name of the partnership, firm or association and its post-office address;

(3) If the applicant be a corporation, its name, the state of its incorporation, its post-office address, the full name and address of each officer and director thereof, and if a foreign corporation, whether it is qualified to do business in this state;

(4) Whether the applicant, any partner, member, officer or director has previously applied for a construction permit under the provisions of this article or for a similar construction permit in this or any other state, and if so, whether such construction permit was issued or refused;

(5) The name and address of any person who has agreed to lend the applicant money for use in connection with such proposed horse or dog racetrack;

(6) The name and address of any other person who is financially interested in the proposed horse or dog racetrack;

(7) The county where the proposed horse or dog racetrack is to be constructed and established, and if such proposed horse or dog racetrack is to be constructed and established across county lines, the identification of each such county;

(8) Plans showing, in such detail as the racing commission may require, the proposed horse or dog racetrack and all buildings and improvements to be used in connection therewith; and

(9) Such other information as the racing commission may reasonably require which may include information relating to any criminal record of the applicant, if an individual, or of each partner or member, if a partnership, firm or association, or of each officer and director, if a corporation.

(c) Such application shall be verified by the oath or affirmation of the applicant for such construction permit,
if an individual, or if the applicant is a partnership, firm,
association or corporation, by a partner, member or
officer thereof, as the case may be.

(d) No application for a construction permit for the
construction and establishment of a dog racetrack shall be
received or acted upon by or a construction permit
issued by the racing commission for the construction
and establishment of a dog racetrack which is to be
located within fifty-five air miles of an existing horse
racetrack: Provided, That nothing herein contained shall
be construed to prohibit establishment of a dog racetrack
in conjunction with harness racetrack facilities existing
on and operating as a harness racetrack the first day of
February, one thousand nine hundred seventy-four, if
such facilities are or can be made suitable: Provided,
That nothing in this section exempts any such county
from the local option provisions of this article.

§19-23-19. Tentative approval of application for construction
permit; denial of application; publication of
notice.

(a) Upon the basis of the application and all other
information before it, the racing commission shall make
and enter an order granting tentative approval of the
application if it finds:

(1) That the applicant intends to proceed in good faith
to construct and establish a horse or dog racetrack com-
plying in all particulars with the law of this state, the
provisions of this article and any reasonable rules and
regulations of the racing commission;

(2) That the plans for such proposed horse or dog
racetrack are adequate and have been prepared with due
regard to the safety of all persons who will use such horse
or dog racetrack;

(3) That the applicant is financially able to complete
such horse or dog racetrack in accordance with the plans
submitted with such application; and

(4) That the construction and establishment of such
proposed horse or dog racetrack would be in the best
interests of horse or dog racing within this state.

(b) Otherwise, the racing commission shall deny the
application and refuse to grant tentative approval thereof.
The racing commission shall make and enter an order to
that effect and all of the provisions of section sixteen
pertaining to the denial of any application for a license
and an order in connection therewith and the provisions
of section seventeen pertaining to judicial review of a
decision of the racing commission shall govern and con-
trol. The denial and refusal shall be final and conclusive
unless a hearing thereon shall be demanded pursuant to
the provisions of section sixteen of this article considered
in pari materia with the preceding sentence of this sub-
section (b).

(c) If the racing commission grants tentative approval
of such application, it shall prepare and publish a notice
to the public that the racing commission has granted
tentative approval of the application and that the racing
commission will confirm such tentative approval and
issue a construction permit to the applicant at the ex-
piration of sixty days from the date of the first publica-
tion of such notice (which date shall be specified in said
notice), unless within said time a petition for a local option
election shall have been filed, in accordance with the
provisions of this article, with the county commission of
the county in which any integral part of said horse or dog
racetrack is proposed to be constructed and established.
Such notice shall be published as a Class II legal adver-
tisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the county in which
any integral part of such proposed horse or dog racetrack
is to be constructed and is established.

§19-23-20. Petition for local option election.

A petition for a local option election on the question
of the proposed construction and establishment of a
horse or dog racetrack must be signed by qualified voters
residing within the county equal to at least fifteen per-
cent of the qualified voters within said county at the
last general election. Said petition may be in any num-
ber of counterparts, but must be filed with the county
commission prior to the expiration of the sixty-day period
specified in the notice published by the racing com-
mission in accordance with the provisions of section nine-
teen of this article. Said petition shall be sufficient if
in substantially the following form:

"PETITION FOR LOCAL OPTION ELECTION CON-
CERNING THE PROPOSED CONSTRUCTION AND
ESTABLISHMENT OF A (HORSE OR DOG) RACE-
TRACK IN ________________ COUNTY, WEST
VIRGINIA.

"Each of the undersigned certifies that he or she is
an individual residing in __________________ County, West
Virginia, and is a qualified voter in said county
under the laws of this State, and that his or her name,
address and the date of signing this petition are cor-
rectly set forth below.

"The undersigned petition the county commission to
call and hold a local option election as required by article
twenty-three, chapter nineteen of the Code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended,
upon the following question: 'Shall the West Virginia
Racing Commission issue a construction permit autho-
rizing the construction and establishment of a (horse
or dog) racetrack where (horse or dog) race meetings
may be held or conducted and the pari-mutuel system
of wagering permitted and conducted in ______________
County, West Virginia?"

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Date</th>
</tr>
</thead>
</table>

(Each individual signing must specify either his
post-office address or his street name and number.)"
§19-23-21. Local option election procedure; form of ballots or ballot labels.

(a) Upon the timely filing of a proper petition for a local option election in accordance with the provisions of section twenty of this article, the county commission of the county in which all or any integral part of a proposed horse or dog racetrack is to be constructed and established is hereby authorized to call a local option election for the purpose of determining the will of the qualified voters within said county as to the construction and establishment of all or any integral part of such horse or dog racetrack within said county. Upon the timely filing of a proper petition as aforesaid, the county commission shall enter an order calling for a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. A copy of the order so entered by the county commission shall be served upon the racing commission and the racing commission shall take no further action in connection with the issuance of such construction permit until said local option election shall be held. Said county commission shall give notice of such local option election by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. Such notice shall be so published within fourteen consecutive days next preceding the date of said election.

(b) The local option election ballots, or ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the West Virginia Racing Commission issue a construction permit authorizing the construction and establishment of a (horse or dog) racetrack where (horse or dog) race meetings may be held or conducted and the pari-mutuel system of wagering permitted and conducted?"

☐ Yes ☐ No

(Place a cross mark in the square opposite your choice.)"
(c) Each individual qualified to vote in said county at a primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The votes in said local option election shall be counted and returns made by the election officers, the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of this state relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the votes cast at such local option election and certify the results thereof to the racing commission.

§19-23-22. Issuance or nonissuance of construction permit; duration of construction permit; transfer and assignment of construction permit.

(a) The racing commission shall, after the certification of the results of such local option election, issue such construction permit if a majority of the legal votes cast at such election were in favor of the issuance of a construction permit. If a majority of the legal votes cast at such election were opposed to the issuance of a construction permit, the commission shall not issue a construction permit.

(b) A construction permit issued as aforesaid shall remain valid only for a three-month period, except that if the racing commission is satisfied that the construction permit holder has in good faith started and is continuing construction of the proposed horse or dog racetrack, the racing commission may extend the construction permit for additional successive three-month periods, but in no event shall the aggregate time of such construction permit exceed a period of twenty-four months from the date of the issuance of the construction permit.

(c) No construction permit which may be or has been issued under provisions of this article or the former pro-
visions of this article shall be transferred or assigned in any manner whatever without the written consent of the racing commission.

§19-23-23. Further elections restricted.

When a local option election in accordance with the provisions of this article or the former provisions of this article shall have been held in a county, another such election shall not be held in said county for a period of five years, and within that time the racing commission shall not accept or act upon any application for any other construction permit within said county, except that if an election be held seeking the approval of a permit for the construction of a horse racetrack another election may be held within such five-year period seeking the approval of a permit for the construction of a dog racetrack, and the reverse shall also be true. In the event a horse or dog racetrack shall be constructed in a county pursuant to a construction permit issued by the racing commission in accordance with the provisions of this article, no local option election shall thereafter be held as to any horse or dog racetrack constructed and established pursuant to such construction permit: Provided, That a local option election has been held for the type of racing to be conducted.

PART XIII. Offenses And Penalties.

§19-23-26. Offenses and penalties.

(a) Any person holding or conducting, or assisting, aiding or abetting in the holding or conducting, of any horse or dog race meeting at which horse or dog racing and the pari-mutuel system of wagering on the same is permitted or conducted, without a license issued by the racing commission, which license remains unexpired, unsuspended and unrevoked, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one thousand dollars for each day of such unauthorized horse or dog race meeting, or by imprisonment in jail not exceeding one year, or by both such fine and imprisonment, in the discretion of the court:
Provided, That no conviction shall be had or punishment imposed upon any licensee, whose license has been suspended or revoked, for holding or conducting a horse or dog race meeting while execution of the order of suspension or revocation is stayed or suspended as provided in this article.

(b) Any person violating any provision of section four or section five of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or by imprisonment in jail for not less than six months nor more than one year, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said section four or section five carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(c) Any person violating any provision of subsection (b), section two of this article shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in jail for not less than one month nor more than two months, or by both such fine and imprisonment, in the discretion of the court. The venue of any such offense shall be in the county, or any one of the counties, wherein the person violating said subsection (b) carries out any duties of, or performs any work for, the racing commission, which constitute the basis of the charge or complaint.

(d) False swearing before the racing commission on the part of any witness shall be deemed perjury and shall be punished as such.
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-d, relating to education, West Virginia board of regents, providing for the establishment, maintenance and operation of a state college of osteopathic medicine; providing for the employment of a president, staff and faculty; providing for the appointment of an advisory board; authorizing programs, curricula, and other services; establishing fees; providing for special fees; authorizing expenditures; permitting purchase of real property; providing for capital improvements; providing for contract authority generally; providing specifically for contracts by the board and the West Virginia anatomical board; and providing for use of cadavers.

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-d, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-13d. Establishment and operation of a state college of osteopathic medicine; authority and duty to purchase property, expend appropriations and conduct programs of the West Virginia School of Osteopathic Medicine.

1 On or before the thirty-first day of December, one thousand nine hundred seventy-five, the board of regents shall establish, and thereafter maintain and operate a state college of osteopathy, to be known as the “West Virginia School of Osteopathic Medicine” and to be located in Lewisburg, Greenbrier county, West Virginia.
For this purpose, the board is authorized and is hereby directed to acquire all the real property and all facilities and equipment of the existing Greenbrier College of Osteopathic Medicine, located at Lewisburg, Greenbrier county, West Virginia. The cost of acquisition shall not exceed five hundred fifty-eight thousand dollars ($558,000).

The board of regents, upon acquisition, shall forthwith employ a president and such staff and faculty as determined appropriate for the college, appoint an advisory board consistent with section nine of this article and exercise general determination, control, supervision and management of the financial, business and educational policies and affairs of the state college of osteopathic medicine.

The college shall be authorized to offer such curricula, programs, courses and services and confer such degrees as may be approved by the board of regents. The board of regents shall fix tuition and establish and set other fees to be charged students as it deems appropriate, including the establishment of special fees for specific purposes. Special fees shall be paid into special funds and be used only for the purposes for which said fees were collected.

The board of regents shall expend from the appropriations allocated for the West Virginia School of Osteopathic Medicine such funds as are necessary for the operation and conduct of programs, the acquisition of clear title to the property of the Greenbrier College of Osteopathic Medicine, and for necessary capital improvements. The title to all property purchased for the use of the West Virginia School of Osteopathic Medicine shall be vested in the board of regents.

The board of regents is authorized to enter into contracts on behalf of the West Virginia School of Osteopathic Medicine with public and private educational institutions, agencies and boards, with governmental agencies and with corporations, partnerships, and individuals for the performance of instructional or other services.
The board of regents is hereby specifically authorized to contract with the West Virginia anatomical board and the West Virginia anatomical board is hereby specifically authorized to contract with the board of regents on behalf of the West Virginia School of Osteopathic Medicine for the requisition, use, disposition and control of any body as may come under the authority of the anatomical board, provided that such body be used exclusively for educational purposes of West Virginia School of Osteopathic Medicine.

The board of regents is further authorized to contract with any other person, corporation or entity for the purchase of cadavers for educational purposes at the West Virginia School of Osteopathic Medicine, notwithstanding any provision of law to the contrary.

CHAPTER 11
(Com. Sub. for H. B. 164—By Mr. Damron, 10th District, and Mr. Wright)

[Passed November 5, 1975; in effect from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to an additional salary increase of seven hundred dollars for teachers; providing for the payment of the total amount of seven hundred dollars during the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, and providing for the payment of such additional salary increase and the additional increased fixed charges required thereby outside the West Virginia public school support plan.

Be it enacted by the Legislature of West Virginia:

That article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two-b, to read as follows:
ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2b. Additional salary increase for teachers.

In addition to the amount of state minimum salary he would receive pursuant to the provisions of sections two and two-a of this article, each teacher shall receive as an additional salary increase an amount of seven hundred dollars: Provided, That for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, the total amount of seven hundred dollars shall be paid between the effective date of this section and the end of such fiscal year. The additional salary increase provided under this section, and the additional increased fixed charges payments required thereby, shall be paid for outside the West Virginia public school support plan provided for in article nine-a, chapter eighteen of this code.
RESOLUTIONS

CONCURRENT RESOLUTIONS

(Only resolutions of general interest are included herein)

Authorizing legislative interim studies:

(Since these resolutions take the same general form, they are listed herein by number showing the subject of the studies authorized. They may be found in the House and Senate Journals of the session).

House Concurrent

2. Study of retirement benefits for public officers and public employees convicted of crimes relating to their official office and duties.

SENATE CONCURRENT RESOLUTION NO. 4

(By Mr. Fanning and Mr. Susman)

[Adopted November 5, 1975.]

Creating a special Education Finance Study Commission.

WHEREAS, The West Virginia system for the funding of its public education system consists of a complicated network of state and local laws, regulations, taxes and expenditures; and

WHEREAS, The State Aid Formula comprises only one part of the total system for public education funding; and

WHEREAS, Rising education costs, as well as constitutional complications, demand that the entire system of the funding of public education in West Virginia be more fully understood, so that the system can be improved, streamlined and made more effective in meeting the educational needs of the citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That a special commission to be known as the Education Finance Study Commission is hereby created, consisting of three members
of the Senate, to be appointed by the President 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, not members of the Legislature, who are knowledgeable in the field of education finance, who shall be appointed jointly by the President of the Senate and the Speaker of the House of Delegates; and, be it

Further Resolved, That it shall be the task of the commission to direct a comprehensive interim study of the West Virginia system for the funding of public education, to determine necessary improvements thereof and to make recommendations to the Legislature to implement such improvements as it may recommend; and, be it

Further Resolved, That the State Department of Education and the Boards of Education of the various counties of West Virginia shall, when requested, assist the commission in its endeavors; and, be it

Further Resolved, That the commission shall obtain the services of consultants and experts knowledgeable in the field of financing public education in various school systems within the United States; and, be it

Further Resolved, That the commission shall submit a report of its findings, conclusions and recommendations, together with drafts of any legislation it may recommend, to the regular session of the Legislature, 1977; and, be it

Further Resolved, That the expenses necessary to conduct the study, to employ consultants and experts and to prepare a report be paid from legislative appropriations to the Joint Committee on Government and Finance, but no expenses shall be incurred unless the approval of the Joint Committee on Government and Finance is first had and obtained by said commission.
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-seven, to the State Department of Highways, Account No. 641, an act, supplementing Enrolled Committee Substitute for House Bill No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1976, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues; and
WHEREAS, It thus appearing from the aforesaid, the Governor's Executive Budget Document, and the revision to such document submitted by the Governor on June 21, 1976, amending and supplementing such Budget Document, that a sufficient balance of general revenue is available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following new Account No. 641, the designated line items, and language of appropriation:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
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<tbody>
<tr>
<td>Section 1. Appropriations from General Revenue.</td>
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</table>

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<tr>
<th>PROTECTION</th>
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<td>128-A—State Department of Highways</td>
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<tr>
<th>Acct. No. 641</th>
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<tbody>
<tr>
<td>1 Expressway, Trunkline and Feeder $ 1,912,000</td>
</tr>
<tr>
<td>2 State Local Service 10,058,000</td>
</tr>
<tr>
<td>3 General Operations 1,024,000</td>
</tr>
<tr>
<td>4 Interstate Construction 8,475,000</td>
</tr>
<tr>
<td>5 Other Federal Aid Construction 6,144,000</td>
</tr>
<tr>
<td>6 Nonfederal Aid Construction 1,016,000</td>
</tr>
</tbody>
</table>

| Total $ 28,629,000 |

Any or all of the above appropriation may be transferred to the State Road Fund.

The purpose of this bill is to supplement the aforesaid budget bill with a new account, items and language of appropriation, the amount of the same being available for expenditure in fiscal year 1976-77.

The above appropriation in conjunction with Account No. 670 includes amounts sufficient to implement Enrolled House
21 Bill No. 1590, acts of the Legislature, regular session, one thousand nine hundred seventy-six.

CHAPTER 2
(Com. Sub. for H. B. 102—By Mr. Seibert)

[Passed June 24, 1976; 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 State Road Funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Department of Highways, Account No. 670, an act, supplementing Enrolled Committee Substitute for House Bill No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a Statement of Revenues—By Funds, including the State Road Fund; and

WHEREAS, The Legislature, during the regular session, 1976, enacted a Budget Bill for the fiscal year 1976-77 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues; and

WHEREAS, It thus appearing from the aforesaid, the Governor's Executive Budget Document and his revision of such document, including the State Road Fund as submitted by him on June 21, 1976, that a sufficient balance of State Road Fund moneys are available for further supplementary appropriations for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven; a portion of which balance is hereby appropriated by the terms of this supplementary appropriation bill.

Be it enacted by the Legislature of West Virginia:

That Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding
thereto the following amounts to the designated existing line items in
Account No. 670, and by adding to said account certain new
designated line items and language of appropriation as follows:

**TITLE II—APPROPRIATIONS.**

1. **Sec. 2. Appropriations from Other Funds.**

129—State Department of Highways

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

1. Expressway, Trunkline and Feeder $1,912,000
2. State Local Service 10,058,000
3. General Operations 1,024,000
4. Interstate Construction 113,447,000
5. Appalachian Program 68,059,000
6. Other Federal Aid Construction 86,118,000
7. Nonfederal Aid Construction 68,827,000

The purpose of this bill is to supplement existing items in
the aforesaid account and to further supplement the account
with new items and language of appropriation. The amounts
hereby appropriated shall be available for expenditure in fiscal
year 1976-77.

The above appropriations, in conjunction with Account No.
641 and appropriations previously made in the Budget Bill for
Account No. 670, include amounts sufficient to implement
Enrolled House Bill No. 1590, acts of the Legislature, regular
session, one thousand nine hundred seventy-six.

**CHAPTER 3**

(H. B. 144—By Mr. Seibert)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts be-
tween items of the existing appropriation of the Insurance Com-
missioner, Account No. 616, as appropriated by chapter eleven,
acts of the Legislature, regular session, one thousand nine
hundred seventy-five, known as the "Budget Bill."

**Be it enacted by the Legislature of West Virginia:**

That items of the total appropriation of Acct. No. 616, chapter
eleven, regular session, one thousand nine hundred seventy-five, be
supplemented, amended and transferred to read as follows:

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<tr>
<th>TITLE II—APPROPRIATIONS.</th>
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<tr>
<td>Section 1. Appropriations from General Revenue.</td>
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<tr>
<td>PROTECTION</td>
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<td>129—Insurance Commissioner</td>
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<tr>
<td>Acct. No. 616</td>
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</table>

The purpose of this supplementary appropriation bill is to
supplement, amend and transfer certain moneys from one item
of the existing appropriation to another item of such appro-
pration for the designated spending unit. The amounts as
itemized for expenditure during the fiscal year one thousand
nine hundred seventy-six shall be made available for expendi-
ture upon the effective date of this bill.

**CHAPTER 4**

(H. B. 136—By Mr. Seibert)

[Passed June 24, 1976; 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 revenues re-
mainning unappropriated for the fiscal year ending June thirtieth,
one thousand nine hundred seventy-six, to the Department of
Natural Resources, Account No. 565, chapter eleven, acts of
the Legislature, regular session, one thousand nine hundred
seventy-five, known as the "Budget Bill."

**WHEREAS,** The Governor submitted to the Legislature the Execu-
tive Budget Document, dated January 14, 1976, which included a
statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76;

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 565, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 CONSERVATION AND DEVELOPMENT
4 109—Department of Natural Resources
5  Acct. No. 565
6 9 Clarke-McNary Fire Prevention $ 60,000
7 The purpose of this bill is to supplement the aforesaid account and item therein for expenditure in the fiscal year 1975-76. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 5
(H. B. 146—By Mr. Burke)

[Passed June 24, 1976; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of
Natural Resources, Account No. 565, as appropriated by chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 565, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, be supplemented, amended and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CONSERVATION AND DEVELOPMENT

129—Department of Natural Resources

Acct. No. 565

11 Water Resources Board $22,802
16 Reclamation Board of Review $6,000

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appropriation for the designated spending unit. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-six shall be made available for expenditure upon the effective date of this bill.

CHAPTER 6

(S. B. 35—By Mr. Rogerson)

[Passed June 24, 1976; 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 funds remaining unappropriated from the Revenue Sharing Trust Fund for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Department of Natural Resources, Account No. 972, an act, Enrolled Committee Substitute for House Bill
No. 701, enacted by the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

Be it enacted by the Legislature of West Virginia:

That Account No. 972, Enrolled Committee Substitute for House Bill No. 701, an act of the Legislature, one thousand nine hundred seventy-six, known as the Budget Bill, be amended by adding the designated line and be supplemented by adding to the designated line the following sum:

1 TITLE II—APPROPRIATIONS.

2 Section 7. Appropriations from Revenue Sharing Trust Fund.

3 179—Revenue Sharing Trust Fund—

4 Department of Natural Resources

5 Acct. No. 972

6 8a Road Improvements within State Parks .... $ 2,500,000

7 The purpose of this supplementary appropriation bill is

8 to fund improvements of roads within state parks.

CHAPTER 7

[H. B. 138—By Mr. Seibert]

[Passed June 24, 1976; 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 revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Sinking Fund Commission, Account No. 170, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a
statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the Department of Welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 170, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1

TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 FISCAL

4 20—Sinking Fund Commission

5 Acct. No. 170

6 2 Current Expenses ........................................... $1,500
7 3 Equipment ....................................................... 6,500
8 4 Total ............................................................... $8,000

9 The purpose of this bill is to supplement the aforesaid account and items therein for expenditure in the fiscal year 1975-76. Such amount shall be available for expenditure upon the effective date of this bill.

13 Any unexpended balance remaining in the appropriation for "Equipment" at the close of the fiscal year 1975-76 is hereby reappropriated for expenditure during the fiscal year 1976-77.
AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-six, to the Treasurer's Office, Account No. 160, chapter eleven, acts of the Legislature, regular session, one thousand nine hundred seventy-five, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 14, 1976, which included a statement of the state fund, general revenue, setting forth therein the cash balance and investments as of July 1, 1975, and funds transferred from the department of welfare after the close of fiscal year 1974-75; and further included the estimate of revenues for fiscal year 1975-76, less net appropriation balances forwarded and regular appropriations for fiscal year 1975-76; and

WHEREAS, The Legislature has heretofore and during the regular session, 1975, enacted a Budget Bill for fiscal year 1975-76 and certain supplementary appropriation bills for such fiscal year, all well within the Governor's estimates of available revenues, thereby leaving general revenues available for further appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 160, chapter eleven, acts of the Legislature regular session, one thousand nine hundred seventy-five, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 FISCAL
4 17—Treasurer's Office
5 Acct. No. 160
6 3 Current Expenses ........................................... $ 20,000
The purpose of this bill is to supplement the aforesaid account and item therein for expenditure in the fiscal year 1975-76. Such amount shall be available for expenditure upon the effective date of this bill.
### DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

#### Regular Session, 1976

#### HOUSE BILLS

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<th>Bill No.</th>
<th>Chapter</th>
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#### SENATE BILLS

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[737]
Extraordinary Session, 1975

### HOUSE BILLS

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|-------------|---------------------------------------|--------|------|---------------------------------------------------------------|------|---------|---------|------|-------------------|----------|-------------------|----------|------------------------|-------------|------------------|-----------------------------|---------------------|---------|---------------------|------------------|-----------------------------|------------------|----------------|-----------------|--------------------------|-----------------|
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**CORPORATIONS:**

- Articles of amendment
- Contents
- Execution
- Articles of incorporation
- Acknowledgment
- Contents
- Inconsistencies with bylaws
- Definitions
- Directors
  - Action without meeting
  - Conflict of interest
  - Quorum
  - Removal
- Meetings
  - Organizational meeting
  - Notice
  - Waiver
- Quorum
  - Directors
  - Shareholders or member
  - Shareholders
  - Actions without meeting
  - Quorum

**Taxation**

- Net income tax
  - Meaning of terms
  - See Income Tax.

**COUNCIL OF FINANCE AND ADMINISTRATION:**

- Appointment of members
- Chairman
- Created
- Duties
- Ex officio members
- Meetings

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