ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1977
Second Extraordinary Session, 1976
First Extraordinary Session, 1977
FOREWORD


Regular Session, 1977

The first regular session of the 63rd Legislature convened on January 12, 1977, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 2nd day of November, 1976, all as prescribed by Section 18, Article VI, of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on certain other matters incident to organization, took an adjournment until February 9, 1977, as provided by the aforesaid section of the Constitution. Reconvening on February 9, 1977, pursuant to the adjournment, the constitutional 60-day limit on the duration of the session being at midnight April 9, 1977, sine die adjournment came on that date.

Bills totaling 1697 were introduced in the two houses during the session (1067 House and 630 Senate). The Legislature passed 174 bills, 80 House and 94 Senate. The Governor approved 165 bills and vetoed 10. However, one bill disapproved was amended, repassed and subsequently approved by the Governor, leaving a net total of 9 bills lost through veto.

There were 105 concurrent resolutions during the session, 69 House and 36 Senate, of which 11 House and 6 Senate were adopted. Twenty-eight House Joint and 15 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one House Joint Resolution—HJR 16, proposing an amendment to the Constitution of the State designated the "Freeport Amendment", permitting the Legislature to exempt inventory and warehouse goods from ad valorem property taxation by general law. The House had 29 House Resolutions and the Senate had 27 Senate Resolutions, of which 14 House and 20 Senate were adopted.

The Senate failed to pass 61 House Bills passed by the House and 68 Senate Bills failed passage by the House. Five House bills, and five Senate Bills died in conference.

Second Extraordinary Session, 1976

This session convened on July 26, 1976, and concluded its business on November 10, 1976. An adjournment of the session was taken on July 30 until November 9, 1976.
The proclamation of the Governor convening the session contained 71 items of business for consideration.

During the session, 143 bills were introduced in the two houses—68 House bills and 75 Senate bills dealing with the matters set forth in the proclamation of the Governor. The Legislature passed eleven bills—four House and seven Senate. All bills passed were approved by the Governor. Three House bills, passed by the House, were not passed by the Senate. Two Concurrent Resolutions were introduced in the House, but were not adopted, and the Senate had four Concurrent Resolutions, only one of which was adopted. The Senate had one Joint Resolution and the House had two, none of which were adopted. There were three House Resolutions, with two adopted, and nine Senate Resolutions, all adopted.

**First Extraordinary Session, 1977**

This session convened on May 2, 1977, and concluded on June 22, 1977. An adjournment of the session was taken on May 13, until June 21, 1977.

The proclamation of the Governor convening the session contained eleven items of business for consideration.

During the eleven days the Legislature met in daily session, 27 bills were introduced in the two houses—17 House and 10 Senate. The Legislature passed ten bills—five House and five Senate. All bills passed were approved by the Governor.

There were 24 concurrent resolutions offered during the session—16 House and eight Senate, of which six House and one Senate were adopted. No joint resolutions were introduced in either house. The House had six House Resolutions, and the Senate had seven Senate Resolutions, of which three House and seven Senate were adopted.

One bill (H. B. 113, licensing of chiropractors) died in conference.

This volume will be distributed as provided by House Resolution No. 29, adopted April 7, 1977. These Acts will be published with buckram binding, and may be purchased from the Department of Finance and Administration, State Capitol, Charleston, West Virginia 25305.

*C. A. Blankenship, Clerk*

*House of Delegates*
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REGULAR SESSION, 1977

OFFICERS

Speaker—Donald L. Kopp, Clarksburg
Clerk—C. A. Blankenship, Pineville
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

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(D) Democrats: 91
(R) Republicans: 9
Total: 100
MEMBERS OF THE SENATE

REGULAR SESSION, 1977

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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<td>Lafe P. Ward (D)</td>
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† Elected in 1976 for unexpired term.

| (D) Democrats | 28 |
| (R) Republicans | 6 |
| **Total** | 34 |
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES

1977

Agriculture and Natural Resources

Ballouz (Chairman), Neal (Vice Chairman), Arnold, Blevins, Brenda, Brown, Bryan, Burke, Crookshanks, Fry, Goodwin, Harden, Harris, McKown, McNeely, Milleson, O'Neal, Rotgin, Shiflet, Smith, Whitlow, Wiedebusch, Worden, Shaffer and Swann.

Banking and Insurance

Shingleton (Chairman of Banking), Morasco (Chairman of Insurance), Bryan (Vice Chairman of Banking), Stacy (Vice Chairman of Insurance), Bird, Donley, Fry, Hartman, Holmes, Johnson, Lohr, McKown, Milleson, Mowery, Pitsenberger, Sattes, Schifano, Scott, Shepherd, Shiflet, Shumate, Tucker, Wright, Esposito and Shaffer.

Constitutional Revision

Copeland (Chairman), Wehrle (Vice Chairman), Ballouz, Caudle, Colombo, Craig, Dalton, Damron, Donley, Ketchum, Martin, Mathis, Moore, Mowery, Neal, Sattes, Schifano, Shuman, Sonis, Spears, Tucker, Wooton, Wright, Harman and White.

Education

Albright (Chairman), Bumgarner (Vice Chairman), Ballouz, Blackwell, Blatnik, Blevins, Crookshanks, Dalton, Goodwin, Hagedorn, Harris, Hartman, Ketchum, Lewis, McNeely, Martin, O'Neal, Richey, Rotgin, Snyder, Starcher, Wright, Yanni, Harman and Prunty.

Finance

Polan (Chairman), Farley (Vice Chairman), Boettner, Brenda, Brown, Colombo, Crabtree, Fitzgerald, Holmes, Johnson, Karras, Kincaid, Lohr, Long, Mathis, Milleson, Morasco, Neal, Spears, Tomblin, Toney, Van Meter, Withrow, Swann and Teets.

Government Organization

Canfield (Chairman), Shuman (Vice Chairman), Bird, Blatnik, Burke, Dodd, Fry, Gvoyich, Harden, Hendricks, Laulis, McKown, Martin, Schifano, Shiflet, Shumate, Slack, Sonis, Tighe, Whitlow, Wiedebusch, Worden, Wright, Greer and Otte.
Health and Welfare

Withrow (Chairman), Fitzgerald (Vice Chairman), Arnold, Bird, Blevins, Boettner, Bumgarner, Caudle, Dodd, Dotson, Gvoyich, Hagedorn, Harden, Ketchum, Laulis, Lewis, Rotgin, Spears, Smith, Tighe, Tomblin, Wehrle, Worden, Esposito and Otte.

Industry and Labor

Wiedebusch (Chairman), Moore (Vice Chairman), Blackwell, Bumgarner, Christian, Copeland, Crabtree, Crookshanks, Dodd, Fry, Gilliam, Gvoyich, Hagedorn, Harris, Holmes, Karras, Long, Richey, Shepherd, Sonis, Starcher, Whitlow, Yanni, Greer and Prunty.

Interstate Cooperation

Shiflet (Chairman), Christian, Donley, Gilliam, Scott, Withrow and Swann. (Speaker is ex officio nonvoting member.)

Judiciary

Tompkins (Chairman), Tucker (Vice Chairman), Albright, Bryan, Caudle, Christian, Copeland, Craig, Damron, Donley, Dotson, Gilliam, Moore, Mowery, Pitsenberger, Sattes, Scott, See, Shepherd, Singleton, Stacy, Wehrle, Wooton, Shaffer and White.

Political Subdivisions

Damron (Chairman), Toney (Vice Chairman), Boettner, Brown, Dotson, Goodwin, Gvoyich, Hendricks, Ketchum, Kincaid, Lewis, Mathis, McNeely, Mowery, O'Neal, Pitsenberger, Richey, Shepherd, Shuman, Sonis, Snyder, Van Meter, Wooton, Greer and Otte.

Roads and Transportation

Goodwin (Chairman), Long (Vice Chairman), Arnold, Blackwell, Blatnik, Burke, Christian, Crabtree, Craig, Dalton, Farley, Fitzgerald, Hendricks, Laulis, Shumate, Slack, Smith, Snyder, Stacy, Starcher, Tomblin, Toney, Yanni, Harman and Swann.

Rules

Kopp (Chairman, ex officio), Albright, Brenda, Canfield, Colombo, Lohr, Polan, See, Shiflet, Tompkins, Tucker and Teets.

State and Federal Affairs

Scott (Chairman), Van Meter (Vice Chairman), Brenda, Caudle, Colombo, Crabtree, Dalton, Gilliam, Hartman, Holmes, Johnson, Karras, Kincaid, Morasco, Neal, Shepherd, Singleton, Smith, Snyder, Spears, Tighe, Tomblin, Withrow, Prunty and White.
HOUSE COMMITTEES

JOINT COMMITTEES

Enrolled Bills
Christian (Chairman), Holmes, Spears, Esposito and Prunty.

Government and Finance
Kopp (Chairman), Albright, Polan, See, Tompkins, Greer and Teets.

Joint Rules
Kopp (Chairman ex officio), See and Teets.

Legislative Rule-Making Review Committee
Shingleton (Chairman), Bryan, Lohr, Shiflet, Shaffer and Teets.
(Speaker is ex officio nonvoting member.)

PURCHASING PRACTICES AND PROCEDURES
COMMISSION
Kopp (Chairman), Moore, Sattes, Harman and Teets.
STANDING COMMITTEES OF THE SENATE
1977

Agriculture
Beall (Chairman), Williams (Vice Chairman), Benson, Hamilton, Hanlon, Hatfield, Oates, Steptoe, Susman, Gilligan and Jones.

Banking and Insurance
Neeley (Chairman), Rogers (Vice Chairman), Baylor, Benson, Hamilton, Huffman, Moreland, Rollins, Susman, Ward, Williams, Herndon and Kusic.

Confirmations
Benson (Chairman), Galperin (Vice Chairman), Davis, Hamilton, McGraw, Neeley, Oates, Rogers, Savilla, Tonkovich, Gilligan, Harmon and Herndon.

Education
Nelson (Chairman), Oates (Vice Chairman), Beall, Benson, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Savilla, Sharpe, Gilligan, Herndon and Jones.

Elections
Oates (Chairman), Nelson (Vice Chairman), Galperin, Hamilton, Huffman, McGraw, Moreland, Palumbo, Steptoe, Gilligan and Herndon.

Energy, Industry and Mining
Susman (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Gainer, Grubb, Williams, Hinkle and Kusic.

Finance
Fanning (Chairman), Susman (Vice Chairman), Beall, Gainer, Grubb, Hatfield, Hanlon, McGraw, Neeley, Rollins, Savilla, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harmon and Hinkle.

Health
Huffman (Chairman), Hatfield (Vice Chairman), Davis, Galperin, Hamilton, Hanlon, Moreland, Sharpe, Tonkovich, Harmon and Jones.

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SENATE COMMITTEES

Interstate Cooperation

Gainer (Chairman), Neeley (Vice Chairman), Moreland, Nelson, Oates, Davis and Hinkle. (President is ex officio nonvoting member)

Judiciary

Palumbo (Chairman), Oates (Vice Chairman), Baylor, Benson, Davis, Gainer, Galperin, Hamilton, Huffman, Moreland, Neeley, Nelson, Rogers, Rollins, Ward, Herndon, Jones and Kusic.

Labor

Hatfield (Chairman), Davis (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Ward, Gilligan and Harman.

Local Government

Galperin (Chairman), Moreland (Vice Chairman), Beall, Benson, Hanlon, Huffman, Steptoe, Herndon and Hinkle.

Military

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

Natural Resources

Gainer (Chairman), Rogers (Vice Chairman), Baylor, Beall, Benson, Galperin, Grubb, McGraw, Oates, Palumbo, Rollins, Steptoe, Susman, Harman and Hinkle.

Public Institutions

Sharpe (Chairman), Hatfield (Vice Chairman), Davis, Nelson, Hamilton, Rollins, Savilla, Gilligan, Harman and Hinkle.

Rules

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

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Beall, Gainer, Hamilton, Hatfield, Huffman, Neeley, Nelson, Palumbo, Savilla, Sharpe, Tonkovich, Williams, Gilligan, Herndon and Jones.
Enrolled Bills
Davis (Chairman), Beall, Rogers, Hinkle and Jones.

Government and Finance
Brotherton (Chairman), Fanning, Palumbo, Sharpe, Ward, Harman and Kusic.

Joint Rules
Brotherton (Chairman ex officio), Ward and Kusic.

Legislative Rule-Making Review Committee
Steptoe (Chairman), Moreland, Rollins, Susman, Herndon and Hinkle. (President is ex officio nonvoting member)

PURCHASING PRACTICES AND PROCEDURES COMMISSION
Brotherton (Chairman), Beall, Nelson, Harman and Jones.
AN ACT to amend and reenact section fifteen, article three, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purchase, reorder and sales of alcoholic liquors by the West Virginia alcohol beverage control commissioner and providing that the amount of the operating fund and the value of the inventory stock shall not exceed twenty million dollars.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-15. Amount of operating fund and value of inventory stock allowed; contract for manufacture of state brand; ordering listed and unlisted brands.

1 In order to avoid the accumulation of excessive stocks in warehouses and stores, the commissioner shall so plan his purchases of alcoholic liquors for sale in state stores and agencies that none of the stock on hand be on a consignment basis and that the amount of operating fund and the value of inventory stock shall not exceed twenty million dollars.
The commissioner may, with the consent of the governor, contract for the manufacture of alcoholic liquors for sale in state stores and agencies. Such liquors shall bear a special designation as “state brand.”

Listed brands and sizes of spirituous liquors shall not be reordered in quantities greater than at the rate of comparative gross sales as determined by the last three monthly reports published prior to each reorder: Provided, That to take advantage of price discounts or to anticipate price increases listed brands may be reordered upon the basis of anticipated needs to be determined by projecting adjusted sales records; but in no event shall the amount of operating fund and the value of inventory stock exceed the limit provided in the first paragraph of this section.

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

AN ACT to amend article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to the treatment by physicians of minors addicted to alcoholic liquor or nonintoxicating beer without the consent or knowledge of the minor's parent or guardian.

Be it enacted by the Legislature of West Virginia:

That article six, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three, to read as follows:
ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-23. Treatment of minors for addiction to alcoholic liquor and beer.

Notwithstanding any other law to the contrary, any licensed physician may examine, counsel, diagnose and treat any minor at his or her request for any addiction to or dependency upon the use of alcoholic liquor or nonintoxicating beer, as defined in section five, article one of this chapter, without the knowledge or consent of the minor's parent or guardian. Such physicians shall not incur any civil or criminal liability in connection therewith except for negligence or willful injury.

CHAPTER 3

(Com. Sub. for H. B. 1610—By Mr. Goodwin and Mr. Tucker)

[Passed April 7, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and five, article seven, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of licenses to private clubs which sell alcoholic liquors generally; including licenses issued at certain parks, airports and vessels; leasing of certain premises by director of the department of natural resources and certain local government authorities; and approval for issuance of such licenses by the director of natural resources and certain local government authorities.

Be it enacted by the Legislature of West Virginia:

That sections two and five, article seven, 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 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions.
§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.
§60-7-2. Definitions.

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

(a) "Private club" means any corporation or unincorporated association which either (1) belongs to or is affiliated with a nationally recognized fraternal or veterans organization, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests, or (3) is organized and operated for legitimate purposes, which has at least one hundred duly elected or approved dues paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues paying members in good standing of such corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in said building or on said premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons...
for serving meals to members and their guests, or (4) is organized for legitimate purposes and owns or leases a building or other limited premises in any state, county or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with said club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in said club to said members and their guests.

(b) "Licensee" means the holder of a license to operate a private club granted under the provisions of this article, which license shall remain unexpired, unsuspended and unrevoked.

c) "Applicant" means a private club applying for a license under the provisions of this article.

d) "Commissioner" means the West Virginia alcohol beverage control commissioner.

e) "Code" means the official code of West Virginia, one thousand nine hundred thirty-one, as amended.

The department of natural resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation or public authority operating any park or airport shall have plenary power and authority to lease as lessor a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to the provisions of this article.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

(a) Upon receipt of the application referred to in section
four of this article, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the accuracy of the matters contained in such application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant such license for a period not to exceed thirty days. If it shall appear that such applicant is a bona fide private club, of good reputation in the community in which it shall operate and that there is no false statement contained in such application, the commissioner shall issue a license authorizing the applicant to sell alcoholic liquors as provided in section three of this article, and otherwise shall refuse to issue such license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the director of the department of natural resources must grant his approval before the license can be issued; or

(2) A county or municipal park, or an airport, the authority governing the park or airport must grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless (i) there is a facility containing twenty or more rooms under one roof which are available for sleeping accommodations and (ii) a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying such application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of section thirteen of this article. When such refusal or denial becomes final
the commissioner shall forthwith refund to the applicant his fees and bond accompanying said application.

(c) Such license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation, and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) Such license shall expire on the thirtieth day of June next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article shall not be transferable.

CHAPTER 4
(Com. Sub. for S. B. 266—By Mr. Brotherton, Mr. President)

[Passed April 1, 1977; 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 the special revenue account of the West Virginia Alcohol Beverage Control Commissioner remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the West Virginia Alcohol Beverage Control Commissioner, Account No. 927, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Governor has reviewed the revenues of the special revenue account of the West Virginia Alcohol Beverage Control Commissioner and finds that funds are available for further appropriation for the fiscal year 1976-77, a part of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That Account No. 927, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 2. Appropriations from Other Funds.

151—West Virginia Alcohol Beverage Control Commissioner

Acct. No. 927

TO BE PAID FROM SPECIAL REVENUE FUND

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<th>Other Personal Services</th>
<th>Current Expenses</th>
<th>Social Security Matching</th>
<th>Agency Operating Expense</th>
<th>Public Employees Retirement Matching</th>
<th>Public Employees Health Insurance</th>
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The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 5

(Com. Sub. for H. B. 1076—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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-seven, to the Andrew S. Rowan Memorial Home, Account No. 384, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 384, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1  TITLE II—APPROPRIATIONS.

2  Section 1. Appropriations from General Revenue.

3  CHARITIES AND CORRECTION

4  58—Andrew S. Rowan Memorial Home

5  Acct. No. 384

6  1 Personal Services ........................................... $20,000
7  2 Current Expenses ............................................. $18,171

8  5 Total .......................................................... $38,171

9  The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditures in the current fiscal year 1976-77. Such amounts 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 general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Anthony Center, Account No. 369, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 369, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CHARITIES AND CORRECTION

48—Anthony Center

Acct. No. 369

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</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 7
(S. B. 236—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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-seven, to the Auditor's Office—General Administration, Account No. 150, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 150, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill,” be supplemented by adding the following sums to the designated line items:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

FISCAL

13—Auditor’s Office—General Administration

Acct. No. 150

5 Mental Hygiene Fund $ 70,000
7 Total $ 70,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 8

(S. B. 256—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; 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-seven, to the Barboursville State Hospital, Account No. 424, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 424, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

77—Barboursville State Hospital

Acct. No. 424

<table>
<thead>
<tr>
<th></th>
<th>Current Expenses</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$58,200</td>
</tr>
</tbody>
</table>

2 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 9

(H. 8. 1081—By Mr. Speaker, Mr. Kopp)

[Passed April 5, 1977; in effect from passage. Approved by the Governor.]
further appropriation during the fiscal year 1976-77, a part of
which balance is hereby appropriated by the terms of this supple­
mentary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 419, chapter seven, acts of the Legislature,
regular session, one thousand nine hundred seventy-six, known as
the “Budget Bill,” be supplemented by adding the following sums to
the designated line items:

**TITLE II—APPROPRIATIONS.**

Section 1. Appropriations From General Revenue

HEALTH AND WELFARE

72—Colin Anderson Center

Acct. No. 419

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$199,000</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$220,500</strong></td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is
to supplement the aforesaid account and items therein for
expenditure in the current fiscal year 1976-77. Such amounts
shall be available for expenditure upon the effective date of
this bill.

**CHAPTER 10**

(Com. Sub. for H. B. 1068—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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 remain­
ing unappropriated for the fiscal year ending June thirtieth, one
thousand nine hundred seventy-seven, to the State Commissioner of Public Institutions, Account No. 190, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 FISCAL

4 20—State Commissioner of Public Institutions

5 Acct. No. 190

6 4 Other Personal Services ______________________ $ 56,013

7 5 Current Expenses ____________________________ 79,500

8 8 Total ______________________________________ $135,513

9 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1976-77. Such amounts 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 general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Commissioner of Public Institutions, Account No. 190, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following designated line item and sum:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

FISCAL

20—State Commissioner of Public Institutions

Acct. No. 190

1  7a   Prison Industries ........................................... $ 400,417

2  8    Total.......................................................... $ 400,417
The purpose of this supplementary appropriation bill is to add a new line item and sum to the aforesaid account for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 12
(S. B. 594—Originating in the Senate Committee on Finance)

[Passed April 4, 1977; 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-seven, to the State Commissioner of Public Institutions, Account No. 190, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 190, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following designated line items and sums:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

FISCAL

20—State Commissioner of Public Institutions

Acct. No. 190

1 7b Prison Industries $160,300
2 1 Furniture Factory Equipment $8,000
3 2 Clothing and Mattress Factory 30,000
4 3 Sign Shop Equipment 5,350
5 4 Graphic Arts Program Equipment 11,950
6 5 Dryer and Conveyor System 105,000

7 8 Total $160,300

8 The purpose of this supplementary appropriation bill is to add a new line item and sum to the aforesaid account for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 13

(Com. Sub. for H. B. 1071—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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-seven, to the Davis Center, Account No. 371, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and
WHEREAS, it appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part of which balance is hereby appropriated by the terms of the supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 371, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 CHARITIES AND CORRECTION
4 50—Davis Center
5 Acct. No. 371
6 1 Personal Services
7 5 Total
8 6 7 Personal Services
9 5 Total
10 $9,500
11 $9,500
12 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 14
(H. B. 1416—Originating in the House Committee on Finance)

[Passed March 23, 1977; 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 re-
remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Department of Agriculture, Account No. 510, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the current fiscal year of 1976-77, a part 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 Account No. 510, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," is hereby supplemented by adding thereto the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 AGRICULTURE

4 101—Department of Agriculture

5 Acct. No. 510

6 3 Current Expenses ................................................. $32,000

7 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for payment of laboratory building rental expense. Such amount shall be available for expenditure immediately upon the effective date of this bill and in the current fiscal year of 1976-77.
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 Health Department, Account No. 400, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 400, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

59—State Health Department

Acct. No. 400

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Personal Services</th>
<th>$136,187</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>24</td>
<td>Total</td>
<td>$136,187</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 16

(H. B. 1661—Originating in the House Committee on Finance)

[Passed March 29, 1977; 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, supplementing chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, 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 February 16, 1977, wherein on page IV thereof and as further detailed in his executive communication of February 28, 1977, is set forth the revenues and expenditures of the state road fund, including fiscal year 1976-77; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the State Road Fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 670, chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legis-
lature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding thereto the following amounts to the designated line items as follows:

1  TITLE II—APPROPRIATIONS.

2  Section 2. Appropriations from Other Funds.

3  129—State Department of Highways

4  Acct. No. 670

5  TO BE PAID FROM STATE ROAD FUND

6  1  Expressway, Trunkline and Feeder      $19,707,000

7  2  State Local Service                   16,479,000

8  4  Equipment Revolving                   1,400,000

9  8d Nonfederal Aid Construction         1,331,000

10  Total                                   $38,917,000

The purpose of this bill is to supplement existing items in the aforesaid account for expenditure in the current fiscal year of 1976-77. Such amount shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 17
(H. B. 1660—Originating in the House Committee on Finance)

[Passed March 29, 1977; 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-seven, to the State Department of Highways, Account No. 641, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 641, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, which amended and supplemented chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 PROTECTION
4 128-A—State Department of Highways
5 Acct. No. 641
6 1 Expressway, Trunkline and Feeder $19,707,000
7 2* State Local Service 16,479,000
8 6 Nonfederal Aid Construction 1,331,000
9 6a Equipment Revolving 1,400,000
10 Total $38,917,000

Any or all of the above appropriation may be transferred to the state road fund for disbursement therefrom.

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1976-77. Such amounts shall be available for expenditure immediately upon the effective date of the 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 Department of Mental Health, Account No. 410, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 410, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

### TITLE II—APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

**HEALTH AND WELFARE**

67—Department of Mental Health

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Personal Services</td>
<td>$90,000</td>
</tr>
<tr>
<td>2</td>
<td>7</td>
<td>Community Mental Retardation Program</td>
<td>345,000</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
<td>Alcohol and Drug Abuse Program</td>
<td>120,000</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 19

(Com. Sub. for H. B. 1094—By Mr. Speaker, Mr. Kopp)

[Passed March 23, 1977; in effect from passage. Approved by the Governor.]
the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

1

TITLE II—APPROPRIATIONS.

2

Section 2. Appropriations from Other Funds.

3

130—Department of Motor Vehicles

4

Acct. No. 671

5

TO BE PAID FROM STATE ROAD FUND

6 1 Personal Services ____________________________ $ 55,000

7 2 Current Expenses ____________________________ 130,290

8 4 Purchase of License Plates ____________________ 192,000

9 5 Social Security Matching ______________________ 3,190

10 6 Public Employees Retirement Matching .......... 5,150

11 7 Public Employees Health Insurance .............. 2,450

12 8 Total ______________________________________ $388,080

13 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 20

(H. B. 1600—By Mr. Speaker, Mr. Kopp)

(Passed March 23, 1977; 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-seven, to the Department of Natural Resources, Account No. 565, chapter seven, 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 Execu-
tive Budget Document, dated February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations From General Revenue.</td>
</tr>
<tr>
<td>CONSERVATION AND DEVELOPMENT</td>
</tr>
<tr>
<td>108—Department of Natural Resources</td>
</tr>
<tr>
<td>Acct. No. 565</td>
</tr>
<tr>
<td>6 Clarke-McNary Fire Prevention ................. $285,000</td>
</tr>
<tr>
<td>35 Total ........................................... $285,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to supplement the aforesaid account and items therein for expenditure in the fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 21
(Com. Sub. for H. B. 1337—By Mr. Shiflet and Mr. Ballouz)

[Passed April 9, 1977; 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-seven, to the Department of Natural Resources, Account No. 565, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

Whereas, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the current fiscal year of 1976-77, a part 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 Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 CONSERVATION AND DEVELOPMENT
4 108—Department of Natural Resources
5 Acct. No. 565
6 36 Little Beaver State Park—To complete
7 37 Activities Building and Parking Area ... $ 100,000
8 38 Beartown State Park—Rest Rooms, Trails,
9 39 Parking Area and Other Park
10 Improvements ........................................ 20,000
11 40 Watoga State Park—Campground
12 41 Improvements, Including Buildings,
13 42 Sewage and Water Systems ....................... 375,000
14 43 Coopers Rock State Forest—Water System 150,000
15 44 Greenbrier State Forest—Picnic Area
16 45 Improvements ........................................ 60,000
17 46 Kanawha State Forest—Picnic Area
18 47 Improvements ........................................ 40,000
APPROPRIATIONS

19  48  Panther State Forest—Group Camp
20  49  Improvements, Including Sewage and
21  50  Water Systems, Furniture and Cabin ......  355,000
22  51  Seneca State Forest—Water System .........  45,000
23  52  Moncove Lake Public Hunting and Fishing
24  53  Area—Campground Improvements, Including Water System,
25  54  Roads and Campsites ..........................  90,000
26  55
27  56  Pleasants Creek Public Hunting and Fishing
28  57  Area—Campground Improvements,
29  58  Including Water System, Tables and
30  59  Fireplaces .................................  50,000
31  60  Plum Orchard Lake Public Hunting and
32  61  Fishing Area—Campground
33  62  Improvements, Including Water System and Campsites ........................................  40,000
34  63  To examine the structure of Laurel Lake
35  64  in Mingo County .............................  16,000
36
37  Total ........................................... $1,341,000
38
39  The purpose of this supplementary appropriation bill is to
40  supplement the aforesaid account and items therein for ex-
41  penditure during the current fiscal year of 1976-77 and upon
42  the effective date of this bill. Any unexpended balance
43  remaining in the above items at the close of fiscal year 1976-77
44  is hereby reappropriated for expenditure in the fiscal year
45  1977-78.

CHAPTER 22

(5. B. 262—By Mr. Brotherton, Mr. President)

[Passed April 4, 1977; 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-seven, to the Department of Natural Resources, Account No. 565, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CONSERVATION AND DEVELOPMENT

108—Department of Natural Resources

Acct. No. 565

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1</td>
<td>Personal Services</td>
<td>$ 285,000</td>
</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Current Expenses</td>
<td>200,000</td>
</tr>
<tr>
<td>3</td>
<td>35</td>
<td>Total</td>
<td>$ 485,000</td>
</tr>
</tbody>
</table>

4 The purpose of this supplementary appropriation bill is 5 to supplement the aforesaid account and items therein for 6 expenditure in the current fiscal year 1976-77. Such 7 amounts shall be available for expenditure upon the 8 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 Farm Management Commission, Account No. 511, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding thereto the following account, line items and sums:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

AGRICULTURE

Farm Management Commission

Acct. No. 511

1 1 Personal Services ............................................. $123,823
2 2 Current Expenses ............................................ 382,050
3 3 Repairs and Alterations ................................. 64,000
CHAPTER 24

[Com. Sub. for H. B. 1063—By Mr. Speaker, Mr. Kopp]

[Passed April 6, 1977; 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-seven, to the Governor's Office—Civil Contingent Fund, Account No. 124, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 124, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as
the "Budget Bill," be supplemented by adding the following sum to the designated line item:

1 **TITLE II—APPROPRIATIONS.**
2
3 **Section 1. Appropriations from General Revenue.**
4
5 **EXECUTIVE**
6
7 **7—Governor's Office—Civil Contingent Fund**
8 Acct. No. 124
9
10 1 Total ______________________________________ $1,500,000
11
12 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

13 If any portion of the above appropriation is expended in connection with disaster or emergency relief, the governor shall, on the first day of each month, provide to the legislative auditor an itemized report of the amount and purpose of each such expenditure incurred during the preceding month.

\[\]

**CHAPTER 25**

(S. B. 231—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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-seven, to the Governor's Office, Account No. 120, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and
WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 120, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

5—Governor’s Office

Acct. No. 120

1 3 Current Expenses $ 65,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 26

(P. B. 232—By Mr. Brotherton, Mr. President)

(Passed March 17, 1977; 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-seven, to the Governor’s Office—Custodial Fund, Account No. 123, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

Whereas, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 123, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

Title II—Appropriations.

Section 1. Appropriations from General Revenue.

Executive

6—Governor’s Office—Custodial Fund

Acct. No. 123

1 Total.......................................................... $ 80,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

Chapter 27

(S. B. 313—Originating in the Senate Committee on Finance)

[Passed March 1, 1977; 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-
Be it enacted by the Legislature of West Virginia:

WHEREAS, The severe weather conditions of the winter of 1976-77 have caused unprecedented damage to the water systems of municipalities, towns, villages and public service districts in this state; and

WHEREAS, The damage to said systems has created conditions detrimental to the health, safety and welfare of the citizens of this state, and the expenditure of public moneys is required to relieve these conditions; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," is hereby supplemented by adding thereto the following account, line item and sum:

EXECUTIVE

Governor's Office—Emergency Relief

Acct. No. 128

1 1 Emergency Relief for Water Systems of
2 2 Municipalities, Towns, Villages and Public
3 3 Service Districts ...........................................$ 2,000,000

4 The above appropriation is to be expended in connection with the repair and rehabilitation of water systems damaged by weather conditions during the winter of 1976-77. All or any part of this appropriation may be
expended in conjunction with federal funds and to match
or maximize grants-in-aid from the federal government
or any other source. Any part of this appropriation may
be transferred to any other account in the Governor's
office or to any other department of state government for
such purposes.

This appropriation shall be available for expenditure
immediately upon the effective date of this bill. Any
unexpended balance remaining in the appropriation at
the close of the fiscal year 1976-77 is hereby reappropri-
ated for expenditure during the fiscal year 1977-78.

On the first day of each month following the effective
date of this appropriation, the governor shall submit to
the legislative auditor an itemized report of the transfers
and expenditures made hereunder during the preceding
month.

CHAPTER 28
(S. B. 234—By Mr. Brotherton, Mr. President)

[Passed April 1, 1977; 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 end-
ing June thirtieth, one thousand nine hundred seventy-
seven, to the Governor's Office—Federal-State Coordina-
tion, Account No. 125, chapter seven, acts of the Legisla-
ture, 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 February 16, 1977, which
included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now re-
mains unappropriated a balance in the general revenue fund
available for further appropriation during the fiscal year 1976-
77, a part 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 Account No. 125, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

8—Governor's Office—Federal-State Coordination

Acct. No. 125

1 1 Federal-State Coordination ........................................ $ 1,590,000
2 5 Total........................................................................ $ 1,590,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 29

(S. B. 250—By Mr. Brotherton, Mr. President)

[Passed April 6, 1977; 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-seven, to the Greenbrier School for Mentally Retarded Children, Account No. 414, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 414, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

69—Greenbrier School for Mentally Retarded Children

Acct. No. 414

1  1 Personal Services ___________________________ $ 19,167

2  The purpose of this supplementary appropriation bill
3  is to supplement the aforesaid account and item therein
4  for expenditure in the current fiscal year 1976-77. Such
5  amount shall be available for expenditure upon the effec-
6  tive date of the bill.
unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Hopemont State Hospital, Account No. 430, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 430, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

<table>
<thead>
<tr>
<th></th>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Section 1. Appropriations from General Revenue.</td>
</tr>
<tr>
<td>3</td>
<td>HEALTH AND WELFARE</td>
</tr>
<tr>
<td>4</td>
<td>80—Hopemont State Hospital</td>
</tr>
<tr>
<td>5</td>
<td>Acct. No. 430</td>
</tr>
<tr>
<td>6</td>
<td>Current Expenses $45,500</td>
</tr>
<tr>
<td>7</td>
<td>Total $45,500</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount 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 general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Huntington State Hospital, Account No. 422, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 422, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

75—Huntington State Hospital

Acct. No. 422

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>Personal Services</th>
<th>$125,250</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>Current Expenses</td>
<td>$130,000</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Total</td>
<td>$255,250</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 32

(Com. Sub. for H. B. 1074—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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-seven, to the Huttonsville Correctional Center, Account No. 376, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 376, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CHARITIES AND CORRECTION

55—Huttonsville Correctional Center

Acct. No. 376

1 Personal Services $ 39,190
2 Current Expenses 50,000

Total $89,190

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 33

(H. B. 1085—By Mr. Speaker, Mr. Kopp)

[Passed April 4, 1977; 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-seven, to the Lakin State Hospital, Account No. 423, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 423, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

<table>
<thead>
<tr>
<th>TITLE II—APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations From General Revenue.</td>
</tr>
<tr>
<td>HEALTH AND WELFARE</td>
</tr>
<tr>
<td>76—Lakin State Hospital</td>
</tr>
<tr>
<td>Acct. No. 423</td>
</tr>
<tr>
<td>6 2 Current Expenses $15,000</td>
</tr>
<tr>
<td>7 5 Total $15,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 34
(S. B. 263—By Mr Brotherton, Mr. President)

[Passed March 28, 1977; 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-seven, to the West Virginia Public Employees Insurance Board, Account No. 615, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and
WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 615, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

**TITLE II—APPROPRIATIONS.**

Section 1. Appropriations from General Revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

127—West Virginia Public Employees Insurance Board

Acct. No. 615

<p>| | | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>Public Employees Health Insurance—</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>3</td>
<td>State Contribution</td>
<td>$ 3,150,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

---

**CHAPTER 35**

(H. B. 1701—Originating in the House Committee on Finance)

[Passed April 4, 1977; 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-seven, to Roney's Point Branch Hospital, Account No. 417, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 417, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 HEALTH AND WELFARE

4 70—Roney’s Point Branch Hospital

5 Acct. No. 417

6 1 Personal Services $10,000

7 5 Total $10,000

8 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 36

(S. B. 239—By Mr. Brotherton, Mr. President)

[Passed March 17, 1977; 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-seven, to the Secretary of State, Account No. 250, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 250, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

<table>
<thead>
<tr>
<th>Section</th>
<th>Appropriations from General Revenue.</th>
</tr>
</thead>
<tbody>
<tr>
<td>TITLE II—APPROPRIATIONS.</td>
<td></td>
</tr>
<tr>
<td>INCORPORATING AND RECORDING</td>
<td></td>
</tr>
<tr>
<td>25—Secretary of State</td>
<td></td>
</tr>
<tr>
<td>Acct. No. 250</td>
<td></td>
</tr>
<tr>
<td>1 3 Current Expenses</td>
<td>$14,000</td>
</tr>
<tr>
<td>2 6a Publication of State Register</td>
<td>25,000</td>
</tr>
<tr>
<td>3 7 Total</td>
<td>$39,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts 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 general revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Board of Education—Rehabilitation Division, Account No. 440, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 440, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

1
Title II—Appropriations.

2 Section 1. Appropriations From General Revenue.

3 Health and Welfare

4 83—State Board of Education—Rehabilitation Division

Acct. No. 440

5

6 1 Personal Services $241,230

7 3 Rehabilitation Center 409,345

8 10 Total $650,575
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

CHAPTER 38
(Com. Sub. for H. B. 1067—By Mr. Speaker, Mr. Kopp)

[Passed March 28, 1977; 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-seven, to the Treasurer's Office, Account No. 160, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 160, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

FISCAL

15—Treasurer’s Office

Acct. No. 160

3 Current Expenses _______________ $91,603

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 39

(S. B. 252—By Mr. Brotherton, Mr. President)

[Passed April 6, 1977; 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-seven, to the Weston State Hospital, Account No. 420, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 420, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HEALTH AND WELFARE

73—Weston State Hospital

Acct. No. 420

1 2 Current Expenses ............................... $ 165,000

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 40

(H. B. 1065—By Mr. Speaker, Mr. Kopp)

[Passed April 9, 1977; 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-seven, to the West Virginia Industrial School for Boys, Account No. 370, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains
unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 370, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sums to the designated line items:

1. **TITLE II—APPROPRIATIONS.**

2. **Section 1. Appropriations From General Revenue.**

3. **CHARITIES AND CORRECTION**

4. **49—West Virginia Industrial School for Boys**

5. Acct. No. 370

6. 1 Personal Services $42,445

7. 2 Current Expenses $31,550

8. 5 Total $73,995

9. The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amounts shall be available for expenditure upon the effective date of this bill.

*CHAPTER 41*

(S. B. 243—By Mr. Brotherton, Mr. President)

[Passed April 4, 1977; 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-seven, to the West Virginia Penitentiary, Account No.
375, chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 375, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CHARITIES AND CORRECTION

54—West Virginia Penitentiary

Acct. No. 375

1       2 Current Expenses                      $ 15,000

2 The purpose of this supplementary appropriation bill is
3 to supplement the aforesaid account and item therein for
4 expenditure in the current fiscal year 1976-77. Such
5 amount shall be available for expenditure upon the effec-
6 tive date of this bill.

CHAPTER 42

[Com. Sub. for S. B. 451—By Mr. Sharpe and Mr. Oates]

[Passed March 29, 1977; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the special revenue funds
of the West Virginia University—Medical School Fund, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the West Virginia University—Medical School, Account No. 928, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, It appears from the Governor's Executive Budget Document, dated February 16, 1977, that there are special revenues in the West Virginia University—Medical School Fund available for appropriation for the 1976-77 fiscal year; and

WHEREAS, It is the purpose of the Legislature to make the following supplementary appropriation to the West Virginia University—Medical School out of such available revenue; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 928, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding thereto the following sum to the designated line item:

TITLE II—APPROPRIATIONS.

Section 2. Appropriations from Other Funds.

152—West Virginia University—Medical School

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

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<tr>
<th></th>
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<th>Current Expenses</th>
<th>$ 750,000</th>
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<tr>
<td>1</td>
<td>2</td>
<td></td>
<td>750,000</td>
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</table>

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1976-77.

The amount as itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven 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 the special revenue account of Workmen’s Compensation Commission remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to Workmen’s Compensation Commission, Account No. 900, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill.”

WHEREAS, The Governor has reviewed the revenues of the account for special revenue of Workmen’s Compensation Commission and finds that funds are available for further appropriation during the fiscal year 1976-77, a part of which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 900, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented by adding the following sums to the designated line items:

<table>
<thead>
<tr>
<th>Title II—Appropriations</th>
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<tbody>
<tr>
<td>Section 2. Appropriations from Other Funds.</td>
<td></td>
</tr>
<tr>
<td>150—Workmen’s Compensation Commission</td>
<td></td>
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<tr>
<td>Acct. No. 900</td>
<td></td>
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<tr>
<td>TO BE PAID FROM WORKMEN’S COMPENSATION FUND</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>1 Personal Services</td>
</tr>
<tr>
<td>7</td>
<td>2 Current Expenses</td>
</tr>
<tr>
<td>8</td>
<td>4 Social Security Matching</td>
</tr>
<tr>
<td>9</td>
<td>5 Public Employees Retirement Matching</td>
</tr>
<tr>
<td>10</td>
<td>6 Public Employees Health Insurance</td>
</tr>
<tr>
<td>11</td>
<td>7 Total</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year 1976-77. Such amount shall be available for expenditure upon the effective date of this bill.

CHAPTER 44
(H. B. 1574—Originating in the House Committee on Finance)

[Passed March 24, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Andrew S. Rowan Memorial Home, Account No. 384, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 384, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

CHARITIES AND CORRECTION

58—Andrew S. Rowan Memorial Home

Acct. No. 384

2 Current Expenses $364,400
4 Equipment 15,600

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of existing appropriation to another item of such appropriation for the designated spending unit and account thereof, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Attorney General, Account No. 240, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 240, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

LEGAL

23—Attorney General

Acct. No. 240

1  2 Other Personal Services  $847,292
2  3 Current Expenses  124,000
3  4 Equipment  43,500

The purpose of this bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Davis Center, Account No. 371, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 371, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1 CHARITIES AND CORRECTION

50—Davis Center

Acct. No. 371

1 Personal Services $294,000
2 Current Expenses 147,000
4 Equipment 17,000

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to another item of such appropriation for the designated spending unit and account thereof, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts of the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, as appropriated by Enrolled House Bill No. 1661, regular session, one thousand nine hundred seventy-seven, by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, and by chapter seven, acts of 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 the total appropriations made from the state road fund to the State Department of Highways, Account No. 670, for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, as appropriated by Enrolled House Bill No. 1661, regular session, one thousand nine hundred seventy-seven, by chapter two, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-six, and by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill,” be supplemented, amended and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 2. Appropriations from Other Funds.

129—State Department of Highways

Acct. No. 670

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Expressway, Trunkline and Feeder</td>
<td>$62,332,000</td>
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<tr>
<td>2</td>
<td>State Local Service</td>
<td>$62,037,000</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>$3,400,000</td>
</tr>
</tbody>
</table>
The purpose of this bill is to supplement, amend and transfer certain moneys from items of the existing appropriations to other items of such appropriations for the designated spending unit, and to reflect the total spending authority of the spending unit for the 1976-77 fiscal year, with no new moneys being appropriated hereby.

The amounts as newly itemized for expenditure in such fiscal year shall be available for expenditure upon the effective date of this bill.

CHAPTER 48

(H. B. 1372—By Mr. Shiflet and Mr. Ballous)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring an existing appropriation of the Department of Natural Resources, Account No. 972, as appropriated by chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-five, one thousand nine hundred seventy-five, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill."

WHEREAS, In chapter fifty-one, acts of the Legislature, regular session, one thousand nine hundred seventy-five, the Legislature appropriated $250,000 out of the Revenue Sharing Trust Fund to the Department of Natural Resources, Account No. 972, for "acquisition of land, right-of-way and certain personal property situate in Fayette County, West Virginia," and said appropriation being supplementary to chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill"; and
WHEREAS, Said appropriation has not been fully expended to date and the balance thereof has been carried forward for expenditure in the fiscal years 1975-76 and 1976-77; and

WHEREAS, A balance of $21,080 remains unexpended, subject to reduction for encumbrances prior to the effective date of this bill, of said appropriation and said balance is no longer needed for the original purpose of the appropriation; and

WHEREAS, The Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid balance of the appropriation should immediately be transferred to enable the completion of another department project as set forth below; therefore

Be it enacted by the Legislature of West Virginia:

That the appropriation made to Account No. 972, by chapter fifty-one, acts of Legislature, regular session, one thousand nine hundred seventy-five, supplementing chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, known as the "Budget Bill," be amended and transferred to read as follows:

1 DEPARTMENT OF NATURAL RESOURCES
2 Acct. No. 972
3 TO BE PAID FROM REVENUE SHARING TRUST FUND
4 4 Acquisition of land, right-of-way and
5 5 certain personal property situate in
6 6 Fayette County, West Virginia .................. $228,920
7 6a Watoga State Park—Park Improvements
8 6b Including All-Weather Surface
9 6c Treatment of Tennis Courts .................. $ 21,080

The purpose of this bill is to amend and transfer an existing appropriation made by said chapter fifty-one for acquisition of Minden Railroad, by transferring $21,080, subject to reduction for encumbrances prior to the effective date, to the new designated line item. No new moneys are being appropriated. The amount as hereby itemized for expenditure during the fiscal year 1976-77 shall be available for expenditure upon the effective date of this bill. Any unexpended balance
removing in the above appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

CHAPTER 49
(Com. Sub. for H. B. 1371—By Mr. Shiflet and Mr. Ballouz)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring appropriations made to the Department of Natural Resources by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, known as the "Budget Bill," and by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, In section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, known as the "Budget Bill," the Legislature in Item IX, line item No. 10 thereof, appropriated $300,000 to the Department of Natural Resources for "Stonewall Jackson Lake (State Park)"; and

WHEREAS, Said appropriation has not been fully expended to date but has been reappropriated in the budget bills for each fiscal year subsequent to the fiscal year in which the original appropriations were made; and

WHEREAS, Of the $300,000 originally appropriated for "Stonewall Jackson Lake (State Park)", the amount of $299,990 remains unexpended subject to reduction for encumbrances prior to the effective date of this bill, and is no longer needed for the original purpose of the appropriation; and

WHEREAS, In section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," the Legislature in Item III, line item 4D thereof, appropriated $15,000 to the Department of Natural Resources for "Matoaka State Park," the full amount of which remains unexpended subject to reduction for encumbrances prior to the effective date of this bill; and
WHEREAS, Said appropriation to Matoaka State Park is no longer needed for the original purpose of the appropriation; and

WHEREAS, The total balance remaining unexpended in the above appropriations is $314,990 subject to reduction as aforesaid, and the Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid total balance should be transferred and expended on existing department projects which have not been completed due to lack of funds; therefore

Be it enacted by the Legislature of West Virginia:

That the existing balance of $299,990 in Item IX, line item No. 10, “Stonewall Jackson Lake (State Park),” as appropriated in section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-two, and as reappropriated; and the existing balance of $15,000 in Item III, line item 4D, “Matoaka State Park”, as appropriated in section four, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, being a total of $314,990 subject to reduction for encumbrances prior to the effective date of this bill, which reduction, if any, is to be applied on a percentage proration basis, are hereby transferred to the following designated line items and allocated in the following amounts:

1  Cass Scenic Railroad—Improvements Including
   Reconstruction of Railroad Depot $ 83,000
2  Pipestem State Park—Park Improvement Including
   Acquisition of Solid Waste Disposal Facility
   and Construction of Sled Run 55,000
3  Prickett's Fort State Park—Park Improvements
   Including Construction of Restroom and
   Supporting Facilities 30,000
4  Twin Falls State Park—Park Improvements
   Including Completion of Campground and
   Picnic Facilities 52,000
5  Watters Smith State Park—Park
   Improvements Including Restoration of
   Watters Smith Pioneer Home 22,000
6  Chief Logan State Park—Park Improvements
   Including Completion of Maintenance Building 30,000
7  Holly River State Park—Park
   Improvements Including Land Purchase 30,000
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19 Watoga State Park—Park
20 Improvements Including All-Weather
21 Surface Treatment of Tennis Courts

12,990

The purpose of this bill is to transfer certain existing appropriations for the Department of Natural Resources to the new designated line items. No new moneys are being appropriated. The amounts as newly itemized for expenditure during the fiscal year 1976-77 shall be available upon the effective date of this bill. Any unexpended balance remaining in the above appropriations at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

CHAPTER 50

(H. B. 1373—By Mr. Shiflet and Mr. Ballous)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT amending and transferring an existing appropriation of the Department of Natural Resources, Account No. 972, as appropriated by chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, In Account No. 972, section seven, title two, chapter seven, acts of the Legislature, regular session, 1976, the Legislature on line 5 thereof, appropriated $162,000 out of the Revenue Sharing Trust Fund to the Department of Natural Resources for Minden Railroad; and

WHEREAS, A balance of $161,989 remains unexpended of said appropriation, subject to reduction for encumbrances prior to the effective date of this bill, with such reduction to be applied pro rata to the new line items, and said balance is no longer needed for the original purpose of the appropriation; and
WHEREAS, The Director of the Department of Natural Resources in the exercise of his discretion is of the opinion that the aforesaid balance of the appropriation should immediately be transferred to enable the completion of other department projects as set forth below; therefore

Be it enacted by the Legislature of West Virginia:

That the appropriation made to Account No. 972, section seven, title two, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be amended and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 7. Appropriations from Revenue Sharing Trust Fund.

179—Revenue Sharing Trust Fund—Department of Natural Resources

Acct. No. 972

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>5</td>
<td>Minden Railroad</td>
<td>$11,069</td>
</tr>
<tr>
<td>9</td>
<td>Canaan Valley State Park—Park Improvements Including Upgrading of Ski Facilities and Golf Course</td>
<td>$106,980</td>
</tr>
<tr>
<td>10</td>
<td>Blackwater Falls State Park—Park Improvements Including Tennis Courts and Sled Run</td>
<td>$55,000</td>
</tr>
</tbody>
</table>

The purpose of this bill is to amend and transfer an existing appropriation for Minden Railroad, subject to reduction for encumbrances prior to the effective date of this bill with such reductions to be applied pro rata, to the new designated line items. No new moneys are being appropriated. The amounts as newly itemized for expenditure during the fiscal year 1976-77 shall be available for expenditure upon the effective date of this bill. Any unexpended balance remaining in the above appropriations at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.
CHAPTER 51
(H. B. 1752—Originating in the House Committee on Finance)

[Passed April 7, 1977; 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 seven, acts of 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 items of the total appropriation of Account No. 565, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1 CONSERVATION AND DEVELOPMENT
2 108—Department of Natural Resources
3 Acct. No. 565
4 9 Water Resources Board ________________ $25,000
5 12 Reclamation Board of Review ___________ $ 5,000

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 and account thereof, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 52
(S. B. 444—By Mr. Brotherton, Mr. President)

[Passed March 28, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the De-
Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 570, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

PROTECTION

112—Department of Public Safety

Acct. No. 570

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<tr>
<td>1</td>
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<td>Personal Services</td>
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</tr>
<tr>
<td>2</td>
<td>2</td>
<td>Current Expenses</td>
<td>3,031,723</td>
<td></td>
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<tr>
<td>3</td>
<td>3</td>
<td>Repairs and Alterations</td>
<td>143,500</td>
<td></td>
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The purpose of this bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to another item of such appropriation for the designated spending unit, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven shall be available for expenditure upon the effective date of this bill.
Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 404, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

HEALTH AND WELFARE
62—Department of Veterans Affairs
Acct. No. 404

1 1 Personal Services $426,706
2 4 Educational opportunities for children of
3 5 War Veterans 13,294

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-seven, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 54
(S. B. 414—Originating in the Senate Committee on Finance)

[Passed March 18, 1977; In effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Fairmont Emergency Hospital, Account No. 425, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 425, chapter seven, acts of the Legislature, regular session, one
thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

HEALTH AND WELFARE

78—Fairmont Emergency Hospital

Acct. No. 425

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<tr>
<td>1</td>
<td>1</td>
<td>Personal Services $526,500</td>
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<tr>
<td>2</td>
<td>2</td>
<td>Current Expenses $297,500</td>
</tr>
</tbody>
</table>

3 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-seven, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 55

(H.B. 924—By Mr. Speaker, Mr. Kopp)

[Passed March 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of geological and economic survey commission; as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 520, chapter seven, acts of the Legislature, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:
CONSERVATION AND DEVELOPMENT

106—Geological and Economic Survey Commission

Acct. No. 520

2 Current Expenses __________________________  $112,814
3 Repairs and Alterations ______________________  91,850

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-seven, shall be made available for expenditure upon the effective date of this bill.

CHAPTER 56

(H. B. 1702—Originating in the House Committee on Finance)

[Passed April 1, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Guthrie Center, Account No. 418, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 418, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

HEALTH AND WELFARE

71—Guthrie Center

Acct. No. 418

1 Personal Services _____________________________  $575,645
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to another item of such appropriation for the designated spending unit and account thereof, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for such expenditure immediately upon the effective date of this bill.

CHAPTER 57
(H. B. 1500—Originating in the House Committee on Finance)

[Passed March 24, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Hopemont State Hospital, Account No. 430, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 430, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

1 HEALTH AND WELFARE
2 80—Hopemont State Hospital
3 Acct. No. 430
4 2 Current Expenses .................................. $618,606
5 3 Repairs and Alterations ............................. 47,500
6 4 Equipment ............................................ 80,000
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to another item of such appropriation for the designated spending unit and account thereof, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.

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**CHAPTER 58**

(S. B. 411—Originating in the Senate Committee on Finance)

[Passed March 15, 1977; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Leckie Center, Account No. 373, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 373, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

**CHARITIES AND CORRECTION**

52—Leckie Center

Acct. No. 373

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$290,500</td>
</tr>
<tr>
<td>2</td>
<td>Repairs and Alterations</td>
<td>$32,500</td>
</tr>
</tbody>
</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 appropriation for the designated spending unit. The amounts as itemized for expenditure during
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Treasurer's Office, Account No. 160, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 160, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

FISCAL

15—Treasurer’s Office

Acct. No. 160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Other Personal Services</td>
<td>$277,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>12,000</td>
</tr>
</tbody>
</table>

The purpose of this 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, with no new moneys being appropriated hereby. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Welch Emergency Hospital, Account No. 426, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 426, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

HEALTH AND WELFARE

79—Welch Emergency Hospital

Acct. No. 426

1 1 Personal Services $ 895,000
2 2 Current Expenses 319,400
3 3 Repairs and Alterations 80,000

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from certain items 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-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Children’s Home, Account No. 380, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 380, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

CHARITIES AND CORRECTION

57—West Virginia Children's Home

Acct. No. 380

1 1 Personal Services ...........................................$ 153,000
2 4 Equipment ......................................................... 13,060

3 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-seven, shall be made available for expenditure upon the effective date of this bill.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the West Virginia Penitentiary, Account No. 375, as appropriated by chapter seven, acts of 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 items of the total appropriation of Account No. 375, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, be supplemented, amended and transferred to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

CHARITIES AND CORRECTION

54—West Virginia Penitentiary

Acct. No. 375

1 2 Current Expenses $ 1,245,000
2 4 Equipment 155,000

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, with no new moneys being appropriated hereby. The amounts as itemized for expenditure during the fiscal year one thousand nine hundred seventy-seven shall be made available for expenditure upon the effective date of this bill.
AN ACT to amend article one, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to banks and other lending institutions; requiring banks and other lending institutions to insure their deposits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-6. Deposit insurance required for banking and other lending institutions.

All building and loan associations established pursuant to article six, chapter thirty-one, industrial banks established pursuant to article seven, chapter thirty-one, credit unions established pursuant to article ten, chapter thirty-one, members of the savings and loan association of the state of West Virginia established pursuant to article eleven, chapter thirty-one and all banking institutions governed by the provisions of this chapter shall qualify for and obtain federal deposit insurance, or shall obtain insurance as approved by the commissioner of banking in an amount equal to that provided by the federal deposit insurance corporation for eligible institutions.

Each such institution which fails to obtain deposit insurance as required herein by the first day of July, one thousand nine hundred seventy-eight shall be prohibited from conducting any business as a lending institution until such insurance is obtained, except that the commissioner may grant continuances for compliance with this section for any institution showing good cause for such a continuance.
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nineteen, relating to the solicitation of charitable funds act; short title; definitions; commission created; compensation of members and expenses of commission; registration of charitable organizations; exemptions from registration; limitations on payments; limitations on activities; registration of fund-raising counsel and solicitor; bonds; records; books; public records; reciprocal agreements; prohibited acts; nonresident charitable organizations, counsel and solicitors; secretary of state as agent; notice of service by attorney general; and enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-3. Commission on charitable organizations; powers and duties.
§29-19-5. Registration of charitable organizations; fee.
§29-19-6. Certain persons and organizations exempt from registration.
§29-19-7. Limitations on amount of payments for solicitation activities.
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
§29-19-10. Information filed to become public records.
§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.
§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors, designation of secretary of state as agent for service of process; notice of such service by attorney general.


1 This article shall be known and may be cited as the "Solicitation of Charitable Funds Act."


1 As used in this article:

2 (1) "Charitable organization" means a person which is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization or any person which solicits or obtains contributions solicited from the public for charitable purposes after the effective date of this article. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization which has its principal place of business outside the state is a charitable organization for the purposes of this article. This definition shall not be deemed to include religious organizations or any group affiliated with and forming an integral part of said organization no part of the net income of which inures to direct benefit of any individual and which have received a declaration of current tax exempt status from the government of the United States nor shall this definition include any single church congregation located in the county or local congregation of any religious affiliation or any municipal-wide or county-wide little league or similar youth athletic organization or any service club. No such affiliated group may be required to obtain such declaration if the parent or principal organization shall have obtained same.

26 (2) "Contributions" means the promise or grant of any money or property of any kind or value.

28 (3) "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not
limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(4) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists or advises one or more chapters, branches or affiliates in the state.

(5) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

(6) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fund-raising counsel.

(7) "Professional solicitor" means any person who, for a financial or other consideration, solicit contributions for, or on behalf of a charitable organization, whether such solicitation is performed personally or through their agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this act. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment
within the state shall not be deemed to be a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, shall be deemed, as the result of such advice, to be a professional fund-raising counsel or a professional solicitor.

(8) "Commission" means the commission on charitable organizations herein created.

§29-19-3. Commission on charitable organizations; powers and duties.

(a) The commission on charitable organizations, herein referred to as the "commission," consists of seven members, one of whom shall be the secretary of state or his designate, who shall be the chairman, one of whom shall be the attorney general or his designate, one of whom shall be the commissioner of welfare or his designate and one of whom shall be the director of the state department of health or his designate and three members to be appointed by the governor who shall serve at his will and pleasure.

(b) The commission shall promulgate rules and regulations and prescribe forms for registration or other purposes consistent with the specific requirements of this article and, after due notice to and consultation with representatives of charitable organizations, professional fund-raising counsel and professional solicitors and an opportunity for all such to be heard to make effective such rules, regulations, forms and procedures and when necessary to hold hearings and make adjudications as provided in this article and make recommendations to the attorney general for enforcement of this article.


No member of the commission shall receive any compensation, whether in the form of salary, per diem allowance or otherwise, for or in connection with his services as a member. Each member, however, is entitled to reimbursement by the commission for all reasonable and
necessary expenses actually incurred in connection with
the performance of his duties as a member.

The expenses of the members and the general operating
expenses of the commission shall be paid from moneys
appropriated by the Legislature for those purposes.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization which intends to
solicit contributions within this state, or has funds so-
licted on its behalf, shall, prior to any solicitation file
a registration statement with the secretary of state
upon forms prescribed by the commission, which shall
be good for one full year and which shall be refiled in
the next and each following year in which such charitable
organization is engaged in solicitation activities. It shall
be the duty of the president, chairman or principal officer
of such charitable organization to file the statements re-
quired under this article. Such statements shall be sworn
to and shall contain the following information:

(1) The name of the organization and the purpose for
which it was organized;

(2) The principal address of the organization and the
address of any offices in this state. If the organization
does not maintain an office, the name and address of the
person having custody of its financial records;

(3) The names and addresses of any chapters, branches
or affiliates in this state;

(4) The place where and the date when the organiza-
tion was legally established, the form of its organization,
and a reference to any determination of its tax-exempt
status under the Internal Revenue Code;

(5) The names and addresses of the officers, directors,
trustees and the principal salaried executive staff of-
ner;

(6) A copy of a balance sheet and income and expense
statement audited by an independent public accoun-
tagant for the organization's immediately preceding fiscal
year, or a copy of a financial statement audited by an
independent public accountant covering, in a consolidated
report, complete information as to all the preceding
year's fund-raising activities of the charitable or-
ganization, showing kind and amount of funds raised,
costs and expenses incidental thereto, and alloca-
tion or disbursement of funds raised: Provided,
That only organizations raising more than fifty thou-
sand dollars per year in contributions shall be re-
quired to have an audit by an independent public ac-
countant;

(7) Whether the organization intends to solicit con-
tributions from the public directly or have such done
on its behalf by others;

(8) Whether the organization is authorized by any
other governmental authority to solicit contributions
and whether it is or has ever been enjoined by any court
from soliciting contributions;

(9) The general purpose or purposes for which the
contributions to be solicited shall be used;

(10) The name or names under which it intends to
solicit contributions;

(11) The names of the individuals or officers of the
organization who will have final responsibility for the
custody of the contributions; and

(12) The names of the individuals or officers of the
organization responsible for the final distribution of the
contributions.

(b) Each chapter, branch or affiliate, except an in-
dependent member agency of a federated fund-raising
organization, may separately report the information re-
quired by this subsection, or report the information to its
parent organization which shall then furnish such infor-
mation as to its West Virginia affiliates, chapters and
branches in a consolidated form to the secretary of state.
An independent member agency of a federated fund-
raising organization, as hereinbefore defined, shall comply
with the provisions of this article independently, unless
specifically exempted from doing so.

(c) The registration forms and any other documents
prescribed by the commission shall be signed by an au-
Authorized officer or by an independent public accountant and by the chief fiscal officer of the charitable organization and shall be verified under oath.

(d) Every charitable organization which submits an independent registration to the secretary of state shall pay an annual registration fee of ten dollars; a parent organization filing on behalf of one or more chapters, branches or affiliates and a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and such chapters, branches, affiliates or member agencies included in the registration statement.

§29-19-6. Certain persons and organizations exempt from registration.

(a) The following charitable organizations shall not be required to file an annual registration statement with the secretary of state:

(1) Educational institutions, the curriculums of which in whole or in part are registered or approved by the state board of education, either directly or by acceptance of accreditation by an accrediting body recognized by the state board of education;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his use;

(3) Charitable organizations which do not intend to solicit and receive and do not actually raise or receive contributions from the public in excess of seven thousand five hundred dollars during a calendar year or do not receive contributions from more than ten persons during a calendar year, if all of their functions, including fund-raising activities, are carried on by persons who are unpaid for their services and if no part of their assets or income inures to the benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public, whether all of such is or is not received by any charitable organization during any calendar year, shall be
in excess of two thousand dollars, it shall, within thirty
days after the date it shall have received total contri-
butions in excess of seven thousand five hundred dol-
lars, register with and report to the department as re-
quired by this article;

(4) Hospitals which are nonprofit and charitable;

(5) Organizations which solicit only within the mem-
bership of the organization by the members thereof.
The term "membership" shall not include those persons
who are granted a membership upon making a contribu-
tion as the result of solicitation; or

(6) A local post, camp, chapter or similarly designated
element or a county unit of such elements of a bona fide
veterans' organization which issues charters to such local
elements throughout this state, a bona fide organization of
volunteer firemen, a bona fide ambulance association or
bona fide rescue squad association or a bona fide auxiliary
or affiliate of any such organization, provided all its fund-
raising activities are carried on by members of such an
organization or an affiliate thereof, and such members
receive no compensation directly or indirectly therefor.

(b) Any charitable organization claiming to be exempt
from the registration provisions of this act and which is
about to or does solicit charitable contributions shall
submit, annually, to the secretary of state on forms to be
prescribed by the commission the name, address and
purpose of the organization and a statement setting forth
the reason for the claim for exemption. If exempted, the
secretary of state shall issue, annually, a letter of ex-
emption which may be exhibited to the public. No
registration fee shall be required of any exempt orga-
nization.

§29-19-7. Limitations on amount of payments for solicitation
activities.

(a) No charitable organization shall pay or agree to
pay to a professional solicitor or his agents, servants or
employees in the aggregate a total amount in excess
of fifteen percent (including reimbursement for ex-
penses incurred) of the total moneys, pledges or other
property raised or received by reason of any solicitation activities or campaigns.

(b) For purposes of this section the total moneys, funds, pledges or other property raised or received shall not include the actual cost to the charitable organization or professional solicitor of goods sold or service provided to the public in connection with the soliciting of contributions.

(c) Every contract or written agreement between professional fund-raising counsel and a charitable organization shall be filed with the secretary of state within ten days after such contract or written agreement is concluded.

(d) Every contract or a written statement of the nature of the arrangement to prevail in the absence of a contract between a professional solicitor and a charitable organization shall be filed with the secretary of the state within ten days after such contract or written agreement is concluded. If the contract or arrangement with a professional solicitor does not provide for compensation on a percentage basis, the commission shall examine the contract to ascertain whether the compensation to be paid in such circumstances is likely to exceed fifteen percent of the total moneys, pledges or other property raised or received as a result of the contract or arrangement; if the reasonable probabilities are that the compensation will exceed fifteen percent of the total moneys, pledges or other property, the secretary of state shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract, or receive or perform services, or receive or make payments, pursuant to a disapproved contract. Any party to a disapproved contract shall, upon written request made within thirty days of disapproval, be given a hearing before the commission within thirty days after such request is filed.


No charitable organizations subject to this article may solicit funds from the public except for charitable pur-
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fund-raising counsel or professional solicitor for a charitable organization subject to the provisions of this article, unless he has first registered with the secretary of state. Applications for such registration shall be in writing under oath or affirmation in the form prescribed by the secretary of state and contain such information as the commission may require. The application for registration by professional fund-raising counsel or professional solicitor shall be accompanied by an annual fee in the sum of fifty dollars. A partnership or corporation, which is a professional fund-raising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fund-raising counsel and all professional solicitors, their officers, agents, servants or employees employed to work under the direction of a professional solicitor must be listed in the application.

(b) The applicant shall, at the time of making application, file with and have approved by the secretary of state a bond in which the applicant shall be the principal obligor in the sum of ten thousand dollars with one or more sureties satisfactory to the secretary of state, whose liability in the aggregate as such sureties will at least equal the said sum and maintain said bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the secretary of state and any person who may have a cause of action against the obligor of said bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fund-raising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration shall be valid throughout the
37 state for a period of one year and may be renewed for
38 additional one-year periods upon written application un-
39 der oath in the form prescribed by the commission and
40 the payment of the fee prescribed herein.

41 (d) The secretary of state or his designate shall
42 examine each application, and if he finds it to be in
43 conformity with the requirements of this article and all
44 relevant rules and regulations and the registrant has
45 complied with the requirements of this article and all
46 relevant rules and regulations, he shall approve the
47 registration. Any applicant who is denied approved
48 registration may, within fifteen days from the date of
49 notification of such denial, request, in writing, a hearing
50 before the commission, which hearing shall be held
51 within fifteen days from the date of the request.

§29-19-10. Information filed to become public records.

1 Registration statements and applications, reports,
2 professional fund-raising counsel contracts or professional
3 solicitor contracts, and all other documents and informa-
4 tion required to be filed under this article or by the
5 secretary of state or by the commission shall become
6 public records in the office of the secretary of state, and
7 shall be open to the general public for inspection at such
8 time and under such conditions as the secretary of state
9 may prescribe.

§29-19-11. Records to be kept by charitable organizations,

professional fund-raising counsel and professional
solicitors.

1 Every charitable organization subject to the provisions
2 of this article shall, in accordance with the rules and
3 regulations prescribed by the commission, keep true
4 fiscal records as to its activities in this state as may
5 be covered by this article in such form as will enable it
6 accurately to provide the information required by this
7 article. Upon demand, such records shall be made avail-
8 able to the secretary of state, the commission or the at-
9 torney general for inspection. Such records shall be re-
10 tained for a period of at least three years after the end
11 of the period of registration to which they relate.

1 The secretary of state may enter into reciprocal agreements with the appropriate authority of any other state for the purpose of exchanging information with respect to charitable organizations, professional fund-raising counsel and professional solicitors. Pursuant to such agreements the secretary of state may accept information filed by a charitable organization, professional fund-raising counsel or professional solicitor with the appropriate authority of another state in lieu of the information required to be filed in accordance with the provisions of this article, if such information is substantially similar to the information required under this article. The secretary of state shall also grant exemption from the requirement for the filing of annual registration statement with the secretary of state to charitable organizations organized under the laws of another state having their principal place of business outside of this state whose funds are derived principally from sources outside the state and which have been granted exemption from the filing of registration statements by the state under whose laws they are organized if such state has a statute similar in substance to the provisions of this article.


(a) No charitable organization, professional fund-raising counsel or professional solicitor, subject to the provisions of this article, may use or exploit the fact of registration so as to lead the public to believe that such registration in any manner constitutes an endorsement or approval by the state. The use of the following statement shall not be deemed a prohibited exploitation: "Registered with the secretary of state as required by law. Registration does not imply endorsement of a public solicitation for contributions."

(b) No person may, in connection with the solicitation of contributions for or the sale of goods or services of a person other than a charitable organization, misrepresent to or mislead anyone by any manner, means, practice or device whatsoever, to believe that the person
on whose behalf such solicitation or sale is being conducted is a charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if such is not the fact.

(c) No person may in connection with the solicitation of contributions or the sale of goods or services for charitable purposes represent to or lead anyone by any manner, means, practice or device whatsoever, to believe that any other person sponsors or endorses such solicitation of contributions, sale of goods or services for charitable purposes or approves of such charitable purposes of a charitable organization connected therewith when such other person has not given consent to the use of his name for these purposes; any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign.

(d) No person may make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(e) No professional solicitor may solicit in the name of or on behalf of any charitable organization unless such solicitor has:

(1) Written authorization of two officers of such organization, a copy of which shall be filed with the secretary of state. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued; and

(2) Such authorization with him when making solicitations and exhibits the same on request to persons solicited or police officers or agents of the secretary of state.
§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors, designation of secretary of state as agent for service of process; notice of such service by attorney general.

Any charitable organization or professional fund-raising counsel or professional solicitor having its or his principal place of business without the state, or organized under and by virtue of the laws of a foreign state, which or who shall solicit contributions from people in this state, is subject to the provisions of this article and shall be deemed to have irrevocably appointed the secretary of state as its or his agent upon whom may be served any summons, subpoena, subpoena duces tecum or other process directed to such charitable organization, professional fund-raising counsel or professional solicitor or any partner, principal officer or director thereof in any action or proceeding brought under the provisions of this article. Service of such process upon the secretary of state shall be made by personally delivering to and leaving with him a copy thereof, and such service shall be sufficient service provided that notice of such service and a copy of such process are forthwith sent by the attorney general to such charitable organization or professional fund-raising counsel or professional solicitor by registered or certified mail with return receipt requested at its or his office, as set forth in the registration form required to be filed with the secretary of state pursuant to this article or in default of the filing of such form, at the last address known to the attorney general or to the secretary of state.


(a) If any charitable organization, professional fund-raising counsel or professional solicitor fails to file any registration application or statement, report or other information required to be filed by the secretary of state or the commission under this article, or otherwise violates the provisions of this act, the department shall notify the delinquent charitable organization, professional fund-raising counsel or professional solicitor by mailing a notice by registered or certified mail, with return receipt...
requested, to its or his last-known address. If the re-
quired registration application or statement, annual re-
port or other information is not filed or if the existing
violation is not discontinued within two weeks after the
formal notification or receipt of such notice, the com-
mision may cancel, suspend or refuse to accept the
registration of such delinquent charitable organization,
professional fund-raising counsel or professional solicitor.

(b) The commission, upon its own motion or upon
complaint of any person, may, if it has reasonable ground
to suspect a violation, investigate any charitable orga-
nization, professional fund-raising counsel or professional
solicitor to determine whether such charitable organiza-
tion, professional fund-raising counsel or professional
solicitor has violated the provisions of this article or
has filed any application or other information required
under this article which contains false or misleading
statements. If the commission finds that any applica-
tion or other information contains false or misleading
statements, or that a registrant under this article has
violated the provisions thereof, it may recommend to
the secretary of state that the registration be suspended
or canceled and the secretary of state may so order.

(c) The registration of any charitable organization,
professional fund-raising counsel or professional solicitor,
which or who knowingly makes a false or misleading
statement in any registration application or statement,
report or other information required to be filed by the
secretary of state or this article shall be revoked.

(d) All administrative proceedings under this article,
including the promulgation of rules and regulations,
shall be conducted in accordance with the provisions of
chapter twenty-nine-a of this code and all commission
adjudications shall be subject to review and appeal as
provided therein.

(e) In addition to the foregoing, any person who
willfully and knowingly violates any provisions of this
article, or who shall willfully and knowingly give false
or incorrect information to the secretary of state in filing
statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not less than one hundred dollars and not more than five hundred dollars or be imprisoned for not more than six months, or both, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars and not more than one thousand dollars or be imprisoned for not more than one year, or both.

(f) Whenever the attorney general or any prosecuting attorney has reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this article or has knowingly and willfully made any false statement in any registration application or statement, report or other information required to be filed by this article or whenever a charitable organization, professional fund-raising counsel or professional solicitor has failed to file a registration statement required by this article, or whenever there is employed or is about to be employed in any solicitation or collection of contributions for a charitable organization any device, scheme or artifice to defraud or to obtain money or property by means of any false pretense, representation or promise, or whenever the officers or representatives of any charitable organization, professional fund-raising counsel or professional solicitor have refused or failed after notice to produce any records of such organization, or whenever the funds raised by solicitation activities are not devoted or will not be devoted to the charitable purposes of the charitable organization, in addition to all other actions authorized by law, the attorney general or prosecuting attorney may bring an action in the name of the state against such charitable organization and its officers, such professional fund-raising counsel or professional solicitor or any other person who has violated this article or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or
promise, to defraud or obtain money or other property, to enjoin such charitable organization or professional fund-raising counsel or professional solicitor or other person from continuing such violation, solicitation or collection, or engaging therein or doing any acts in furtherance thereof and for such other relief as the court deems appropriate.

(g) In addition to the foregoing, any charitable organization, professional fund-raising counsel or professional solicitor who willfully and knowingly violates any provisions of this article by employing any device, scheme, artifice, false representation or promise with intent to defraud or obtain money or other property shall be guilty of a misdemeanor, and, upon conviction thereof, for a first offense, be fined not less than one hundred dollars and not more than five hundred dollars or confined in the county jail not more than six months, or both; and for a second and any subsequent offense shall be fined not less than five hundred dollars and not more than one thousand dollars or confined in the county jail not more than one year, or both.

At any proceeding under this section, the court shall also determine whether it is possible to return to the contributors the contributions which were thereby obtained.

If the court finds that the said contributions are readily returnable to the original contributors, it may order the money to be placed in the custody and control of a general receiver, appointed pursuant to the provisions of article six, chapter fifty-one of this code who shall be responsible for its proper disbursement to such contributors.

If the court finds that (1) it is impossible to obtain the names of over one half the persons who were solicited and in violation of this article, or (2) if the majority of individual contributions were less than five dollars, or (3) if the cost to the state of returning these contributions is equal to or more than the total sum to be refunded, the court shall order the money to be placed
128 in the custody and control of a general receiver ap­
129 pointed pursuant to the provisions of article six, chapter
130 fifty-one of this code. The general receiver shall main­
131 tain this money pursuant to the provisions of article
132 eight, chapter thirty-six of this code.

CHAPTER 65

(Com. Sub. for S. B. 200—By Mr. Jones, Mr. Nelton, Mr. Hamilton and Mr. Kusic)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four
and five, article one, chapter forty-nine of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; to amend article two by adding thereto a new
section, designated section fourteen; to amend and reenact
sections one, two, three, seven, eight, nine, ten, eleven,
thirteen, fourteen and fifteen, article five; to further
amend said article by adding thereto two new sections,
designated sections sixteen and seventeen; to amend and
reenact section two, article five-a; to amend and reenact
sections one, two, three, four and five, article six; to further
amend said article six by adding thereto three new sec­
tions, designated sections six, seven and eight; to amend
and reenact article six-a of said chapter; to amend and
reenact section six, article seven; and to further amend
said article seven by adding thereto two new sections,
designated sections one and twenty-seven, all of said chap­
ter forty-nine, all relating to purpose; definitions of child,
neglected child, abused child; removing child from foster
home; jurisdiction of the juvenile court; noncustodial coun­
seling of a child; petitioning the court for disposition of
suspected delinquents, warrants, and notice to child and
parents; taking a child into custody; probable cause hearing
and improvement period; transfer of jurisdiction; hearings
and adjudications; disposition and appeal; modification of
dispositional orders; juvenile probation officers; committing
children to jail; expungement of records and no discrimination; investigation and release of child taken into custody; petition to court when child believed neglected; notice; right to counsel; hearing; temporary custody; improvement period; examinations; disposition of neglected children; modification of dispositional orders; foster care review; consensual termination; reports of children suspected of being abused or neglected; confidentiality and civil liability for violation; penalty for failure to report; enforcement of order for support; and emancipation.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Purposes, definitions.
2. State and county responsibilities for the protection and care of children.
5. Juvenile proceedings.
5A. Juvenile referee system.
6. Procedure in cases of child neglect or abuse.
6A. Reports of children suspected to be abused or neglected.
7. General provisions.

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-1. Purpose.
§49-1-2. “Child” defined.
§49-1-3. “Neglected child” and “abused child” defined.
§49-1-4. "Delinquent child" defined.
§49-1-5. Definitions of other terms.

§49-1-1. Purpose.

(a) The purpose of this chapter is to provide a comprehensive system of child welfare throughout the state which will assure to each child such care and guidance, preferably in his own home, as will serve the spiritual, emotional, mental and physical welfare of the child; preserve and strengthen the child's family ties whenever possible with recognition to the fundamental rights of parenthood and with recognition of the state's responsibility to assist the family in providing the necessary education and training and protect the welfare of the general public. In pursuit of these goals it is the intention of the Legislature to provide for removing the child from the custody of parents only when the child's welfare or the safety and protection of the public cannot be adequately safeguarded without removal; and, when the child has to be removed from his own family, to secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given by his parents, consistent with the child's best interests.

(b) The child welfare service of the state shall be administered by the state department of welfare and the licensing board created by section four-a, article two of this chapter.

The state department of welfare is designated as the agency to cooperate with the United States department of health, education and welfare and United States department of justice in extending and improving child welfare services, to comply with regulations thereof, and to receive and expend federal funds for these services.


"Child" means any person under eighteen years of age. Once a child is transferred to a court with criminal jurisdiction pursuant to section ten, article five of this chapter, he nevertheless remains a child for the purposes of the applicability of the provisions of this chapter with
§49-1-3. "Neglected child" and "abused child" defined.

"Abused child" means a child:

Whose parent or guardian inflicts or attempts to inflict
or allows to be inflicted as a result of inadequate supervision, physical injury upon the child which seriously
endangers the present physical or mental health of such
child or inflicts sexual abuse upon the child.

"Neglected child" means a child:

(1) Whose physical or mental condition is impaired or endangered as a result of the present refusal, failure or inability of the child's parent or custodian to supply the child with necessary food, clothing, shelter, medical care or education, notwithstanding efforts of the state department to remedy the inadequacy, and the condition is not due primarily to the lack of financial means of the parent or custodian; or

(2) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian.

"Neglected child" does not mean a child:

(1) Whose parent or custodian has failed to provide him with medical care because such medical care conflicts with the tenets and practices of a recognized or religious denomination or order of which such parent or custodian is an adherent or member; or

(2) Whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

§49-1-4. "Delinquent child" defined.

"Delinquent child" means a child:

(1) Who commits an act which would be a crime under state law or a municipal ordinance if committed by an adult punishable by confinement in the county jail or imprisonment;
(2) Who commits an act designated a crime under a municipal ordinance or state law not punishable by confinement in the county jail or imprisonment;

(3) Who, without just cause, habitually and continually refuses to respond to the supervision legally required of such child's parents or custodian; or

(4) Who is habitually absent from school without good cause.

§ 49-1-5. Definitions of other terms.

For the purposes of this chapter:

(1) "State department" means the state department of welfare;

(2) "State board" means the state advisory board;

(3) "Commissioner" means the commissioner of welfare;

(4) "Child welfare agency" means any agency or institution maintained by a municipality or county, or any agency or institution maintained by a person, firm, corporation, association or organization to receive children for care and maintenance or for placement in a family home or day care center or any institution that provides care for unmarried mothers and their children, but shall not include county shelters established and maintained for the detention of delinquent children or those charged with delinquency;

(5) "Licensing board" means the state licensing board created by section four-a, article two of this chapter;

(6) "Custodian" means a person who has actual physical possession or care and custody of a child, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding;

(7) "Referee" means a juvenile referee appointed pursuant to section one, article five-a of this chapter, except that in any county which does not have a juvenile referee the judge or judges of the circuit court may designate one or more magistrates of the county to per-
28 form the functions and duties which may be performed
29 by a referee under this chapter;
30 (8) "Court" means the circuit court of the county with
31 jurisdiction of the case or the judge thereof in vacation
32 unless otherwise specifically provided.

ARTICLE 2. STATE AND COUNTY RESPONSIBILITIES FOR THE
PROTECTION AND CARE OF CHILDREN.

1 If at any time the state department is of the opinion
2 that a child in a foster care home is lacking the proper
3 care and supervision, it may terminate the foster care
4 arrangement: Provided, That unless the foster parents
5 have agreed in writing or unless the state department
6 is returning a child to its natural parents, the state de-
7 partment must apply to the circuit court for termination
8 of a foster care arrangement involving a child who has
9 resided in such foster home for a period in excess of
10 eighteen months. In such a case the court may terminate
11 the foster care arrangement only if it finds that the child
12 is lacking the proper care and supervision or a meaningful
13 relationship with the foster parents and that the state
14 department has a more suitable long-term arrangement
15 for care and custody.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-1. Jurisdiction of circuit courts over persons under eighteen years of
age; constitutional guarantees; right to counsel; hearings.
§49-5-2. Continuing jurisdiction of court.
§49-5-3. Noncustodial counseling of a child.
§49-5-7. Institution of proceedings by petition; notice to child and parents;
subpoena.
§49-5-8. Taking a child into custody; detention hearing.
§49-5-9. Preliminary hearing; counsel; improvement period.
§49-5-10. Transfer of jurisdiction.
§49-5-11. Adjudication.
§49-5-15. Juvenile probation officers; duties; expenses; powers.
§49-5-16. Committing children to jail and detention facilities; standards.
§49-5-17. Expungement of records; no discrimination.

§49-5-1. Jurisdiction of circuit courts over persons under
eighteen years of age; constitutional guarantees;
right to counsel; hearings.
1 (a) The circuit court of the county shall have
original jurisdiction in proceedings brought under this article.

If during a criminal proceeding against a person in any other court it shall be ascertained or shall appear that the person was under the age of eighteen years at the time of the alleged offense, such court, judge or magistrate shall immediately certify the case to the circuit court by transferring it with all the papers, documents and testimony connected, and the circuit court shall assume jurisdiction of the case in the same manner as cases originally instituted in the circuit court by petition: Provided, That for violation of a traffic law of West Virginia or a municipal ordinance, magistrate courts and municipal courts shall have concurrent jurisdiction with the circuit court, and persons under the age of eighteen years shall be liable for punishment for violation of such traffic laws and ordinances in the same manner as adults except that magistrate courts and municipal courts shall have no jurisdiction to impose a sentence of confinement for the violation of traffic laws or ordinances.

As used in this section, "violation of a traffic law of West Virginia" means violation of any law contained in chapters seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code except sections one and two, article four (hit and run) and sections one (negligent homicide), two (driving under influence of alcohol, controlled substances or drugs) and four (reckless driving), article five, chapter seventeen-c of this code.

(b) Any child shall be entitled to be admitted to bail or recognizance in the same manner as a person over the age of eighteen years and shall have the protection guaranteed by article three of the constitution of West Virginia.

(c) The child shall have the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the child, parent or custodian executes an affidavit showing that he cannot pay for an attorney appointed by the court or referee, the
court shall allow the attorney so appointed an amount
to be paid in the same manner as fees for appointed
counsel are paid in felony cases. At any stage of the
proceedings the child's counsel shall be entitled to copies
of all social, investigative, medical and law-enforcement
reports, unless otherwise ordered by the court upon good
cause shown.

(d) In all proceedings under this article, the child
shall be afforded a meaningful opportunity to be heard in-
cluding the opportunity to testify and to present and
cross-examine witnesses. In such proceedings the general
public shall be excluded except persons whose presence
is requested by a child or respondent and other persons
the court finds to have a legitimate interest.

The rules of evidence shall apply including the rule
against written reports based upon hearsay. All proce-
dural rights afforded adults in criminal proceedings shall
be applicable. Extra-judicial statements other than res
gestae statements by a child made to law-enforcement
officials or while the child is in custody and outside the
presence of the child's counsel shall not be admissible.
A transcript or recording shall be made of all transfer,
adjudicatory and dispositional hearings. A waiver of any
rights which are subject to waiver by a child may be
accomplished only by an affirmative statement by a
competent child on the record after a complete explana-
tion by the court of the rights, the consequences of the
waiver and an inquiry sufficient to assure the child's
understanding of the consequences of the waiver. At the
conclusion of any hearing, the court shall make findings
of fact and conclusions of law.

(e) The court reporter shall furnish a transcript of
the relevant proceedings to any indigent child who seeks
review of any proceeding under this article if an affidavit
is filed stating that the child and his parent or custodian
are unable to pay therefor.

§49-5-2. Continuing jurisdiction of court.
1 As used in this article, a “child” shall include a person
2 under the age of eighteen years or a person subject to
the juvenile jurisdiction of the court pursuant to this section. If a child sixteen years of age or older commits an act which if committed by an adult would be a crime and for such act is adjudged delinquent, the jurisdiction of the court may be retained until the child becomes twenty years of age with the same power over the child that the court had prior to the child's becoming an adult, and the further power to sentence the child to not more than six months in jail if the child is between the ages of eighteen and twenty years. This shall not preclude the exercise of jurisdiction in case the child, after becoming an adult, commits a violation of law. Any child over the age of sixteen years may demand to be tried as an adult in a court of competent jurisdiction. A person subject to the provisions of this article may be brought before the circuit court by the following means and no others:

(a) By juvenile petition praying that the child be adjudged neglected or delinquent;

(b) By certification from any other court before which such child is brought charged with the commission of a crime, as provided in section one of this article; or

(c) By warrant issued by a judge or referee returnable to the circuit court, charging a child with an act of delinquency.

§49-5-3. Noncustodial counseling of a child.

Upon request for assistance from a parent or custodian, the state department or other official may, without institution of proceedings under this article, refer a child alleged to be delinquent to a counselor at the state department or a community mental health center or other professional counselor in the community. In the event the child refuses to respond to such reference the state department may serve a notice by first class mail or personal service of process upon the child, setting forth the facts and stating that the department will seek a noncustodial order from the court or referee directing the child to submit to counseling. The notice shall set forth the time and place for the hearing on the matter.
14 The court or referee after hearing may direct the child
to participate in a noncustodial period of counseling not
to exceed six months. No information obtained as the
result of such counseling shall be admissible in a subse-
quent proceeding under this article except a dispositional
proceeding.

§49-5-7. Institution of proceedings by petition; notice to child
and parents; subpoena.

1 (a) A petition alleging that a child is a delinquent
child may be filed by a person who has knowledge of or
information concerning the facts alleged. The petition
shall be verified by the petitioner, shall set forth the name
and address of the child’s parents or custodians known
to the petitioner and shall be filed in the circuit court
in the county where the child may be found. The court
may refer the matter to a state department worker or
probation officer for preliminary inquiry to determine
whether the matter can be resolved informally without
the filing of a petition. The petition shall contain (1)
reference to the specific statutory provisions of this
chapter which give the court jurisdiction of the proceed-
ing; (2) specific allegations of the conduct and facts
upon which the petition is based, including the approxi-
mate time and place of the alleged conduct; (3) a state-
ment of the right to have counsel appointed and consult
with counsel at every stage of the proceedings; and (4)
the relief sought.

20 Upon the filing of the petition, the court or referee
shall set a time and place for a preliminary hearing as
provided in section nine of this article and may appoint
counsel. A copy of the petition and summons shall be
served upon the respondent child by first class mail or
personal service of process. If a child does not appear
in response to a summons served by mail, no further
proceeding may be held until the child is served a copy
of the petition and summons by personal service of
process.

(b) The parents or custodians shall be named in the
petition as respondents and shall be served with notice
of the proceedings in the same manner as provided in
subsection (a) of this section for service upon the child
and required to appear with the child at the time and
place set for the proceedings. If any such respondent
cannot be found after diligent search, service may be by
publication as a Class II legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code and the publication area shall be the
county. The respondent shall have thirty days after the
date of publication to appear or answer.

(c) The answer shall have as evidence no greater
weight than the petition. In default of answer a petition
shall not be taken as confessed, and no party shall be
required to answer the petition.

(d) The court or referee may, after failure to secure
attendance by other means, order the issuance of a sub-
poena against the person having custody and control of
the child to bring the child before the court or referee.

(e) When any case of a child charged with the com-
misson of a crime is certified to the circuit court or
brought before the court by warrant pursuant to section
one of this article, the court or referee shall forthwith
cause the child and his parents or custodians to be served
with a petition, as provided in subsections (a) and (b)
of this section. In the event the child is in custody the
petition shall be served within ninety-six hours of the
time custody began, or the child shall be released forth-
with.

(f) The clerk of the court shall promptly notify the
state department of all proceedings under this article.

§49-5-8. Taking a child into custody; detention hearing.

(a) In proceedings instituted by the filing of a juvenile
petition the circuit court may enter an order directing
that a child be taken into custody only if the petition
shows that grounds exist for the arrest of an adult in
identical circumstances or that the health, safety and
welfare of the child demand such custody. A detention
hearing shall be held without delay, but in no event shall
the delay exceed the next succeeding judicial day, excluding Saturday, and such child shall be released on recognizance to his parent or custodian unless findings are made as specified in subsection (c) of this section.

(b) Absent a court order, a child may be taken into custody by a law-enforcement official only if grounds exist for the arrest of an adult in identical circumstances. Upon taking a child into custody, the arresting officer shall: (1) Immediately notify the child's parent, custodian or, if the parent or custodian cannot be located, a close relative; (2) release the child into the custody of his parent or custodian unless the circumstances warrant otherwise; and (3) refer the matter to the prosecuting attorney, state department or probation officer for proceedings under this article. If the circumstances do not warrant the immediate release of the child, the arresting officer shall without undue delay notify the court or referee.

(c) In the event that a child is delivered into the custody of a sheriff or director of a detention facility, such sheriff or director shall immediately notify the court or referee. Said sheriff or director shall immediately provide to every child who is delivered into his custody, a written statement explaining the child's right to a prompt detention hearing, his right to counsel including appointed counsel if he cannot afford counsel and his privilege against self-incrimination. In all cases when a child is delivered into custody, the child shall be released to his parent or custodian by the end of the next succeeding judicial day, excluding Saturday, after being delivered into such custody, unless the child has been placed in detention pursuant to subsection (d) of this section.

(d) A child in custody must immediately be taken before a referee or judge of the circuit court and in no event shall a delay exceed the next succeeding judicial day, excluding Saturday. The judge or referee shall inform the child of his right to remain silent, that any statement may be used against him and of his right to counsel, and no interrogation shall be made without the presence of a parent or counsel. If the child or his parent
or custodian has not retained counsel, counsel shall be appointed forthwith. The referee or judge shall hear testimony concerning the circumstances for taking the child into custody, probable cause and the possible need for detention in accordance with section two, article five-a of this chapter.

If there are shown to be sufficient grounds for the arrest, including probable cause for the offense, the child shall be released on recognizance to his parent or custodian, except that bail may be required when: (1) There is reasonable cause to believe that the child will be unavailable for court proceedings if the child is not detained; or (2) there is reasonable cause to believe that the child will, if not detained, commit an offense involving serious injury to any person. The findings and order shall be made in accordance with section three, article five-a of this chapter. If sufficient grounds for the arrest and probable cause are not shown, the child shall be released.

§49-5-9. Preliminary hearing; counsel; improvement period.

(a) Following the filing of a juvenile petition, the circuit court or referee shall hold a preliminary hearing. In the event that the child is in custody, such hearing shall be in addition to the immediate detention hearing required by section eight of this article and shall be held within seven days of the time the child is taken into custody unless good cause be shown for a continuance; and if no preliminary hearing is held within seven days of the time the child is taken into custody, the child shall be released on recognizance unless the hearing has been continued for good cause. If the judge is in another county in the circuit, the hearing may be conducted in such other county. The preliminary hearing may be waived by the child, upon advice of his counsel. At the hearing, the court or referee shall:

(1) Inform the child and his parents or custodians or any other person standing in loco parentis to him of the child’s right to be represented at all stages of proceedings under this article and the right to have counsel appointed
if neither the child nor any other of the aforementioned persons can pay for the services of counsel.

(2) Appoint counsel by order entered of record, if counsel has not already been retained or appointed.

(3) Determine after hearing if there is probable cause to believe that the child is a delinquent child. If probable cause is not found, the child shall be released and the proceedings dismissed. If probable cause is found, the time for the adjudicatory hearing shall be set. The date for the adjudicatory hearing shall be set to give the child, the child’s parents and attorney at least ten days’ notice, unless notice is waived by all parties.

(4) In the case of a child over the age of sixteen years charged with an offense which if committed by an adult would be a felony, conduct a hearing and make a decision or recommendation whether to transfer the proceeding to a criminal proceeding in accordance with the provisions of section ten of this article. No inquiry relative to admission or denial of allegations or jury demand shall be made by the court or referee until after the determination of whether to transfer the case to a criminal proceeding. The determination by a court or referee that the circumstances do not warrant transfer may not be revoked at a later time.

(5) If the child is in custody, review the earlier decision on custody and the amount of bail, if any. In lieu of placing the child in a detention facility, the court may place the child in the temporary custody of the state department pursuant to section sixteen, article two of this chapter or may place the child in the custody of a probation officer. If the child is detained in custody, the detention shall not continue longer than thirty days without commencement of the adjudicatory hearing.

(6) Inform the child of the right to demand a jury trial.

(b) The child may move to be allowed an improvement period for a period not to exceed one year. If the court is satisfied that the best interest of the child is likely to be served by an improvement period, the court may delay the adjudicatory hearing and allow a noncus-
todial improvement period upon terms calculated to serve the rehabilitative needs of the child. At the conclusion of the improvement period, the court shall dismiss the proceeding if the terms have been fulfilled; otherwise, the court shall proceed to the adjudicatory stage. A motion for an improvement period shall not be construed as an admission or be used as evidence.

§49-5-10. Transfer of jurisdiction.

(a) Upon motion of the prosecuting attorney, the recommendation of the referee or upon its own motion, the court may at the time specified in section nine of this article transfer to a criminal proceeding the case of a child who is alleged to have committed, on or after his sixteenth birthday, an offense which, if committed by an adult, would be a felony if there is clear and convincing proof that: (1) The offense allegedly committed by the child is one of violence or evidences conduct which constitutes a substantial danger to the public; and (2) there are no reasonable prospects for rehabilitating the child through resources available to the court under this article. With reference to such rehabilitation prospects the court shall consider the child’s mental and physical condition, maturity, emotional attitude, home or family environment, school experience and the like. The burden of proof of such determination shall rest on the petitioner.

Such motion shall state the grounds for seeking the transfer from a juvenile proceeding to a criminal proceeding and the consequences of such transfer and shall be served upon the child, his parents or custodians and the child’s counsel not less than seventy-two hours before the preliminary hearing. If the child’s counsel is appointed at the preliminary hearing, the court or referee shall continue the hearing for at least five days to allow counsel to prepare for the transfer hearing unless counsel indicates that he is prepared to proceed. Testimony of a child at a transfer hearing shall not be admissible in a

*This section was also amended and reenacted by Section 49-5-10, Chapter 82, of these acts and the section was again amended and reenacted by H. B. 114, First Extraordinary Session, 1977.
criminal proceeding or at the adjudicatory hearing under this article.

(b) Counsel for the child cannot waive the hearing on transfer on behalf of the child. Failure to object to the transfer shall not constitute a waiver.

(c) If the court transfers the case to a criminal proceeding, the court's findings of fact and conclusions of law shall be incorporated within the order. The child shall have the right to appeal to the supreme court of appeals from this order.

§49-5-11. Adjudication.

At the outset of an adjudicatory hearing, the court shall inquire of the child whether he wishes to admit or deny the allegations in the petition.

(a) If the respondent child admits the allegations of the petition, the court shall consider the admission to be proof of the allegations if the court finds (1) the respondent fully understands all his rights under this article, (2) the respondent voluntarily, intelligently and knowingly admits all facts requisite for an adjudication and (3) the respondent in his admission has not set forth facts which constitute a defense to the allegations. A plea of admission shall not be construed as a waiver of a defective petition or defective notice.

(b) If the respondent child denies the allegations, the court shall dispose of all pretrial motions and the court or jury shall proceed to hear evidence.

(c) If the allegations in the petition are admitted or are sustained by proof beyond a reasonable doubt, the court shall schedule the matter for disposition; otherwise the petition shall be dismissed and the child discharged from custody. Findings of fact and conclusions of law addressed to all allegations in the petition shall be incorporated into the order of the court.


(a) In aid of disposition, the juvenile probation officer or state department worker assigned to the court shall, upon request of the court, make an investigation of the
environment of the child and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order a psychological examination of the child. The report of such examination and other investigative and social reports shall not be made available to the court until the dispositional stage. Unless waived, copies of the report shall be provided to counsel for the petitioner and the child no later than seventy-two hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall conduct the dispositional proceeding, giving both the petitioner and the child an opportunity to be heard. In disposition the court shall not be limited to the relief sought in the petition and shall give precedence to the least restrictive of the following alternatives consistent with the child's best interests:

1. Dismiss the petition;

2. Refer the child and the child's parent or custodian to a community agency for needed assistance and dismiss the petition;

3. Upon a finding that the child is in need of extra parental supervision (a) place the child under the supervision of a probation officer or other person while leaving the child in custody of his parent or custodian and (b) prescribe a program of treatment or therapy or limit the child's activities under terms which are reasonable and within the child's ability to perform;

4. Upon a finding that a parent or custodian is not willing or able to take custody of the child, that a child is not willing to reside in the custody of his parent or custodian, or that a parent or custodian cannot provide the necessary supervision and care of the child, the court may place the child in temporary foster care or temporarily commit the child to the state department or a child welfare agency. In the event the court treats the child as a neglected child, the provisions of article six of this chapter shall apply;

5. Upon a finding that no less restrictive alternative would accomplish the requisite rehabilitation of the child,
and upon an adjudication of delinquency pursuant to subdivision (1), section four, article one of this chapter, commit the child to an industrial home or correctional institution for children. All such commitments shall be for an indeterminate period not to exceed the maximum term for which an adult could have been sentenced for the same offense, with discretion as to discharge to rest with the director of the institution, who may release the child, or return him to the court for further disposition;

(6) After a hearing conducted under the procedures set out in subsections (c) and (d), section four, article five, chapter twenty-seven of the code, commit the child to a mental health facility. Discretion as to discharge in such a case will rest with the clinical director of the mental health facility in accordance with the child's treatment plan; the director may release a child or return him to the court for further disposition.

(c) The disposition of the child shall not be affected by the fact that the child demanded a trial by jury or made a plea of denial. Any dispositional order is subject to appeal to the supreme court of appeals.

(d) Following disposition, it shall be inquired of the respondent whether or not appeal is desired and the response transcribed; a negative response shall not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the child or his counsel, if the same is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.


1 A dispositional order of the court may be modified:
2 (1) Upon the motion of the probation officer, a state department official or prosecuting attorney;
3 (2) Upon the request of the child or a child's parent or custodian who alleges a change of circumstances relating to disposition of the child.

Upon such a motion or request, the court shall conduct a review proceeding, except that if the last dispositional
order was within the previous six months the court may deny a request for review. Notice in writing of a review proceeding shall be given to the child, the child's parent or custodian and all counsel not less than seventy-two hours prior to the proceeding. The court shall review the performance of the child, the child's parent or custodian, the child's social worker and other persons providing assistance to the child or child's family. If the motion or request for review of disposition is based upon an alleged violation of a court order, the court may, within one year after the entry of the initial dispositional order, modify the dispositional order to a more restrictive alternative if it finds clear and convincing proof of substantial violation. Otherwise, the dispositional order may be modified only to one of the less restrictive alternatives set forth in section thirteen of this article. A proceeding to modify a dispositional order may not be used in circumvention of a full delinquency proceeding based upon new circumstances or a new violation of a law or ordinance. No child shall be required to seek a modification order as provided in this section in order to exercise his right to seek release by habeas corpus.

§49-5-15. Juvenile probation officers; duties; expenses; powers.

(a) The commissioner of the state department shall, with the approval of the court, designate an employee of the state department to act as a juvenile probation officer, and when required one or more employees of the state department to act as assistant to such probation officer, and such employee or employees, when so assigned, shall perform their duties under the sole supervision and control of the court. There shall be at least one such juvenile probation officer assigned to each county, but a juvenile probation officer may be assigned to more than one county.

The foregoing provisions of this section shall not be construed as abrogating or affecting in any way the power and authority vested in any court, subject to the approval of and in accordance with the rules of the su-
preme court of appeals, to select, supervise and discharge its own probation officers and assistants thereto.

(b) The clerk of a court shall notify, if practicable, the chief probation officer of the county when a child is brought before the court or judge. When notified, or if the probation officer otherwise obtains knowledge of such fact, he or one of his assistants shall:

(1) Make investigation of the case;

(2) Be present in court or before the judge to represent the interests of the child when the case is heard;

(3) Furnish such information and assistance as the court or judge may require;

(4) Take charge of the child before and after the trial, as may be directed by the court or judge.

§49-5-16. Committing children to jail and detention facilities; standards.

(a) A child under eighteen years of age shall not be committed to a jail or police station, except that any child over fourteen years of age who has been committed to an industrial home or correctional institution may be held in the juvenile department of a jail while awaiting transportation to the institution for a period not to exceed ninety-six hours, and a child over sixteen years of age who is charged with a crime which would be a violent felony if committed by an adult, may, upon an order of the circuit court, be housed in a juvenile detention portion of a county facility, but not within sight of adult prisoners. A child charged with or found to be delinquent under subdivision (3) or (4), section four, article one of this chapter, shall not be housed in a detention or other facility wherein persons are detained for criminal offenses or for delinquency involving offenses which would be crimes if committed by an adult.

(b) The supreme court of appeals shall prescribe written policies and procedures governing the operation of all correctional, detention and other facilities wherein juveniles may be housed. Said policies and procedures
shall include, but shall not be limited to, standards of cleanliness, temperature and lighting; availability of medical and dental care; provision of food, furnishings, clothing and toilet articles; supervision; procedures for enforcing rules of conduct consistent with due process of law, and visitation privileges. On and after January one, one thousand nine hundred seventy-nine, a child in custody or detention shall have, at a minimum, the following rights, and the policies prescribed shall ensure that:

(1) A child shall not be punished by physical force, deprivation of nutritious meals, deprivation of family visits or solitary confinement;

(2) A child shall have the opportunity to participate in physical exercise each day;

(3) Except for sleeping hours a child in a state facility shall not be locked alone in a room unless such child is out of control;

(4) A child shall be provided his own clothing or individualized clothing which is clean, supplied by the facility, and daily access to showers;

(5) A child shall have constant access to writing materials and may send mail without limitation, censorship or prior reading, and may receive mail without prior reading, except that mail may be opened in the child's presence, without being read, to inspect for contraband;

(6) A child may make and receive regular local phone calls without charge and long distance calls to his family without charge at least once a week, and receive visitors daily and on a regular basis;

(7) A child shall have immediate access to medical care as needed;

(8) A child in a juvenile detention facility or state institution shall be provided access to education including teaching, educational materials and books;

(9) A child shall have reasonable access to an attorney upon request; and
(10) A child shall be afforded a grievance procedure, including an appeal mechanism.

Upon admission to a jail, detention facility or institution, a child shall be furnished with a copy of the rights provided him by virtue of this section and as further prescribed by rules promulgated pursuant to this section.

(c) The supreme court of appeals shall appoint and maintain a five-member panel, consisting of five attorneys who are willing to serve in such capacity, to visit, inspect and interview residents of all juvenile institutions, detention facilities and places in the state wherein juveniles may be held involuntarily, to make public reports of such reviews, and to perform such other duties as shall be prescribed by the court. The members so appointed shall serve without compensation for their time.

§49-5-17. Expungement of records; no discrimination.

(a) On the Monday following the first Tuesday of every year, the court shall orally direct the expungement of all law-enforcement files and records, including fingerprints, court files and records of government and private agencies regarding every person having juvenile records in the court with regard to whom juvenile jurisdiction has terminated. As used in this section, "expungement" means the physical destruction of files and records.

(b) The court, upon its own motion or upon the motion of a child or the child's parent or custodian, may at any time order the expungement of law-enforcement files and records, including fingerprints, court files and records pertaining to any juvenile proceeding which does not result in an adjudication of delinquency.

(c) Notice of the expungement order shall be sent to every agency which the court has reason to believe may have information concerning the files and records of the child. An agency receiving notice of the expungement order shall transmit copies of the notice to all agencies to which it has forwarded information concerning the law-enforcement files and records, including fingerprints, court files and records of the child.
(d) After the child's eighteenth birthday or after termination of juvenile jurisdiction, whichever is later, a proceeding conducted under this chapter shall be deemed never to have occurred. The child, the child's parent or custodian, the court, law-enforcement agencies and other governmental and private agencies, in response to a request for record information shall reply that a law-enforcement record, court record or record of proceedings or arrests with respect thereto does not exist.

(e) No individual, firm, corporation or other entity shall, on account of a person's prior involvement in a proceeding under this article, discriminate against any person in access to, terms of, or conditions of employment, housing, education, credit, contractual rights or otherwise.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-2. Investigation and release of child taken into custody; detention hearings.

A child who has been arrested or who under color of law is taken into the custody of any officer or employee of the state or any political subdivision thereof shall be forthwith afforded a hearing to ascertain if such child shall be further detained. In connection with any such hearing, the provisions of article five of this chapter shall apply. It shall be the duty of the judge or referee to avoid incarceration of such child in any jail. Unless the circumstances of the case otherwise require, taking into account the welfare of the child as well as the interest of society, such child shall be released forthwith into the custody of his parent or parents, relative, custodian or other responsible adult or agency.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-1. Petition to court when child believed neglected or abused; notice.
§49-6-2. Same—Right to counsel; improvement period; hearing; transcript.
§49-6-3. Same—Temporary custody.
§49-6-4. Medical and mental examinations.
§49-6-5. Disposition of neglected or abused children.
§49-6-6. Modification of dispositional orders.
§49-6-7. Consensual termination of parental rights.
§49-6-8. Foster care review; annual reports to the court.
§49-6-1. Petition to court when child believed neglected or abused; notice.

(a) If the state department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or to the judge of such court in vacation. The petition shall be verified by the oath of some credible person having knowledge of the facts. The petition shall allege specific conduct including time and place, how such conduct comes within the statutory definition of neglect or abuse with references thereto, any supportive services provided by the state department to remedy the alleged circumstances and the relief sought. Upon filing of the petition, the court shall set a time and place for a hearing and may appoint counsel. When there is an order for temporary custody pursuant to section three of this article, such hearing shall be held within thirty days of such order, unless a continuance for a reasonable time is granted to a date certain, for good cause shown.

(b) The petition and notice of the hearing shall be served upon both parents and any other custodian, giving to such parents or custodian at least ten days' notice, and notice shall be given to the state department. In cases wherein personal service within West Virginia cannot be obtained after due diligence upon any parent or other custodian, a copy of the petition and notice of the hearing shall be mailed to such person by certified mail, addressee only, return receipt requested, to the last known address of such person. If said person signs the certificate, service shall be complete and said certificate shall be filed as proof of said service with the clerk of the circuit court. If service cannot be obtained by personal service or by certified mail, notice shall be by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. A notice of hearing shall specify the time and place of the hearing, the right to counsel of the child and parents or other custodians at every stage of the proceedings and the fact that such proceedings can result in the permanent termi-
nation of the parental rights. Failure to object to defects in the petition and notice shall not be construed as a waiver.

(c) At the time of the institution of any proceeding under this article, the state department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

§49-6-2. Same—Right to counsel; improvement period; hearing; transcript.

(a) In any proceeding under the provisions of this article, the child, his parents, his custodian or other persons standing in loco parentis to him, such persons other than the child being hereinafter referred to as other party or parties, shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. If the child or other parties have not retained counsel and the child and other parties cannot pay for the services of counsel, the court shall, by order entered of record, at least ten days prior to the date set for hearing, appoint an attorney or attorneys to represent the child and other party or parties and so inform the parties. Under no circumstances may the same attorney represent both the child and the other party or parties; however, if more than one child from a family is involved in the proceeding, one attorney may represent all the children. The court may allow to each attorney so appointed a fee in the same amount which appointed counsel can receive in felony cases.

(b) In any proceeding under this article, the parents or custodians may, prior to final hearing, move to be allowed an improvement period of three to twelve months in order to remedy the circumstances or alleged circumstances upon which the proceeding is based. The court shall allow such an improvement period unless it finds compelling circumstances to justify a denial thereof, but may require temporary custody in the state department or another agency during the improvement period.
(c) In any proceeding under this article, the party or parties having custody of the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state department to remedy the alleged circumstances. At the conclusion of the hearing the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected, which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and at the time of the hearing and proven by clear and convincing proof.

(d) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person, if an affidavit is filed stating that he cannot pay therefor.

§49-6-3. Same—Temporary custody.

(a) Upon the filing of a petition, the court may order that the child be delivered for not more than ten days into the custody of the state department or a responsible relative, pending a preliminary hearing, if it finds that: (1) There exists imminent danger to the physical well-being of the child, and (2) there are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child's present custody. The initial order directing such custody shall
contain an order appointing counsel and scheduling the
preliminary hearing, and upon its service shall require
the immediate transfer of custody of such child to the
state department or a responsible relative.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the state department or an appropriate person or agency for a period not exceeding thirty days: Provided, That if the court grants an improvement period as provided in subsection (b), section two of this article, the thirty-day limit upon temporary custody may be waived.

§49-6-4. Medical and mental examinations.

At any time during proceedings under this article the court may, upon its own motion or upon motion of the child or other parties, order the child or other parties to be examined by a physician, psychologist or psychiatrist, and may require testimony from such medical expert, subject to cross-examination and the rules of evidence: Provided, That the court shall not terminate parental or custodial rights of a party solely because the party refuses to submit to the examination, nor shall the court hold such party in contempt for refusing to submit to an examination. The physician, psychologist or psychiatrist shall be allowed to testify as to the conclusions reached from hospital, medical, psychological or laboratory records provided the same are produced at the hearing. The court by order shall provide for the payment of all such expert witnesses. If the child, parent or custodian is indigent, such witnesses shall be compensated out of the treasury of the state, upon certificate
of the court wherein the case is pending. No evidence acquired as a result of any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of this article, the court may request from the state department information about the history, physical condition and present situation of the child. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child and the child's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his own home under supervision of the state department;

(4) Order terms of supervision calculated to assist the child and the child's parent or custodian which prescribe the manner of supervision and care of the child and which are within the ability of the parent or custodian to perform;

(5) Upon a finding that the parents or custodians are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the custody of the state department, a licensed private child welfare agency or a suitable person who may be appointed guardian by the court;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future, and when necessary for the welfare of the child, terminate the parental or custodial rights and responsibilities and commit the child to the permanent guardianship of the state depart-
ment or a licensed child welfare agency. Notwithstanding any other provisions of this article, the permanent parental rights shall not be terminated if a child fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final.

(b) As used in this section, “no reasonable likelihood that conditions of neglect or abuse can be substantially corrected” shall mean that: (1) The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parenting ability has been seriously impaired and the parent has not responded to or followed through with recommended and appropriate treatment which could have improved the capacity for adequate parental functioning; (2) the parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable foster care plan designed to lead to the child’s return to the parent or parents; (3) the parent or parents have not responded to or followed through with reasonable rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the neglect or abuse of the child, as evidenced by the continuation of substantial or repeated acts of neglect or abuse after the provision of such services; (4) the parent or parents have abandoned the child; or (5) the parent or parents have repeatedly or seriously physically abused the child.

(c) The court may as an alternative disposition allow to the parents or custodians an improvement period not to exceed twelve months. During this period the parental rights shall not be permanently terminated and the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, a relative, the state department or other appropriate placement during the period. At the end of the period the court shall hold
a hearing to determine whether the conditions have been adequately improved, and at the conclusion of such hearing, shall make a further dispositional order in accordance with this section.

§49-6-6. Modification of dispositional orders.

Upon motion of a child, a child's parent or custodian or the state department alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing pursuant to section two of this article and may modify a dispositional order: Provided, That a dispositional order pursuant to subdivision (6), subsection (a) of section five shall not be modified after the child has been adopted. Adequate and timely notice of any motion for modification shall be given to the child's counsel, counsel for the child's parent or custodian and to the state department.

§49-6-7. Consensual termination of parental rights.

An agreement of a natural parent in termination of parental rights shall be valid if made by a duly acknowledged writing, and entered into under circumstances free from duress and fraud.

§49-6-8. Foster care review; annual reports to the court.

(a) If, twenty months after receipt of physical or legal custody of a child, the state department has not placed a child in permanent foster care or an adoptive home or placed the child with a natural parent, the state department shall file with the court a petition stating the child's situation, the efforts that have been made to place the child in a permanent situation, the present foster care arrangements and the plan for pursuing permanent arrangements. "Permanent foster care" shall mean a written arrangement with an adult or adults following a six-month trial period whereby the state department places the care, custody and control of a child until the child's emancipation with such adult or adults. The court may schedule a hearing in chambers, giving notice and the right to be present to: The child, if twelve years of age or older; the child's parents; the child's foster parents; and
such other persons as the court may in its discretion
direct. At the conclusion of the proceeding the court shall
in accordance with the best interests of the child enter
an appropriate order of disposition. The court shall
possess continuing jurisdiction over cases reviewed under
this section for so long as a child remains in temporary
foster care or, when a child is returned to his natural
parents subject to conditions imposed by the court, for
so long as the conditions are effective. If the child
remains in the physical or legal custody of the state
department, the state department shall file a supple-
mentary petition with the court within eighteen months
and every eighteen months thereafter until the child is
placed in an adoptive home or permanent foster care or
returned to his parents.

(b) The state department shall annually report to the
court the current status of the placements of children in
permanent care and custody of the state department who
have not been adopted.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED
OR NEGLECTED.

§49-6A-1. Purpose.
§49-6A-2. Persons mandated to report suspected abuse and neglect.
§49-6A-3. Mandatory reporting to medical examiner or coroner; post-
mortem investigation.
§49-6A-4. Photographs and X rays.
§49-6A-5. Reporting procedures.
§49-6A-6. Immunity from liability.
§49-6A-7. Abrogation of privileged communications.
§49-6A-8. Failure to report; penalty.
§49-6A-9. Establishment of child protective services; general duties and
powers; cooperation of other state agencies.
§49-6A-10. Educational programs.

§49-6A-1. Purpose.

1 It is the purpose of this article, through the complete
2 reporting of child abuse and neglect, to protect the best
3 interests of the child, to offer protective services in order
4 to prevent any further harm to the child or any other
5 children living in the home, to stabilize the home en-
6 vironment, to preserve family life whenever possible and
7 to encourage cooperation among the states in dealing
8 with the problems of child abuse and neglect.
§49-6A-2. Persons mandated to report suspected abuse and neglect.

1 When any medical, dental or mental health professional, christian science practitioner, religious healer, school-teacher or other school personnel, social service worker, child care or foster care worker, peace officer or law-enforcement official has reasonable cause to suspect that a child is neglected or abused or observes the child being subjected to conditions that are likely to result in abuse or neglect, such person shall immediately report the circumstances or cause a report to be made to the state department child protective service: Provided, That any person required to report under this article who is a member of the staff of a public or private institution, school, facility or agency shall immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. However, nothing in this article is intended to prevent individuals from reporting on their own behalf.

2 In addition to those persons and officials specifically required to report situations involving suspected abuse or neglect of children, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

§49-6A-3. Mandatory reporting to medical examiner or coroner; post-mortem investigation.

1 Any person or official who is required under section two of this article to report cases of suspected child abuse or neglect and who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner or coroner. Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and report his findings to the police, the appropriate
prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

§49-6A-4. Photographs and X Rays.

Any person required to report cases of children suspected of being abused and neglected may take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child. Any photographs or X rays taken shall be sent to the appropriate child protective service as soon as possible.

§49-6A-5. Reporting procedures.

Reports of child neglect or abuse pursuant to this article shall be made immediately by telephone to the local state department child protective service agency and shall be followed by a written report within forty-eight hours if so requested by the receiving agency. The state department may establish and maintain a twenty-four hour, seven-day-a-week toll-free telephone number to receive such calls reporting suspected or known child abuse or neglect.

A copy of any report of serious injury shall be made available immediately to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office. All reports under this article shall be confidential, and unless there are pending proceedings with regard thereto, shall be destroyed two years following their preparation. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article.

§49-6A-6. Immunity from liability.

Any person, official or institution participating in good faith in any act permitted or required by this article shall be immune from any civil or criminal liability that otherwise might result by reason of such actions.
§49-6A-7. Abrogation of privileged communications.

1 The privileged quality of communications between
2 husband and wife and between any professional person
3 and his patient or his client, except that between attorney
4 and client, is hereby abrogated in situations involving
5 suspected or known child abuse or neglect.

§49-6A-8. Failure to report; penalty.

1 Any person, official or institution required by this article
2 to report a case involving a child known or suspected to
3 be abused or neglected, who knowingly fails to do so or
4 knowingly prevents another person acting reasonably
5 from doing so, shall be guilty of a misdemeanor, and,
6 upon conviction thereof, shall be confined in the county
7 jail not more than ten days or fined not more than one
8 hundred dollars, or both.

§49-6A-9. Establishment of child protective services; general
duties and powers; cooperation of other state
agencies.

1 The state department shall establish or designate in
2 every county a local child protective service to perform
3 the duties and functions set forth in this article.
4 Except in cases involving institutional abuse or cases
5 in which police investigation also appears appropriate,
6 the child protective service shall be the sole public agency
7 responsible for receiving, investigating or arranging for
8 investigation and coordinating the investigation of all
9 reports of child abuse or neglect. In accordance with the
10 local plan for child protective services, it shall provide
11 protective services to prevent further abuse or neglect
12 of children and provide for or arrange for and coordinate
13 and monitor the provision of those services necessary to
14 ensure the safety of children. The local child protective
15 service shall be organized to maximize the continuity
16 of responsibility, care and service of individual workers
17 for individual children and families.
18 Each local child protective service shall:
19 (1) Receive or arrange for the receipt of all reports
20 of children known or suspected to be abused or neglected
21 on a twenty-four hour, seven-day-a-week basis;
(2) Provide or arrange for emergency children's services to be available at all times; and

(3) Within twenty-four hours of notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment.

In those cases in which the local child protective service determines that the best interests of the child require court action, the local child protective service shall initiate the appropriate legal proceeding.

The local child protective service shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

To carry out the purposes of this article, all departments, boards, bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective service plan, shall, upon request, provide to the local child protective service such assistance and information as will enable it to fulfill its responsibilities.

§49-6A-10. Educational programs.

Within available funding and as appropriate, the state department shall conduct educational programs with the staff of the state department, persons required to report, and the general public in order to encourage maximum reporting of child abuse and neglect, and to improve communication, cooperation and coordination among all agencies involved in the identification, prevention and treatment of the abuse and neglect of children.

ARTICLE 7. GENERAL PROVISIONS.

§49-7-1. Confidentiality of records.

§49-7-6. Enforcement of order for support from wages.

§49-7-27. Emancipation.

§49-7-1. Confidentiality of records.

All records of the state department, the court and its
officials, law-enforcement agencies and other agencies or facilities concerning a child as defined in this chapter shall be kept confidential and shall not be released: Provided, That such records, except adoption records and records disclosing the identity of a complainant of child abuse or neglect, shall be made available (1) where authorized by this chapter; (2) to the child, parent, or the attorney of the child or parent, whether or not in connection with judicial proceedings; (3) with the written consent of the child or of someone authorized to act in the child's behalf; or (4) pursuant to subpoena or order of a court of record: Provided, however, That a subpoena for such records may be quashed if the court determines that disclosure is not for a bona fide purpose and compromises the confidentiality intended by this section. The official court file pertaining to the person who is the subject of a neglect, abuse or delinquency proceeding shall be open for inspection only to the child, the child's parent or custodian, their counsel and other parties to the proceedings before the court: Provided further, That the court may, by order, open juvenile court files to inspection by members of the news media or persons doing research, on the condition that information which would identify the child or family involved in the proceeding shall not be divulged. Otherwise, no records shall be released. No record or information shall be transmitted to any federal or state agency except as specifically provided herein.

Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child shall be open to inspection by the prosecutor, probation officer, state department, the child, the child's parent or custodian, the child's counsel and to other law-enforcement agencies when the information is relevant to a specific investigation regarding that child by that agency.

Any person who violates this section shall be liable for
damages in the amount of three hundred dollars or actual
damages, whichever is greater.

§49-7-6. Enforcement of order for support from wages.

1 If a person ordered to pay for the support, maintenance
2 and education of a child pursuant to a proceeding under
3 chapter forty-eight or forty-nine of this code is employed
4 for wages, salary or commission, the court or judge may
5 order that the sum to be paid by him shall be paid to
6 the guardian, institution, organization or person having
7 custody of such child, out of such wages, salary or com-
8 mission, and that he shall execute an assignment thereof
9 pro tanto. The court or judge may also order the person
10 to report to the court or judge, from time to time, his
11 place of employment and the amount earned by him.
12 Upon his failure to obey the order of the court or judge,
13 after proper notice and hearing, he may be punished
14 as for contempt of court.

§49-7-27. Emancipation.

1 A child over the age of sixteen may petition a court
2 to be declared emancipated. The parents or custodians
3 shall be made respondents and, in addition to personal
4 service thereon, there shall be publication as a Class II
5 legal advertisement in compliance with the provisions of
6 article three, chapter fifty-nine of this code. Upon a
7 showing that such child can provide for his physical and
8 financial well-being and has the ability to make decisions
9 for himself, the court may for good cause shown declare
10 the child emancipated. The child shall thereafter have
11 full capacity to contract in his own right and the parents
12 or custodians shall have no right to the custody and con-
13 trol of such child or duty to provide the child with care
14 and financial support. A child over the age of sixteen
15 years who marries shall be emancipated by operation of
16 law. An emancipated child shall have all of the privileges,
17 rights and duties of an adult, including the right of con-
18 tract, except that such child shall remain a child as de-
19 fined for the purposes of articles five and five-a of this
20 chapter.
CHAPTER 66

(Com. Sub. for H. B. 1691—By Mr. Sattos)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to private and public child welfare agencies; procedure to terminate rights of natural father prior to adoption proceeding; petition; notice; service of process; grounds for termination; and hearing.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

Chapter

48. Domestic Relations.


CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 4. ADOPTION.

§48-4-6. Revocation of adoption.

1 (a) 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, 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), or any father of an illegitimate child entitled to notice as provided in subdivision (1), or any father of an illegitimate child entitled to notice as provided in subdivision (1), section one, article three of chapter forty-nine, who was not served with notice as provided in said subdivision (b), article three of chapter forty-nine, 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 or agency 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 instru-
ment of dissent in the office of the clerk of the court which
granted said adoption and the clerk of the county commission
of such county, and such clerks shall record and index the
same. Upon the filing of such instrument of dissent the
adoption shall be vacated.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Consent by agency or department to adoption of child;
statement of relinquishment by parent; petition to ter-
minate father's rights.

(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 juris-
diction 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 acknowl-
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) Whenever the mother of an illegitimate child has executed a relinquishment pursuant to this section, and the natural father has not executed a relinquishment, the child welfare agency or state department of welfare may, by verified petition, seek to have said father's rights terminated based upon the grounds of non-support of said child, abandonment, desertion, or neglect of said child, or that said father is unfit to have custody of said child.

Upon the filing of the verified petition, the court shall set a hearing on said petition. A copy of the petition and notice of the date, time and place of the hearing on said petition shall be personally served on said father at least twenty days prior to the date set for the hearing; and if after due diligence personal service cannot be obtained, or if the father resides outside the state, the copy of the petition and the notice of the hearing shall be sent by certified mail, return receipt requested, to the last known address of said father. If the father cannot be actually notified, as provided in this section, the hearing for termination of parental rights may proceed and, upon proper proof, an order may be entered terminating the father's parental rights, subject to revocation by the determined father as provided in section six, article four, chapter forty-eight of this code.

A petition under this section may be instituted in the county where the child resides or where the child is living.

If the court finds that the said father is guilty of the allegations set forth in the petition, the court shall enter an order terminating said father's rights and shall award the full care, custody and control of said child to the petitioner.
AN ACT to amend and reenact sections five and twelve, article two, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the court of claims; providing for the appointment of a deputy clerk of the court of claims; and granting the judges of the court of claims the authority to sit individually.

Be it enacted by the Legislature of West Virginia:

That sections five and twelve, 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.
§14-2-5. Court clerk and other personnel.

§14-2-5. Court clerk and other personnel.

1 The court shall have the authority to appoint a clerk and a deputy clerk. The salary of the clerk and the deputy clerk shall be fixed by the joint committee on government and finance, and shall be paid out of the regular appropriation for the court. The clerk shall have custody of all records and proceedings of the court, shall attend meetings and hearings of the court, shall administer oaths and affirmations, and shall issue all official summonses, subpoenas, orders, statements and awards. The deputy clerk shall act in the place and stead of the clerk in the clerk's absence.

12 The joint committee on government and finance may employ other persons whose services shall be necessary to the orderly transaction of the business of the court, and fix their compensation.

The court shall, in accordance with this article, consider claims which, but for the constitutional immunity of the state from suit, or for some statutory restrictions, inhibitions or limitations, could be maintained in the regular courts of the state. No liability shall be imposed upon the state or any state agency by a determination of the court of claims approving a claim and recommending an award, unless the claim is (1) made under an existing appropriation, in accordance with section nineteen of this article, or (2) a claim under a special appropriation, as provided in section twenty of this article. The court shall consider claims in accordance with the provisions of this article.

Except as is otherwise provided in this article, a claim shall be instituted by the filing of notice with the clerk. In accordance with rules promulgated by the court, each claim shall be considered by the court as a whole, or by a judge sitting individually, and if, after consideration, the court finds that a claim is just and proper, it shall so determine and shall file with the clerk a brief statement of its reasons. A claim so filed shall be an approved claim. The court shall also determine the amount that should be paid to the claimant, and shall itemize this amount as an award, with the reasons therefor, in its statement filed with the clerk. In determining the amount of a claim, interest shall not be allowed unless the claim is based upon a contract which specifically provides for the payment of interest.

CHAPTER 68

(S. B. 590—By Mr. Hanlon and Mr. Hinkle)

(Passed April 7, 1977; in effect from passage. Approved by the Governor.)

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of public institutions; board of regents; department of public safety; adjutant general; department of mental health; department of highways; workmen's compensation fund; department of mines; board of vocational education, division of vocational rehabilitation; and the department of commerce, 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 such claim in the amount specified below, and directs the auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Public Institutions:

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Claimant</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Randy R. Adams</td>
<td>73.15</td>
</tr>
<tr>
<td>Louis E. Gilbert</td>
<td>375.63</td>
</tr>
<tr>
<td>John Gough</td>
<td>982.70</td>
</tr>
<tr>
<td>Lacy Gwinn</td>
<td>477.27</td>
</tr>
<tr>
<td>Beecher D. Hamons</td>
<td>135.85</td>
</tr>
<tr>
<td>William E. Hefner</td>
<td>252.06</td>
</tr>
<tr>
<td>Edward L. Hill</td>
<td>125.40</td>
</tr>
<tr>
<td>Robert L. Hill</td>
<td>39.54</td>
</tr>
<tr>
<td>Robert Miller</td>
<td>296.55</td>
</tr>
<tr>
<td>Carl Mitchell</td>
<td>828.72</td>
</tr>
<tr>
<td>Clyde Moats</td>
<td>227.35</td>
</tr>
<tr>
<td>William Mullins</td>
<td>621.36</td>
</tr>
<tr>
<td>North-Central Dairy Herd</td>
<td>82.04</td>
</tr>
</tbody>
</table>

Claims Against The State

[Ch. 68]
### Claims Against the State

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Ralston Purina Company</td>
</tr>
<tr>
<td>29</td>
<td>Charles Reynolds</td>
</tr>
<tr>
<td>30</td>
<td>Homer Reynolds</td>
</tr>
<tr>
<td>31</td>
<td>Ronald Robinson</td>
</tr>
<tr>
<td>32</td>
<td>Southern States Morgantown Cooperative, Inc.</td>
</tr>
<tr>
<td>34</td>
<td>Melvin Stemple</td>
</tr>
<tr>
<td>35</td>
<td>Harold Sypolt</td>
</tr>
<tr>
<td>36</td>
<td>Tri-State Builders Hardware, Inc.</td>
</tr>
<tr>
<td>37</td>
<td>Charles Wilson</td>
</tr>
</tbody>
</table>

#### Claims against the Board of Regents:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>38</td>
<td>(b) (To be paid from General Revenue Fund)</td>
</tr>
<tr>
<td>40</td>
<td>(1) Marvin E. DeBoer</td>
</tr>
<tr>
<td>41</td>
<td>(2) Elizabeth Ann Hedges, Executrix of the Estate of A. Bruce Hedges, deceased</td>
</tr>
<tr>
<td>43</td>
<td>(3) Deborah Ann Landes</td>
</tr>
</tbody>
</table>

#### Claims against the Adjutant General:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>(d) (To be paid from General Revenue Fund)</td>
</tr>
<tr>
<td>49</td>
<td>(1) Stonewall Casualty Company, subrogee of Lloyd Fox</td>
</tr>
<tr>
<td>51</td>
<td>(2) Louis Tabit, father and next friend of Mary Janet Tabit</td>
</tr>
<tr>
<td>53</td>
<td>(3) Louis Tabit</td>
</tr>
</tbody>
</table>

#### Claims against the Department of Mental Health:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>54</td>
<td>(e) (To be paid from General Revenue Fund)</td>
</tr>
<tr>
<td>56</td>
<td>(1) Janice M. Neal</td>
</tr>
</tbody>
</table>

#### Claims against the Department of Highways:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>(f) (To be paid from State Road Fund)</td>
</tr>
<tr>
<td>59</td>
<td>(1) Chester Murphy</td>
</tr>
<tr>
<td>60</td>
<td>(2) The Potomac Edison Company</td>
</tr>
<tr>
<td>61</td>
<td>(3) Harold L. Pittsenbarger</td>
</tr>
<tr>
<td>62</td>
<td>(4) Florence I. Stephy</td>
</tr>
<tr>
<td>63</td>
<td>(5) Lois Mullins</td>
</tr>
<tr>
<td>64</td>
<td>(6) James P. Foster, d/b/a Western Virginia Demolition Company</td>
</tr>
<tr>
<td>66</td>
<td>(7) Grover A. Harmon</td>
</tr>
</tbody>
</table>
CLAIMS AGAINST THE STATE [Ch. 68

67  (8) Ralph Wilson ........................................... 3,000.00
68  (9) National Engineering & Contracting Co. .......... 5,059.01
69  (10) Ernest L. White and Florence White .......... 2,500.00
70  (11) Betty H. Dunlap ...................................... 750.00
71  (12) Black Rock Contracting, Inc. .................. 30,759.09
72  (13) State Farm Mutual Automobile Insurance Co., subrogee of Monroe Hamon ..... 289.69
74  (14) Verla R. Anderson ................................... 15.45
75  (15) The Chesapeake and Potomac Telephone Co. of W. Va. .................. 11,039.69
76  (16) James D. Linville .................................. 306.00
77  (17) Larry McConaha ..................................... 31.93
78  (18) State Farm Fire & Casualty Company, subrogee of Edgar & Bessie Damewood ...... 1,200.00
81  (19) Robert B. Dorsey .................................... 89.55
82  (20) Chloe Thompson ..................................... 174.10
83  (21) Spencer Toppings ................................... 710.00
84  (22) Raymond Peak ....................................... 9,000.00
85  (23) Liberty Mutual Insurance Company, subrogee of Charles C. Simpson .......... 1,775.00
88  (25) Charles C. Simpson .................................... 125.00
90  (26) The American Road Insurance Company, subrogee of Shellie Morgan, Jr. .......... 199.26
92  (27) Lane S. Bohrer and Barbara S. Bohrer ........ 9,750.00
93  (28) Richard L. Mason and Jeanne Mason .............. 9,750.00
94  (29) W. E. Durig and Minnie Durig ................... 28,000.00
95  (30) Kenneth L. Block and Patricia A. Block ....... 2,500.00
96  (31) Virginia F. Asbury .................................... 89.26
97  (32) Nelson Gilbert Casto and Patricia Joyce Casto .......... 15,000.00
99  (33) Robert England .................................... 1,000.00
100 (34) Twila Jean Giles ................................... 107.84
101 (35) Ina M. Hamrick ...................................... 1,800.00
102 (36) Helen M. Kelly ...................................... 6,000.00
103 (37) Lang Brothers, Inc. .............................. 27,458.16
104 (38) Romeo G. Perkins and Shelva Jean Perkins .......... 3,500.00
106 (39) Alan MacKenzie Roberts ......................... 80.70
107 (40) Mike Romeo ........................................ 190.00
Ch. 68] CLAIMS AGAINST THE STATE 141

<table>
<thead>
<tr>
<th>Claimant(s)</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fred E. Sloane, Jr. and Minnie Arlene Sloane</td>
<td>(41) Peck Brogan Building &amp; Remodeling</td>
<td>194.22</td>
</tr>
<tr>
<td>Christine Ambrosone Smith</td>
<td>(42)</td>
<td>16,000.00</td>
</tr>
<tr>
<td>Wilmer W. Teets and Sharon J. Teets</td>
<td>(43)</td>
<td>9,216.51</td>
</tr>
<tr>
<td>William N. Williams</td>
<td>(44)</td>
<td>1,128.66</td>
</tr>
<tr>
<td>Robert Woodley</td>
<td>(45)</td>
<td>55.00</td>
</tr>
<tr>
<td>Jesse Wray</td>
<td>(46)</td>
<td>542.00</td>
</tr>
<tr>
<td>Marie Yanasy</td>
<td>(47)</td>
<td>79.25</td>
</tr>
<tr>
<td>Paul W. Sowards</td>
<td>(48)</td>
<td>11,000.00</td>
</tr>
<tr>
<td>Gail Sowards</td>
<td>(49)</td>
<td>250.00</td>
</tr>
<tr>
<td>Paul W. Sowards, as father and next friend of Christina Gail Sowards</td>
<td>(50)</td>
<td>500.00</td>
</tr>
<tr>
<td>Paul Sowards, as father and next friend of Christopher Sowards</td>
<td>(51)</td>
<td>250.00</td>
</tr>
<tr>
<td>Larry G. Conley and Bonita E. Conley</td>
<td>(52)</td>
<td>278.52</td>
</tr>
<tr>
<td>Peck Brogan Building &amp; Remodeling</td>
<td>(1)</td>
<td>14,695.00</td>
</tr>
<tr>
<td>Ralph Underwood, Jr.</td>
<td>(h)</td>
<td>1,754.35</td>
</tr>
<tr>
<td>Gambro, Inc.</td>
<td>(i)</td>
<td>536.40</td>
</tr>
<tr>
<td>Warner P. Simpson Co.</td>
<td>(j)</td>
<td>406.18</td>
</tr>
<tr>
<td>Total of all claims</td>
<td></td>
<td>$290,954.34</td>
</tr>
</tbody>
</table>

The Legislature finds that the above moral obligations and the appropriation 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
CLAIMS AGAINST THE STATE

making of the appropriations for said claimant. The court
of claims shall deliver all releases obtained from claim-
ants to the department against which the claim was
allowed.

CHAPTER 69
(S. B. 572—By Mr. Hinkle and Mr. Hanlon)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the depart-
ment of public institutions and the department of mental
health 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 department of mental
health, 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 com-
modities and services rendered by each claimant, but
were denied by the court of claims on the purely statu-
tory grounds that to allow such claims would be con-
donning 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, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claims against the department of public institutions:

(To be paid from General Revenue Fund)

(1) Exxon Company, U.S.A. $ 514.75
(2) Reynolds Memorial Hospital $ 8,742.00
(3) Standard Exterminating $ 476.00
(4) Ohio Valley Drug Company $ 656.58
(5) Wheeling Electric Company $ 4,281.21

(b) Claims against the department of mental health:

(To be paid from General Revenue Fund)

(1) St. Joseph's Hospital $ 7,946.02

Total $22,616.56

CHAPTER 70

(Com. Sub. for S. B. 570—Mr. Brotherton, Mr. President)

[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal section thirteen, article two, chapter forty-nine; to repeal section nine, article two and section thirty, article three, chapter twenty-eight; to amend and reenact sections one, three and eleven, article one; to amend and reenact section nine, article four, all of chapter twenty-
five; to amend and reenact sections one, two and three, article one, chapter twenty-six; and to further amend chapter twenty-six by adding thereto a new article, designated article eleven; to amend article five, chapter twenty-eight by adding thereto two new sections, designated sections twenty-seven-b and twenty-eight; and to amend and reenact sections one, two, three, four, five, six, six-a and seven, article thirteen, chapter sixty-two, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the abolition of the office of commissioner of public institutions; creating the department and commissioner of corrections; transferring certain institutions to the department of health; providing for the appointment of officers and employees by the commissioner of corrections; transferring certain institutions to the department of welfare; providing for revocation of parole of child offender.

Be it enacted by the Legislature of West Virginia:

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

Chapter

25. Department of Corrections.


CHAPTER 25. DEPARTMENT OF CORRECTIONS.

Article
1. Organization and Institutions.

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and welfare and state board of health; establishment of work and study release units; civil service coverage.

§25-1-11. Officers and employees of corrections institutions.

§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.

1 The office of state commissioner of public institutions is hereby abolished, and, except as otherwise provided in this chapter, its powers and authority are transferred to the department of corrections which is hereby established. Whenever in this code reference is made to the state commissioner of public institutions, it shall be construed to mean the department of corrections.

2 The executive and administrative head of the department of corrections shall be a commissioner who shall be appointed, dismissed and paid in accordance with the provisions of section two-a, article seven, chapter six of this code.

3 The commissioner shall take and subscribe to the oath prescribed by the constitution for public officials and shall execute an official bond in a penalty of fifteen thousand dollars, conditioned as required by law. Premiums on such bond shall be paid from appropriations made for the commissioner's office. Such bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

4 Nothing herein contained shall be construed so as to give the commissioner of corrections any authority in the administration, management or control of mental institutions, heretofore transferred to the department of
mental health by an act of the Legislature, regular ses-
session, one thousand nine hundred fifty-seven.

§25-1-3. Institutions managed by commissioner of corrections; certain institutions transferred to department of health and welfare and state board of health; establishment of work and study release units; civil service coverage.

The commissioner of corrections shall manage, direct, control and govern the following penal or correctional institutions and any others placed under his jurisdiction or control:

West Virginia Penitentiary at Moundsville;
West Virginia State Prison for Women at Pence Springs;
West Virginia Medium Security Prison at Huttonsville;
West Virginia Industrial Home for Girls at Salem;
West Virginia Industrial Home for Boys at Grafton;
Davis Center (formerly the West Virginia Forestry Camp for Boys at Davis);
Leckie Center (formerly the West Virginia Forestry Camp for Boys at Leckie); and
Anthony Center (formerly the Anthony Correctional Center).

Jurisdiction of and title to the West Virginia Children’s Home at Elkins are hereby transferred to the department of welfare, which shall be the custodian of all deeds and other muniments of title to such property and shall cause such as are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, the West Virginia Children’s Home shall be managed and controlled by a superintendent appointed by the commissioner of welfare.

Jurisdiction of and title to the following institutions formerly under the jurisdiction of the commissioner of public institutions are hereby transferred to and vested in the state board of health or its successor: The Andrew S. Rowan Memorial Home, Denmar State Hospital, Hope-mont State Hospital, Pinecrest Hospital, Fairmont Emer-gency Hospital and Welch Emergency Hospital. The
board of health or its successor shall be the custodian of all deeds and other muniments of title to such property and shall cause such as are susceptible of recordation to be recorded in the proper offices. Notwithstanding any provision of this code to the contrary, each such institu-
tion shall be managed and controlled by a superintendent appointed by the director of health.

The commissioner is hereby authorized to establish work and study release units as extensions and subsidiaries of those state institutions under his control and authority. Such work and study release units may be coeducational and shall be managed, directed and controlled as provided for in this article.

Any person employed by the office of public institutions who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six, chapter twenty-nine of this code, remain in the civil service system as a covered em-
ployee.

§25-1-11. Officers and employees of corrections institutions.

1 The commissioner of corrections shall appoint a superintendent or warden for each institution under the control of the department of corrections.

2 The superintendent or warden of each institution shall have the power to appoint all assistants and employees required for the management of the institution in his charge; but the number of such assistants and employees, and their compensation, shall first be approved by the state commissioner of corrections. It shall be the duty of the commissioner of corrections to investigate any complaint made against the superintendent of any insti-
tution, and also against any other officer or employee thereof, if the same has not been investigated.

3 The commissioner shall fix the salaries or compensation of the officers and employees of the institutions named in section three of this article. The salaries or compensa-
tion of all officers and employees of the several insti-
tutions under the control of the commissioner of correc-
tions shall be paid monthly, to include the last day of
20 each month. The superintendents and other officers and 21 employees of each of such institutions shall be paid 22 salaries commensurate with their duties and responsi- 23 bilities, but no meals or other emoluments of any kind 24 shall be furnished, given or paid to such superintendents, 25 officers or employees as all or part of their salary; how- 26 ever, such superintendents, officers and employees may 27 be provided meals, household facilities and supplies as 28 may be necessary for them to perform their duties, if 29 such superintendents, officers and employees agree to 30 pay the reasonable cost thereof as established by the 31 commissioner of corrections.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL LAW OFFEND- ERS.

§25-4-9. Wages of offenders.

1 The West Virginia commissioner of corrections may 2 provide for the payment of wages to the offenders 3 assigned to centers for the work they perform, which 4 wages shall not exceed two dollars for each day's work 5 performed, the sums earned to be paid to the parents 6 or dependents of the offender or to the offender himself, 7 in such manner and in such proportions as the superin- 8 tendent directs.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

Article
1. Children's Home.
11. State Extended Care and Emergency Facilities.

ARTICLE 1. CHILDREN'S HOME.

§26-1-1. West Virginia Children's Home.
§26-1-2. Admission of children.
§26-1-3. Superintendent; establishment of rules.

§26-1-1. West Virginia Children's Home.

1 The West Virginia Children's Home, heretofore 2 established, shall be continued, and shall be managed, 3 directed and controlled by the state department of wel- 4 fare.

§26-1-2. Admission of children.

1 The state department of welfare shall admit to the 2 home children surrendered or otherwise placed in its
custody in any manner authorized by law; and the children shall be kept, maintained and educated therein until they can be placed by legal authority in suitable homes elsewhere.

§26-1-3. Superintendent; establishment of rules.

The commissioner of welfare shall appoint a superintendent of the children's home. The superintendent shall establish and post rules for operation of the home, subject to approval of the commissioner.

ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

§26-11-1. Management by director of health.

The director of health or its successor shall manage, direct, control and govern the Andrew S. Rowan Memorial Home, Denmar Hospital, heretofore established and known as Denmar State Hospital, Hopemont Hospital, heretofore known as Hopemont State Hospital, Pinecrest Hospital, Fairmont Emergency Hospital, and Welch Emergency Hospital and such other state health care facilities as are or may hereafter be created by law.

The director shall designate the functions of each facility and prescribe guidelines for the admission of persons thereto, pursuant to rules and regulations promulgated by the board of health, and shall supervise the business, personnel and clinical responsibilities of each facility: Provided, That in prescribing admission guidelines, precedence shall be given to persons unable to pay therefor.

§26-11-2. Supervision of each facility by administrator; qualifications of administrator; clinical director.

Each facility provided for in this article shall have a chief executive officer denominated an "administrator". The administrator shall be the person having the fiscal responsibility of the facility and the authority to manage
and administer the financial, business and personnel affairs of the facility under the direction of the director of health. The administrator shall be a college graduate and have a minimum of two years experience in either hospital administration, health services administration or business administration with broad knowledge of accounting and personnel practices as related to the rendering of health and health-related services. Such qualifications shall not apply to any person who has served in the capacity of a superintendent for at least six consecutive months on the effective date of this section.

Each facility provided for in this article, with the exception of the Andrew S. Rowan Memorial Home, shall have a clinical director who shall have the responsibility for decisions involving clinical and medical treatment of patients and who shall be a physician having a license to practice medicine in the state of West Virginia.

§26-11-3. Guidelines for admissions; fees for the maintenance of persons.

Pursuant to rules and regulations promulgated by the board of health, the director of health shall prescribe guidelines for the admission of persons to the facilities provided for in this article, with precedence given to those persons who are unable to pay. The director may establish and charge reasonable fees for the maintenance of persons residing in such facilities who are able to pay.

§26-11-4. Transfer of residents; rules and regulations for maintenance of patients.

The director of health may transfer residents between the facilities administered by the board of health or its successor, except as otherwise provided by article five, chapter twenty-seven of this code. The director may accept transfer of residents from correctional institutions, subject to the provisions of chapter twenty-eight of this code.

The director shall prescribe guidelines pursuant to rules and regulations promulgated by the board of health as are necessary and proper to regulate the proper maintenance of patients in the facilities administered by the board of health or its successor.
CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-27b. Labor of convicts.

§28-5-28. Commutation for good conduct.

§28-5-27b. Labor of convicts.

Prisoners shall be kept at work under such rules and regulations as may be adopted by the warden with the approval of the commissioner: Provided, That no prisoner shall be required to work more than eight hours per day except on work necessary and essential to efficient organization of convict forces, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour, and in cases of such necessary and essential overtime work, said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. This “necessary and essential work” shall be subject to the recommendation by the warden to the commissioner and shall become effective only after approval by the commissioner. Sunday work on jobs approved by the commissioner shall be considered as “necessary and essential work.” A strict accounting of credit records of all overtime earned shall be kept by the person in charge of the unit on which the work is performed and completed; a report shall be rendered to the warden each month, who shall approve all such overtime before it is placed to the credit of the inmate. The commissioner shall have the power to designate certain fixed overtime hours which he considers sufficient for the efficient performance of any particular work, and no inmate shall receive any overtime at all unless it is attested by the person in charge of said inmate, who must certify from his own knowledge that said overtime was actually earned. For each sustained charge of misconduct in violation of any rule known to the prisoner all commutation earned by such overtime work shall be subject to partial or complete forfeiture. In going to and returning from work prisoners
shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this section shall be dismissed.

§28-5-28. Commutation for good conduct.

In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their merit. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience shall be granted by the warden and twenty days per month deduction shall be made from the term or terms of sentences of all prisoners in class I, and ten days per month deduction shall be made from the term or terms of sentences of all prisoners in class II as hereinafter provided, when no charge of misconduct has been sustained against a prisoner. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner, including escape or attempt to escape, any part or all of the commutation which shall have accrued in favor of the prisoner to the date of said misconduct may be forfeited and taken away by the warden upon the recommendation of the classification committee or the disciplinary committee which are hereinafter established unless, in case of escape, the prisoner voluntarily returns without expense to the state, such forfeiture shall be set aside by the warden. No overtime allowance or credits, in addition to the commutation of time herein
provided for good conduct, may be deducted from the term or terms of sentences with the exception that for extra meritorious conduct on the part of any prisoner, he may be recommended to the board of parole and probation and to the governor for increased commutation or for a pardon or parole.

There is hereby established a classification committee composed of the warden, the chaplain, the director of prison industries, the prison physician and an associate warden.

The classification committee, as soon as practicable, shall classify all prisoners according to their industry, conduct and obedience in three classifications: Class I, Class II, Class III, and reclassify any of such prisoners from time to time as in their opinion the circumstances may require. The warden shall keep or cause to be kept a conduct record in card or ledger form and a calendar card on each inmate showing all classifications, changes of classifications and forfeitures of commutation of time and reasons therefor. As soon as practicable, the warden shall change the conduct records of prisoners now in the penitentiary to conform with said conduct record and calendar card.

There is hereby established a disciplinary committee composed of the warden, prison physician and the chaplain. Should any prisoner be removed from any overtime job assignment because of misconduct, an appeal shall lie to the disciplinary committee, and in the event of an adverse decision by the disciplinary committee, the prisoner so removed by reason of misconduct shall have the right to appeal to the commissioner, whose decision shall be final.

When present overtime job assignments carrying more than twenty days per month credit are vacated by the present incumbent for any reason, said job assignment shall not be renewed for a credit of more than twenty days per calendar month.
CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 13. CORRECTIONS MANAGEMENT.


This article shall be liberally construed, to the end that persons committed to institutions of the state for crime or delinquency shall be afforded individual and group treatment to reestablish their ability to live peaceably and, consistent with the protection of the community, to release such individuals at the earliest possible date, and to establish a just, humane and efficient program, and to avoid duplication and waste of effort and money on the part of public and private agencies.

§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

The commissioner of corrections shall supervise all persons released on probation and placed in the charge of a state probation and parole officer and all persons released on parole under any law of this state. The commissioner shall have exclusive authority to revoke the parole with appropriate due process or to discharge a child from parole (as child is defined in chapter forty-nine of this code). He shall also supervise 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. The commissioner shall prescribe rules and regulations for the supervision of probationers and parolees under his supervision and control, and shall
15 succeed to all administrative and supervisory powers of
16 the board of probation and parole and the authority of
17 said board of probation and parole in such matters only.
18 The commissioner of corrections shall administer all
19 other laws affecting the custody, control, treatment and
20 employment of persons sentenced or committed to insti-
21 tutions under the supervision of the department or affect-
22 ing the operation and administration of institutions or
23 functions of the department.
24 The final determination regarding the release of in-
25 mates from penal institutions and the final determination
26 regarding revocation of parolees from such institutions
27 pursuant to the provisions of article twelve, chapter
28 sixty-two of the code of West Virginia, one thousand
29 nine hundred thirty-one, as amended, shall remain within
30 the exclusive jurisdiction of the board of probation and
31 parole.

1 To assist in the accomplishment of the purposes of this
2 article the commissioner may appoint a director of cor-
3 rections management who shall be duly qualified by edu-
4 cation and experience, with a degree in sociology, psy-
5 chology, social science or some related field, and with a
6 minimum of three years' experience in the field of cor-
7 rection or a related field.

§62-13-4. Powers and duties of commissioner or director
generally; compensation and funds of inmates.
1 To accomplish the purposes of this article, the commis-
2 sioner (or the director of corrections management if one
3 is appointed) shall:
4 a. Exercise general supervision over the administra-
5 tion of the institutions under the jurisdiction of the
6 department;
7 b. Establish separate subdivisions, to be headed by
8 deputy directors, of adult services, youth services, and
9 other subdivisions as he deems advisable, which may be
10 headed by the same or different deputy directors, which
11 said deputy directors must be graduates of an accredited
college or university with a degree in sociology, psychology, social science or a related field;

c. Establish rules and regulations in writing governing all subdivisions and institutions within the department;

d. Establish an in-service training program for personnel of the department;

e. Classify the institutions of the department, varying according to such factors as security features, program, age and sex of inmates, physical stature or size, character of inmates;

f. Establish a system of classification of inmates, through a reception and examination procedure, and in each institution a classification committee and procedure for assignment of inmates within the programs of the institution;

g. Establish, maintain and direct a varied program of education for inmates in all institutions within the department;

h. Supervise the treatment, custody and discipline of all inmates and the maintenance of the institutions and their industries;

i. Establish a system of compensation for inmates of the correctional institutions of the state who perform good and satisfactory work either within the industrial program or in the servicing and maintenance of the correctional institutions or any other institutions or camps within the state. The commissioner (or the director, with the approval of the commissioner) may establish a graduated scale of compensation to be paid to inmates in accordance with their skill in industry.

The principal officer of any correctional institution, on request of an inmate, may expend up to one half of the money so earned by such inmate on behalf of the family of such inmate. The remainder of the money so earned, after deducting amounts expended as aforesaid, shall be accumulated to the credit of the inmate and be paid to the inmate at such times as may be prescribed by such rules and regulations. Such funds so accumulated on behalf of inmates shall be held by the principal officer
of each institution, under a bond approved by the attorney general.

The accumulation of such total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or the director (as appropriate), through the state sinking fund commission, in short term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the state treasurer. The earnings from investments so made shall be reported to the principal officer of each institution from time to time, as earned, and shall be credited to the respective accounts of such institutions by the sinking fund commission.

When such earnings are transferred to the respective institutions, they shall be credited by the principal officer to the credit of and for the benefit of the inmates' activities account.


All persons committed by courts of criminal and juvenile jurisdiction for custody in penal, correctional or training institutions under the jurisdiction of the commissioner of corrections shall be committed to an appropriate institution, but the commissioner (or the director if the commissioner so approves) shall have the authority to and may order the transfer of any person to any appropriate institution within the department. However, no person committed as a juvenile shall be held in any institution except one for training and care of children; and no one may be transferred to a state prison unless the crime for which such person is incarcerated was of the grade which would warrant direct commitment to the prison.

The commissioner (or the director if the commissioner so approves) may transfer any prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the
department of mental health, to such department, subject
to the approval of the commissioner of the department
of mental health; and may transfer any prisoner or in-
mate to an appropriate mental facility for specialized
medical treatment.

§62-13-6. Compensation of director and employees fixed by
commissioner; traveling and other expenses; pay-
ment of salaries, etc.

The commissioner of corrections shall fix the salaries
of the director, deputy directors and of the other officers
and employees employed pursuant to the provisions of
this article. All persons employed hereunder shall re-
ceive necessary traveling and other expenses. The com-
ensation, salaries, expenses and appropriations provided
for the director of corrections management and the em-
ployees under his jurisdiction shall be paid in the same
manner as are those of other state employees and agen-
cies upon recommendation of the director (if any) and
certification and approval of the commissioner of cor-
rections.

§62-13-6a. Payment of jail fees to county commissions.

The commissioner of corrections is hereby authorized
and directed to pay to the county commission of any
county jail fees incurred by escapees of any West Vir-
ginia center for boys, the West Virginia Industrial Home
for Girls or the West Virginia Industrial School for Boys
when said escapees are confined in said county jails.
Said jail fee shall not exceed the sum of four dollars
per diem per prisoner.

§62-13-7. Repeal of inconsistent laws; transfer of certain
functions of board of probation and parole to de-
partment of corrections.

All other laws or parts of laws inconsistent with this
article are hereby repealed to the extent of such incon-
sistency: Provided, however, That nothing in this article
shall be construed to affect in any way the laws relating
to juvenile probation. Whenever in the official code of West Virginia the words "board of probation and parole" are used and refer to specific administrative and supervisory functions and duties transferred to the department of corrections by this article, the words shall be construed to mean said department.

CHAPTER 71

(Com. Sub. for H. B. 1633—By Mrs. Neal and Mr. Shiflet)

[Passed April 2, 1977, in effect ninety days 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 eighteen; and to amend article one, chapter seven of said code, by adding thereto a new section, designated section three-w, all relating to creating a state beautification commission; appointment of members; organization of commission; payment of expenses of commission members; employment of coordinator by commission and his compensation and powers; employment of personnel by coordinator; setting forth powers of commission; authorizing county commissions to establish county beautification councils; and setting forth duties of such councils.

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 eighteen; and that article one, chapter seven of said code be amended by adding thereto a new section, designated section three-w, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

7. County Commissions and Officers.
ARTICLE 18. WEST VIRGINIA BEAUTIFICATION COMMISSION.

§5-18-1. Commission created; purpose; appointment of members; organization; expenses.

§5-18-2. Employment of coordinator; his compensation and powers; employment of personnel.


§5-18-4. Commission and West Virginia University school of agriculture and forestry to cooperate in carrying out purposes of article.

§5-18-1. Commission created; purpose; appointment of members; organization; expenses.

The West Virginia beautification commission is hereby created to preserve and enhance the beauty of the state by planting and nurturing native and improved flora on public property and to coordinate and provide assistance to county beautification councils in the performance of their duties as provided in section three-w, article one, chapter seven of this code. Said commission shall be a public corporation which shall be an agency of the state of West Virginia, and, as such, may sue and be sued. The commission shall consist of the commissioner of the West Virginia department of highways, the commissioner of the West Virginia department of agriculture and three additional members appointed by the governor, by and with the advice and consent of the Senate, for terms of two, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor.
One of the three citizen members of the commission shall be designated by the governor to serve as the chairperson of said commission. The chairperson shall preside at meetings of the commission and may call meetings of the commission at such times and places as the chairperson deems appropriate. The chairperson shall perform such other duties and responsibilities as such commission may direct. Each member of the commission shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

§5-18-2. Employment of coordinator; his compensation and powers; employment of personnel.

The commission shall employ a coordinator of the commission, fix his salary and instruct him regarding his duties and authority under this article. The coordinator is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein and carry out the directions, rules and regulations of the commission. The coordinator may, subject to the approval of the commission, employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The coordinator and other commission personnel shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of authorized commission services.


The powers of the commission are to:

(1) Evaluate and assess county beautification council policies and their impact upon aesthetic qualities of the landscape within the counties of the state and the environment and make recommendations thereon;

(2) Promote highway beautification measures;
(3) Cooperate and work with federal, state and local governmental officers, units, activities and agencies in the promotion and attainment of the purposes of the commission;

(4) Enlist the cooperation of civic and community organizations, industrial and commercial organizations, labor organizations and other identifiable groups in order to develop and implement programs which further the purposes of the commission;

(5) Delegate to the coordinator powers necessary for the effective and orderly performance of his duties;

(6) For the purposes of this article, accept contributions and gifts and seek and accept aid, grants and other financial assistance from any source whatsoever;

(7) Expend and distribute funds and property for the functions and purposes of the commission as are appropriated for the commission by the Legislature, or which are contributed by a gift, grant or otherwise for the purposes of such commission. The commission may allocate and disburse aid to county beautification councils established pursuant to the provisions of section three-w, article one, chapter seven of this code, for use by the county beautification councils in accordance with state law and guidelines and directions prescribed for such beautification councils;

(8) Contract with other parties in order to effectuate the purposes of the commission;

(9) Conduct research in regard to flora as may be adaptable or usable to carry out the purposes of this article and to conduct experiments in carrying out such research; and

(10) Seek and gather information and data necessary for the formulation of beautification policies.
§5-18-4. Commission and West Virginia University school of agriculture and forestry to cooperate in carrying out purposes of article.

The commission and the West Virginia University school of agriculture and forestry shall cooperate in all respects in carrying out the purposes of this article, and such school of agriculture and forestry shall provide direction and assistance to the commission and to county beautification councils and to the extent that plantings, seeds and other horticultural products are available, may allocate the same without cost to such commission and councils.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3w. Authority to establish county beautification councils; organization; county commissions not obligated for debts of councils; powers and duties; expenditures of funds by councils; authority of county commissions to appropriate moneys.

In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered to establish county beautification councils which shall be composed of such number of persons with such organizational requirements and limitations as the county commission creating any such council may direct. Such councils shall be deemed to be agencies of the county commissions; however, county commissions shall not be obligated for any debt or obligation which may be created by such councils. The councils are empowered to employ such persons as are necessary to accomplish the undertakings assumed by them.

Each council shall be charged with the duty of improving the aesthetic qualities of the landscape within the county, and to such intent and purpose the councils may, with the approval of the commissioner of the West Virginia department of highways, engage in the planting, cultivation and maintenance of shrubs, trees and other plants on highway property and rights-of-way at such places and under such conditions as may be established by said commissioner.
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21 County commissions may appropriate to such councils
22 such funds as the county commissions deem appropriate.
23 Councils may receive and expend appropriations for the pur-
24 poses herein indicated and may, likewise, receive and expend
25 appropriations, gifts, grants or contributions from the state of
26 West Virginia, the federal government, or any agency of either,
27 and from any other person, corporation or entity of whatever
28 nature.

CHAPTER 72
(H. B. 1426—By Mr. Goodwin and Mr. Tucker)

[Passed April 9, 1977; 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; and to amend chapter seven of said code by adding thereto a new article, designated article fourteen-a, relating to bonds of county officers; providing that penalty on sheriff's bond shall be not less than one hundred thousand dollars and penalty on deputy sheriff's bond shall be not less than thirty-five thousand nor more than one hundred thousand dollars; defining deputy sheriff; relating to the general tort liability of sheriffs and certain deputy sheriffs; defining certain terms with respect thereto; requiring certain county commissions to provide for liability insurance for sheriffs and such deputies; limiting the liability of sheriffs, counties and county commissions in certain cases and defining the extent of such liability.

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; and that chapter seven of said code be amended by adding thereto a new article, designated article fourteen-a, to read as follows:

7. County Commissions and Officers.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 2. OFFICIAL AND OTHER BONDS.


1 Every commissioner of a county commission and every clerk of a circuit court shall give bond with good security, to be approved by the circuit court, or the judge thereof in vacation; and every sheriff, deputy sheriff, surveyor of lands, clerk of a county commission, assessor, county superintendent of schools, notary public and magistrate shall give bond 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 one hundred 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 deputy sheriff, not less than thirty-five thousand nor more than one hundred thousand dollars; 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 of-
ficial 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.

For the purposes of this section, "deputy sheriff" shall mean a person appointed by a sheriff as his deputy whose primary duty as such deputy is within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14A. DEPUTY SHERIFFS' TORT LIABILITY.

§7-14A-1. Short title.

§7-14A-2. Definitions.

§7-14A-3. County commission to purchase professional liability insurance; limits; additional insurance authorized; contribution from deputies.

§7-14A-4. Liability of sheriff, county and county commission limited.

§7-14A-1. Short title.

This article may be cited and referred to as the "West Virginia Deputy Sheriffs' Tort Liability Act."

§7-14A-2. Definitions.

For the purpose of this article and as used in this article:

(a) "Deputy sheriffs" or "deputies" shall have the same meaning as those terms are given in subdivision (2), subsection (a), section two, article fourteen of this chapter, and shall, when used in this article, be limited, except when specifically authorized or when the context in which used clearly requires a broader or different application and meaning, to those deputy sheriffs serving under civil service protection pursuant to the provisions of article fourteen of this chapter.

(b) "County commissions" shall mean the county commission, or tribunal in lieu thereof, in counties wherein a civil service system for deputy sheriffs is required to be in effect or wherein such system is put into effect pursuant to article fourteen of this chapter.
(c) "Professional liability insurance" means an insuring agreement wherein the insurer agrees, subject to policy agreements, exclusions, conditions and limits, to pay all sums which the insured deputy sheriff shall or may become legally obligated to pay as damages because of bodily injury (including death) or property damages sustained by others and caused by an occurrence and arising out of such deputy sheriff's occupancy, maintenance or use of official operations or conduct in the performance of official duties.

§7-14A-3. County commission to purchase professional liability insurance; limits; additional insurance authorized; contribution from deputies.

Effective the first day of January, one thousand nine hundred seventy-eight, the county commission of each county wherein the provisions of this article are applicable, shall purchase a professional liability insurance policy covering all deputy sheriffs subject to this article, which policy shall provide for minimum coverage of fifty thousand dollars for each person injured or damaged in each occurrence and one hundred thousand dollars total coverage for each occurrence. Every such policy shall be written on an occurrence basis only. Such policy shall be paid for out of the county general revenue fund. The county commission may purchase additional coverage and, as to such additional coverage, may pay all or any part of the premiums as it and its sole discretion deems appropriate or, as to such additional coverage may require contributions in whole or in part from the sheriff and from the deputy sheriffs required to be covered by such insurance. Such additional insurance may not be purchased and the premiums in whole or in part paid by such deputies except with the consent of the majority of the deputies to be covered thereby.

§7-14A-4. Liability of sheriff, county and county commission limited.

Any other provision of this code or rule of law to the contrary notwithstanding, on and after the first day of January, one thousand nine hundred seventy-eight, no sheriff shall be held jointly or severally liable on his official bond
or otherwise for any act or conduct of any deputies subject to the provisions of this article committed on or after such date, except in cases where such deputy is acting in the presence of and under the direct, immediate and personal supervision of such sheriff, nor shall the county commission of a county nor the county itself be held so liable, and the liability of such sheriff, county or county commission in such cases shall be no greater than would be the liability of the superintendent of the department of public safety, or such department or the state of West Virginia under the same or substantially similar circumstances.

CHAPTER 73

(H. B. 1360—By Mr. Damron and Mr. Gvoyich)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to deputy sheriffs; compensatory day off for required work on holidays; and prohibiting discharge of certain deputy sheriffs under certain conditions.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

1 The county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, sheriff, county assessor and prosecuting attorney, by and with the advice and consent of the county commission, may appoint and em-
ploy, to assist them in the discharge of their official duties for
and during their respective terms of office, assistants, deputies
and employees.

The county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, sheriff, county assessor
and prosecuting attorney shall, prior to March second of each
year, file with the county commission a detailed request for
appropriations for anticipated or expected expenditures for
their respective offices, including the compensation for their
assistants, deputies and employees, for the ensuing fiscal year.

Any deputy sheriff who is required to work on a holiday as
observed by county employees generally shall be compensated
for such time by being given a substitute day off.

The county commission shall, prior to March twenty-ninth
of each year by order fix the total amount of money to be
expended by the county for the ensuing fiscal year, which
amount shall include the compensation of county assistants,
deputies and employees. Each county commission shall enter its
order upon its county commission record.

The county clerk, circuit clerk, joint clerk of the county
commission and circuit court, if any, sheriff, county assessor
and prosecuting attorney shall then fix the compensation of
their assistants, deputies and employees based on the total
amount of money designated for expenditure by their respec-
tive offices by the county commission and the amount so ex-
spended shall not exceed the total expenditure designated by the
county commission for each office.

The county officials, in fixing the individual compensation
of their assistants, deputies and employees and the county
commission in fixing the total amount of money to be expended
by the county, shall give due consideration to the duties, re-
sponsibilities and work required of the assistants, deputies and
employees and their compensation shall be reasonable and
proper.

After the county commission has fixed the total amount of
money to be expended by the county for the ensuing fiscal
year and after each county official has fixed the compensation
of each of his assistants, deputies and employees, as provided
in this section, each county official shall file prior to June thirtieth, with the clerk of the county commission a budget statement for the ensuing fiscal year setting forth the name, or the position designation if then vacant, of each of his assistants, deputies and employees, the period of time for which each is employed, or to be employed if the position is then vacant, and his monthly or semimonthly compensation.

All budget statements required to be filed by this section shall be verified by an affidavit by the county official making them. Among other things contained in the affidavit shall be the statement that the amounts shown therein are the amounts actually paid or intended to be paid to the assistants, deputies and employees without rebate, and without any agreement, understanding or expectation that any part thereof shall be repaid to him, and that, prior to the time the affidavit is made, nothing has been paid or promised him on that account, and that if he shall thereafter receive any money, or thing of value, on account thereof, he will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any county official or their assistants, deputies and employees.

Each county official named in this section shall have the authority to discharge any of his assistants, deputies or employees by filing with the clerk of the county commission a discharge statement specifying the discharge action: Provided, That no deputy sheriff appointed pursuant to the provisions of article fourteen, chapter seven of this code shall be discharged contrary to the provisions of that article.

CHAPTER 74

(H. B. 1765—By Mr. Shingleton and Mr. Morasco)

[Passed April 9, 1977; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to establishment of county solid waste authorities; name;
purposes; management and control of authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; authority to be public corporation; powers, duties and responsibilities of authority generally; workmen’s compensation coverage; severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

§7-16-1. Establishment of authorities authorized.

§7-16-2. Purposes.

§7-16-3. Management and control vested in authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; compensation.

§7-16-4. Authority to be a public corporation; name; power to contract and sue; seal.

§7-16-5. Powers, duties and responsibilities of authority generally.

§7-16-6. Employees to be covered by workmen’s compensation.

§7-16-7. Liberal construction of article; provisions not in derogation of other powers.


§7-16-1. Establishment of authorities authorized.

1 The county commission of every county is hereby authorized to create and establish a public agency to be known as a county solid waste authority (hereinafter called the authority) to carry out the powers and duties conferred by law upon the county relating to disposal of solid waste, including but not limited to, those powers authorized by sections three-e and three-f, article one of this chapter.

§7-16-2. Purposes.

1 The purposes for which the authority is created are to provide for the necessary, dependable, effective and efficient collection and disposal of solid waste and other hazardous waste and to assist and cooperate with the state and local governments in achieving these purposes.

§7-16-3. Management and control vested in authority; appointment and terms of members; vacancies; removal of members; meetings; quorum; compensation.

1 The management and control of the authority, its property,
operations, business and affairs shall be lodged in an authority
of seven persons who shall be known as “members of the
authority,” each of whom shall be appointed by the county
commission for a term of three years, except that as to the first
seven appointed to the first authority appointed, the term of
two members shall expire on the first day of July next ensuing,
the terms of the next two members shall expire on the first day
of July two years thereafter, and the term of three members
shall expire on the first day of July three years thereafter. Each
member shall hold office until the expiration of the term for
which such member is appointed or until a successor shall have
been duly appointed and shall have qualified. Vacancies on the
authority shall be filled by appointment of the county commis-
sion for the unexpired term of the member whose office shall be
vacant.

No member may be an elected official or employee of
the county or engaged in solid waste business. Board mem-
ers may be reappointed to serve additional terms. All
members of the board shall be citizens of the state of West
Virginia and the county.

The county commission may at any time remove any mem-
ber of the authority by an order duly entered of record and
may appoint a successor.

Annually the authority shall elect one of its members as
chairman, another as vice chairman and appoint a secretary-
treasurer, who need not be a member of the authority.

Four members of the authority shall constitute a quorum
and the affirmative vote of a majority shall be necessary for any
action taken by vote of the authority. No vacancy in the
membership of the authority shall impair the rights of quorum
by such vote to exercise all rights and perform all the duties
of the authority. The person appointed as secretary-treasurer,
including an authority member if he is so appointed, shall give
bond in the sum of fifty thousand dollars.

Each of the seven appointed members of the authority shall
receive fifty dollars for each meeting actually attended, but
the total compensation paid to any member shall not exceed
the aggregate sum of six hundred dollars in any fiscal year.
Each of the seven authority members shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the authority. All such compensation and expenses incurred by authority members shall be payable solely from funds of the authority or from funds appropriated for such purpose by the county commission and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriation.

The authority shall meet at least four times annually and upon the call of its chairman or upon the request in writing to the chairman of four board members.

§7-16-4. Authority to be a public corporation; name; power to contract and sue; seal.

The authority when created, and the members thereof, shall constitute and be a public corporation, the name of which shall contain the words “solid waste authority,” and as such shall have perpetual succession, may contract and be contracted with, sue and be sued, plead and be impleaded and have and use a common seal.

§7-16-5. Powers, duties and responsibilities of authority generally.

The authority may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority may:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties.

(2) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, solid waste disposal projects, and, adopt rules and regulations for the use of such projects.

(3) Make available the use or services of any solid waste disposal project to one or more persons, one or more governmental agencies, or any combination thereof.

(4) Issue solid waste disposal revenue bonds and notes and
solid waste disposal revenue refunding bonds payable solely from revenues of projects operated by the authority.

(5) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties.

(6) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers.

(7) Employ managers, superintendents, engineers, accountants, auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof.

(8) Receive and accept from any federal or state agency grants for or in aid of the construction of any solid waste disposal project or for research and development with respect to solid waste disposal projects and solid waste disposal sheds and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(9) Engage in research and development with respect to solid waste disposal projects and solid waste disposal sheds.

(10) Purchase fire and extended coverage and liability insurance for any solid waste disposal project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds or in any trust agreement securing the same.

(11) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste disposal project as provided in this article.
54  (12) Do all acts necessary and proper to carry out the
55  powers expressly granted to the authority by this article and the
56  powers conferred upon the county by sections three-c and
57  three-f, article one of this chapter.

§7-16-6. Employees to be covered by workmen's compensation.

1  All employees of the authority eligible thereto shall be
deeemed 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.

§7-16-7. Liberal construction of article; provisions not in deroga-
tion of other powers.

1  It is the purpose of this article to encourage the proper col-
lection and disposal of solid waste in a prudent and economical
manner and this article 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
article are in addition to and not in derogation of any other
power and duty now conferred by law upon county commis-
sions.


1  The several sections and provisions of this article are sever-
able, and if any section or provision hereof shall be held unconsti-
tutional, all the remaining sections and provisions of the
article shall nevertheless remain valid.

CHAPTER 75

(§ 52—By Mr. Nelson)

[Passed April 1, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter
fifty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to establishing
the judicial circuits and creating an additional office of
judge in the sixth circuit; terms of office of circuit judges;
legislative findings and declarations; election of circuit judges; terms of court; and requiring the supreme court of appeals to submit a plan rearranging the circuits.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 four 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 county of Raleigh shall constitute the tenth 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) Except as hereinafter provided, 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 reorganization amendment to the West Virginia constitution, shall expire on the thirty-first day of December, one thousand nine hundred eighty-four. Thereafter, the terms of office of such circuit court judges shall be for eight years, the first commencing on the first
day of January, one thousand nine hundred eighty-five, and ending on the thirty-first day of December, one thousand nine hundred ninety-two. Subsequent terms of said judges shall be for eight years. The first term of office of the fourth circuit court judge of the sixth circuit created by the provisions of said subsection (a) shall commence on the first day of July, one thousand nine hundred seventy-seven, and shall end on the thirty-first day of December, one thousand nine hundred seventy-eight. The second term of office of said sixth circuit court judge shall commence on the first day of January, one thousand nine hundred seventy-nine, and shall end on the thirty-first day of December, one thousand nine hundred eighty-four. Subsequent terms of office of said sixth circuit court judge shall be for eight years.

(c) The Legislature hereby finds and declares that the purpose of this section is to implement the provisions 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 circuit 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 amendment to the voters of the state for ratification was that no judge of a statutory court of record of limited jurisdiction 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
109 county were elected. Consistent with such findings and
110 declarations, the terms of office of the judges of the tenth
111 and thirteenth judicial circuits who became circuit court
112 judges by virtue of the judicial reorganization amend-
113 ment to the West Virginia constitution, and who were,
114 respectively, the judges of the intermediate court of
115 Raleigh county and the intermediate court of Kanawha
116 county, which terms commenced the first day of January,
117 one thousand nine hundred seventy-five, shall expire on
118 the thirty-first day of December, one thousand nine hun-
119 dred eighty-four.

120 (d) The election of every circuit court judge, except
121 as hereinafter provided, shall be held on the Tuesday
122 next after the first Monday in November, one thousand
123 nine hundred eighty-four, and every eighth year there-
124 after. The fourth circuit court judge of the sixth circuit
125 created by the provisions of subsection (a) of this section
126 shall be appointed originally by the governor according
127 to the provisions of section three, article ten, chapter
128 three of this code. The first election of said sixth circuit
129 court judge shall be held on the Tuesday next after the
130 first Monday in November, one thousand nine hundred
131 seventy-eight. The election for the third term of said
132 sixth circuit court judge shall be held on the Tuesday
133 next after the first Monday in November, one thousand
134 nine hundred eighty-four, and every eighth year there-
135 after.

136 (e) The terms of court of the circuit judges of the
137 counties aforesaid shall commence and be held as here-
138 inafter provided.

139 (f) On or before January one, one thousand nine
140 hundred eighty-three, the supreme court of appeals of
141 West Virginia shall submit to the Legislature a plan for
142 rearranging the circuits created in subsection (a) of this
143 section.
CHAPTER 76
(H. B. 1672—By Mr. Shiflet and Mrs. Neal)

[Passed April 5, 1977; in effect January 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact section one-k, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to terms of court of the eleventh judicial circuit.

Be it enacted by the Legislature of West Virginia:

That section one-k, 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.

§51-2-1k. Eleventh circuit.

1 For the county of Pocahontas, on the third Tuesday in March, the second Tuesday in June and the fourth Tuesday in October.

4 For the county of Greenbrier, on the first Tuesday in April, the fourth Tuesday in July and the second Tuesday in November.

7 For the county of Monroe, on the first Tuesday in February, the fourth Tuesday in May and the first Tuesday in October.

9 For the county of Summers, on the second Tuesday in January, the first Tuesday in May and the first Tuesday in September.

CHAPTER 77
(H. B. 957—By Mrs. Spears and Mrs. Pletsenberger)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-t, 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 of the twentieth circuit.

Be it enacted by the Legislature of West Virginia:

That section one-t, 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.

§51-2-1t. Twentieth circuit.

1 For the county of Randolph, on the third Tuesday in September, January and April.

CHAPTER 78
(H. B. 1611—By Mr. Mowery)

[Passed April 9, 1911; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article ten, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit unions; and increasing security for loans to members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CREDIT UNIONS.

§31-10-19. Security for loans to members; installment crop loans; loan to member of credit committee; illegal to loan to nonmembers; repayment of loans.

1 As provided in section eighteen of this article, a credit union may loan to its members for such purposes and upon such security and terms as the bylaws shall provide and the credit committee shall approve; but security must be taken for any loan in excess of two thousand five hundred dollars.
Endorsements of a note or assignment of shares in any credit union shall be deemed security within the meaning of this section.

A member who needs funds with which to purchase necessary supplies for growing crops may receive a loan in fixed monthly installments instead of in one sum.

If any member of the credit committee makes application to borrow money from a credit union or becomes surety for any other member whose application for a loan is under consideration, the supervisory committee shall appoint a substitute to act on the credit committee in the place of such member, during the consideration of such application. All officers and members of any committee in any way knowingly permitting or participating in making a loan of funds of a credit union to a nonmember thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of any such illegal loan from the borrower or from any officer or member of a committee who knowingly committed or participated in the making thereof, or from all of them jointly.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

CHAPTER 79

(Com. Sub. for H. B. 921—By Mr. Karras and Mr. Tomblin)

[Passed March 30, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to distinguishing between grand and petit larceny; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.


(a) If any person commits simple larceny of goods or chattels of the value of two hundred dollars or more, such person shall be guilty of a felony, designated grand larceny, and, upon conviction thereof, shall be confined in a penitentiary not less than one nor more than ten years, or, in the discretion of the court, be confined in the county jail not more than one year and shall be fined not more than five hundred dollars.

(b) If any person commits simple larceny of goods or chattels of the value of less than two hundred dollars, such person shall be guilty of a misdemeanor, designated petit larceny, and, upon conviction thereof, shall be confined in the county jail for a term not to exceed one year or fined not to exceed five hundred dollars, or both, in the discretion of the court.

CHAPTER 80
(H. B. 1729—Originating in the House Committee on the Judiciary)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto eight new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g and thirty-nine-h, all relating to crime of obtaining property with worthless checks when maker knows check to be worthless; subjecting person signing corporate check to provisions relating to personal checks; providing misdemeanor and felony penalties; crime of passing worthless
check and penalties; providing that payment of check acts as defense to certain prosecutions; duty of bank to indicate reason why check is dishonored and providing that such given reason is prima facie evidence of the truth thereof; relating to evidentiary requirements regarding knowledge of sufficiency of funds and identity of maker of check; providing misdemeanor penalty for giving false information; providing for notice of dishonor from payee and the imposition of a service charge; effect of payment of check; providing form of complaint for warrant; providing for notice of filing of complaint for warrant from magistrate court to maker of check; and relating to imposition of court costs.

Be it enacted by the Legislature of West Virginia:

That section thirty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto eight new sections, designated sections thirty-nine-a, thirty-nine-b, thirty-nine-c, thirty-nine-d, thirty-nine-e, thirty-nine-f, thirty-nine-g, and thirty-nine-h, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39. Obtaining property in return for worthless check; penalty.
§61-3-39a. Making, issuing, etc., worthless checks; penalty.
§61-3-39b. Payment as defense.
§61-3-39c. Reason for dishonor; duty of drawee.
§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.
§61-3-39e. Notice of dishonor by payee, service charge.
§61-3-39f. Manner of filing complaint for warrant; form.
§61-3-39g. Notice of complaint; payment procedure; costs.
§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

§61-3-39. Obtaining property in return for worthless check; penalty.

1 It shall be unlawful for any person, firm or corporation to
2 obtain any money, services, goods or other property or thing
3 of value by means of a check, draft or order for the payment
4 of money or its equivalent upon any bank or other depository,
5 knowing at the time of the making, drawing, issuing, uttering
6 or delivering of such check, draft or order that there is not
7 sufficient funds on deposit in or credit with such bank or
8 other depository with which to pay the same upon presentation.
The making, drawing, issuing, uttering or delivery of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalties of this section to the same extent as though such check, draft or order was his own personal act, when such agent or officer knows that such corporation does not have sufficient funds on deposit in or credit with such bank or depository from which such check, draft or order can legally be paid upon presentment.

This section shall not apply to any such check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order.

No prosecution shall be confined to the provisions of this section by virtue of the fact that worthless checks, drafts or orders may be employed in the commission of some other criminal act.

Any person who shall violate the provisions of this section, if the amount of the check, draft or order is less than two hundred dollars, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars, or imprisoned not more than six months, or both fined and imprisoned. Any person who shall violate the provisions of this section, if the amount of the check, draft or order is two hundred dollars or more, shall be guilty of a felony, and, if convicted thereof, shall be fined not more than five hundred dollars, or imprisoned not less than one year nor more than five years, or both fined and imprisoned.

§61-3-39a. Making, issuing, etc., worthless checks; penalty.

It shall be unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with such bank or other depository with which to pay the same upon presentation.
The making, drawing, issuing, uttering or delivering of any such check, draft or order, for or on behalf of any corporation, or its name, by any officer or agent of such corporation, shall subject such officer or agent to the penalties of this section to the same extent as though such check, draft or order was his own personal act.

This section shall not apply to any such check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order. This section shall not apply when such insufficiency of funds or credit is caused by any adjustment to the drawer's account by the bank or other depository without notice to the drawer or is caused by the dishonoring of any check, draft or order deposited in the account unless there is knowledge or reason to believe that such check, draft or order would be so dishonored.

Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one hundred dollars, or imprisoned not more than ten days, or both fined and imprisoned.

§61-3-39b. Payment as defense.

Payment of a dishonored check, draft or order shall not constitute a defense or ground for dismissal of charges brought under section thirty-nine of this article. Payment of a dishonored check, including any authorized charges or costs, shall constitute a defense or grounds for dismissal of charges brought under section thirty-nine-a of this article.

§61-3-39c. Reason for dishonor; duty of drawee.

It shall be the duty of the drawee of any check, draft or order, before refusing to pay the same to the holder thereof upon presentation, to cause to be written, printed or stamped in plain language thereon or attached thereto, the reason for drawee's dishonor or refusal to pay same. In all prosecutions under section thirty-nine or thirty-nine-a of this article, the
introduction in evidence of any unpaid and dishonored check, draft or other written order, having the drawee's refusal to pay stamped or written thereon, or attached thereto, with the reason therefor as aforesaid:

(a) Shall be prima facie evidence of the making or uttering of said check, draft or other written order, and the due presentation to the drawee for payment and the dishonor thereof, and that the same was properly dishonored for the reasons written, stamped or attached by the drawee on such dishonored checks, drafts or orders; and

(b) Shall be prima facie evidence, as against the maker or drawer thereof, of the withdrawing from deposit with the drawee named in the check, draft or other written order, of the funds on deposit with such drawee necessary to insure payment of said check, draft or other written order upon presentation within a reasonable time after negotiation; and

(c) Shall be prima facie evidence of the drawing, making, uttering or delivering of a check, draft or written order with the knowledge of insufficient funds in or credit with such drawee.

§61-3-39d. Prima facie evidence of knowledge; identity; penalty for providing false information.

(a) In any prosecution under section thirty-nine of this article, the making, drawing, uttering or delivery of a check, draft or order, the payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence that the drawer has knowledge at the time of making, drawing, issuing, uttering or delivering such check, draft or order that there is not sufficient funds or credit to pay the same, unless the check, draft or order is paid along with any charges or costs authorized by this article.

(b) In any prosecution under section thirty-nine-a of this article, it shall constitute prima facie evidence of the identity of the drawer of a check, draft or order if at the time of acceptance of such check, draft or order there is obtained the following information: name and residence, business or mailing address and either a valid motor vehicle operator's number or the drawer's home or work phone number or place of employ-
ment. Such information may be recorded on the check, draft or order itself or may be retained on file by the payee and referred to on the check, draft or order by identifying number or other similar means.

(c) Any person who shall provide false information when information is requested prior to accepting a check, draft or order either at the time such check, draft or order is presented or for the purpose of obtaining a check cashing identification card or similar check cashing privilege shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars, or imprisoned not more than thirty days, or both fined and imprisoned.

§61-3-39e. Notice of dishonor by payee; service charge.

The payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit may send notice thereof to the drawer of the check, draft or order. The payee or holder of any such dishonored check may impose a service charge not to exceed five dollars. No service charge shall be imposed or collected after a complaint for warrant has been delivered to magistrate court. No payee or holder of a check, draft or order which has been dishonored because of insufficient funds or credit shall incur any civil or criminal liability for the sending of a notice substantially in the form provided herein, other provisions of law notwithstanding. The form of such notice shall be substantially as follows:

"You are hereby notified that a check, number ________, issued by you on (date of check), drawn upon (name of bank), and payable to ______________________, has been dishonored. Pursuant to West Virginia law, you have ten days from the date of this notice to tender payment of the full amount of such check plus a five dollar service charge to the undersigned at __________________________. You are further notified that in the event the above amount is timely paid in full you will not be subject to legal proceedings, civil or criminal.

Dated __________________________, 19______ .

(Signed) ."
The provisions of this section shall not authorize the making of any other written or oral threats of prosecution to enforce or enhance the collection or honoring of said dishonored check, draft or order.

The holder or payee of any such check, draft or note shall relinquish the check, draft or order to the maker upon tender of the full amount due at any time before a complaint for warrant has been presented to magistrate court. In the event complaint for warrant has been presented to magistrate court, payment may be made only through such court and any holder or payee unlawfully accepting payment after such time shall be liable for all costs which may be imposed by magistrate court in the matter, including all costs which may have accrued by the time the magistrate court is notified of such payment.

§61-3-39f. Manner of filing complaint for warrant; form.

Notwithstanding the provisions of section one, article one, chapter sixty-two of this code, a complaint for warrant for violations of section thirty-nine-a of this article need not be made upon oath before a magistrate but may be made upon oath before any magistrate court clerk or other court officer authorized to administer oaths or before a notary public in any county of the state and may be delivered by mail or otherwise to the magistrate court of the county wherein venue lies.

A complaint for warrant for violations of section thirty-nine-a of this article shall be deemed sufficient if it is in form substantially as follows:

"State of West Virginia

County of ________________________, to wit:

______________________________________________, upon oath explains that:

(a) Within one year past, on the _______________ day of _____________________________, 19____, in the County aforesaid _____________________________ did unlawfully issue and deliver unto _____________________________ his certain check of the words and figures as follows:
CRIMES AND THEIR PUNISHMENT

(Name of Bank)

Pay to the Order of ___________________________ $__________

Dollars

For ____________________________

when he the said ____________________________ did not have
funds on deposit in and credit with said bank with which to
pay same upon presentation against the Peace and Dignity
of the State of West Virginia and he the said ____________________________
therefore prays a warrant issue and that said ____________________________
(maker)
may be apprehended and held to answer the said warrant and
dealt with in relation thereto according to the law.

(b) At the time said check was delivered and before the
same was accepted there was either on the check or on a card
in the possession of complainant the following information
regarding the identity of aforesaid maker:

(1) Name
(2) Residence address ________________________________
(3) Business address ________________________________
(4) Mailing address ________________________________
(5) * Motor vehicle operator's number ____________________
(6) Home phone ________________________________
(7) Work phone ______
(8) Place of employment ________________________________

That since the time the check was delivered complainant has
ascertained to the best of his knowledge and belief the follow-
ing facts concerning the maker of said check:

Full name ________________________________
Home address ________________________________
§61-3-39g. Notice of complaint; payment procedure; costs.

1 After receipt of a complaint for warrant for a violation of section thirty-nine or thirty-nine-a of this article no magistrate court shall issue a warrant until after the provisions of this section are complied with, unless complaint is made that the drawer of such check, draft or order is about to flee the jurisdiction. The magistrate court shall not receive or hold the check, draft or order except as evidence during trial or hearing.

9 Upon receipt of such complaint for warrant the magistrate court shall immediately prepare and mail to the drawer of such check, draft or order a notice in form substantially as follows and shall impose additional court costs in the amount of ten dollars. Such notice shall be mailed to the drawer by certified
mail, postpaid, return receipt requested, at the address provided
at the time of presenting such check, draft or order and service
of such notice shall be complete upon mailing. Such notice shall
be in form substantially as follows if prosecution is under
section thirty-nine of this article:

“You are hereby notified that a complaint for a warrant for
your arrest has been filed with this office to the following effect
and purpose by ____________ who upon oath complains
that on the ________ day of ________, 19___, you did unlaw-
fully issue and deliver unto him a certain check in the amount
of ____________ drawn on ____________ where you did not have
(Bank)
funds on deposit in or credit with said bank with which to pay
same upon presentation and pray that a warrant issue and that
you be apprehended wherever you may be found by an officer
authorized to make such an arrest and dealt with in ac-
cordance with the laws of the State of West Virginia.

Unless you make payment of the amount of the check plus
court costs in the amount of ____________ to the Magistrate
Court Clerk at ____________ on or before said
__________ day of ____________, 19_____, you will be
presumed to have had criminal intent at the time of issuance
of the check and a warrant for your arrest will be issued on or
after the ________ day of ____________, 19_____.
Magistrate Court of ____________ County

Date: ____________

Such notice shall be in form substantially as follows if
prosecution is under section thirty-nine-a of this article:

“You are hereby notified that a complaint for a warrant
for your arrest has been filed with this office to the following
effect and purpose by ____________ ____________ who upon oath
complains that on the ________ day of ________ ____________,
19. ... you did unlawfully issue and deliver unto him a certain check in the amount of ___________________ drawn on ___________________ where you did not have funds on (Bank)

deposit in or credit with said bank with which to pay same upon presentation and pray that a warrant issue and that you be apprehended wherever you may be found by an officer authorized to make such an arrest and dealt with in accordance with the laws of the State of West Virginia.

A warrant for arrest will be issued on or after the _______ day of ____________, 19_____.

You can nullify the effect of said complaint and avoid arrest by paying to the Magistrate Court Clerk at ________________ the amount due on said check and the costs of this proceeding in the amount of ___________________ on or before said _______ day of ________________, 19____, at which time you will be given a receipt with which you can obtain said check from the holder thereof. The holder of the check is forbidden by law to accept payment.

Magistrate Court of ___________ County

Date

""

Such notice shall give the drawer of any such check, draft or order twenty days within which to make payment to magistrate court. In the event such drawer pays the amount of the check plus court costs to the magistrate court within the twenty day period no warrant shall issue. The payment may be made to the magistrate court in person or by mail by cash, certified check, bank draft or money order and, in the event such payment is made by mail, the magistrate court clerk shall forthwith mail to the maker of such check the receipt hereinbelow required. In the event such total amount is not so paid the court shall proceed with the issuance of the warrant as is provided by law.

Upon receipt of payment of such total amount the magistrate
court clerk shall issue to the drawer a receipt sufficiently
describing such check with which receipt the drawer shall be
entitled to receive the dishonored check, draft or order from
the holder or payee thereof. No service charge shall be
charged or collected by the holder or payee of a dishonored
check, draft or order after filing a complaint for warrant. The
magistrate court clerk shall forward the amount of the check to
the payee or holder thereof. The magistrate court clerk is here-
by authorized to establish a separate bank account for the pur-
pose of facilitating such transactions. Costs collected shall be
dealt with as is provided by law for other criminal pro-
ceedings.

The drawer of a check, draft or order against whom a war-
rant has been issued may at any time prior to trial pay to the
court the amount of the check plus any accrued court costs
plus such court costs as would be assessed if such person were
found guilty of the offense charged.

§61-3-39h. Payment of costs in worthless check cases; disposition
of certain costs.

In any prosecution under sections thirty-nine or thirty-nine-
a of this article such costs as may otherwise be imposed against
the drawer of any such check, draft or order shall be im-
posed on the person initiating the prosecution if payment of the
check, draft or order is accepted by the payee or holder there-
of after the filing of a complaint for warrant; if the payee or
holder had reason to believe that the check, draft or order
would be dishonored or if the same was postdated; or if the
matter is dismissed for failure to prosecute.

Costs collected by magistrate court for issuance of notice
as authorized by section thirty-nine-g of this article shall be
paid into the special county fund created by the provisions of
section four, article three, chapter fifty of this code. Such
costs shall not be included in any calculation of the amount of
funds to be retained by the county but shall be accounted for
separately and retained by the county notwithstanding any
provision of law directing the payment of costs to the state.
AN ACT to amend and reenact section fifteen, article ten, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the pecuniary interest of county and district officers, teachers and school officials in contracts; exception; offering or giving compensation; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

1 It shall be unlawful for any member of a county commission, overseer of the poor, district school officer, secretary of a board of education, supervisor or superintendent, principal or teacher of public schools, or any member of any other county or district board, or for any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies in the contract for, or the awarding or letting of, which as such member, officer, secretary, supervisor, superintendent, principal, or teacher, he may have any voice, influence or control: Provided, however, That nothing herein shall be construed to prevent or make unlawful the employment of the spouse of any such member, officer, secretary, supervisor, superintendent, principal or teacher as principal or teacher, auxiliary or service employee in the public schools of any county, nor to prevent or make unlawful the employment by any joint county and circuit clerk of his or her spouse. Any person or officer named who shall violate
any of the foregoing provisions of this section shall be
guilty of a misdemeanor, and, upon conviction thereof, be
fined not less than fifty nor more than five hundred dollars,
and may, in the discretion of the court, be imprisoned
for a period not to exceed one year. In addition to the
foregoing penalties, any such officer shall be removed
from his office and the certificate or certificates of any
teacher, principal, supervisor and superintendent who
violates any provision of this section shall upon conviction
thereof, be revoked immediately. Any person, firm or
corporation that offers or gives any compensation or
thing of value or forebears to perform any act whatever
to any of the officers or persons hereinbefore named or
to or for any other person with the intent to secure the
influence, support or vote of such officer or person for
any contract, service, award or other matter as to which
any county or school district shall become the paymaster,
shall be guilty of a misdemeanor, and, upon conviction
thereof, be fined not less than five hundred, nor more than
twenty-five hundred dollars, and, at the discretion of the
court, such person or any member of such firm, or, if it be
a corporation, any agent or officer thereof, so offering or
giving such compensation, may, in addition to such fine,
be imprisoned for a period not to exceed one year.

The provisions of this section shall not apply to pub-
lications in newspapers required to be made by law.
thousand nine hundred thirty-one, as amended; and to amend chapter fifty-one of said code by adding thereto a new article, designated article eleven, relating to providing a system for the defense of needy persons; statement of legislative finding and policy; definitions; providing for right to representation and defining stages of proceedings at which persons are entitled to representation; requiring notification of right to an attorney; providing procedure for appointment of counsel; requiring affidavit of indigency; duty of circuit court to determine whether person is entitled to appointed counsel; specifying factors to be considered in determining eligibility; making it unlawful for an attorney to make false statement of fees and expenses and providing penalties; making it unlawful to make false statement in affidavit and providing criminal penalty therefor; establishing procedure for payment of compensation and expenses of appointed counsel and creating special fund for payment; and requiring the director of the administrative office of the supreme court of appeals to administer the system.

Be it enacted by the Legislature of West Virginia:

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

Chapter


50. Magistrate Courts.

53. Extraordinary Remedies.


51. Courts and Their Officers.
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

*§49-5-10. Right to counsel; mandatory advice with respect thereto; appointment of counsel.

1 In any proceeding under the provisions of this article, the child shall have the right to be represented by counsel, and the child and his parents, his guardian, his custodian, or any other person standing in loco parentis to him, or the person named in the petition, must be informed at the outset of the child’s right to be represented by counsel, and if neither the child nor any other of the aforementioned persons can pay for the services of counsel, that counsel will be appointed to represent the child.

2 Upon the presentation to the court or judge thereof of a written request for the appointment of counsel and an affidavit by the child, or by his parents, the guardian of his person, his custodian, or any other person standing in loco parentis to him, or by the person named in the petition, showing that neither the child nor any other of the aforementioned persons can pay for the services of counsel, the court or judge, upon being satisfied as to the truth of the information set forth in the affidavit, shall, by order entered of record, appoint an attorney-at-law to represent the child in any proceeding under the provisions of this article. The attorney so appointed shall be paid for his services and expenses in accordance with the provisions of article eleven, chapter fifty-one of this code.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-3. Appointment of counsel in criminal proceeding.

1 In any criminal proceeding in a magistrate court in which the applicable statutes authorize a sentence of confinement the magistrate shall forthwith advise a defendant of his right to counsel and his right to have counsel appointed if such defendant cannot afford to re-

* This section was also amended and reenacted by Chapter 65 of these Acts, and was again amended and reenacted by H. B. 114, First Extraordinary Session, 1977.
tain 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 accordance with the rules established by such judge of the circuit court. Counsel shall be paid for his services and expenses in accordance with the provisions of article eleven, chapter fifty-one of this code.

CHAPTER 53. EXTRAORDINARY REMEDIES.

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.

(a) A petition filed under the provisions of this article may allege facts to show that the petitioner is unable to pay the costs of the proceeding or to employ counsel, may request permission to proceed in forma pauperis and may request the appointment of counsel. If the court to which the writ is returnable (hereinafter for convenience of reference referred to simply as "the court," unless the context in which used clearly indicates that some other court is intended) is satisfied that the facts alleged in this regard are true, and that the petition was filed in good faith, and has merit or is not frivolous, the court shall order that the petitioner proceed in forma pauperis, and the court shall appoint counsel for the petitioner. If it shall appear to the court that the record in the proceedings which resulted in the conviction and sentence, including, but not limited to, a transcript of the testimony therein, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or
records in any other proceeding or proceedings instituted
by the petitioner to secure relief from his conviction or
sentence, or all of such records, or any part or parts
thereof, are necessary for a proper determination of the
contention or contentions and grounds (in fact or law)
advanced in the petition, the court shall, by order entered
of record, direct the state to make arrangements for copies
of any such record or records, or all of such records, or
such part or parts thereof as may be sufficient, to be
obtained for examination and review by the court, the
state and the petitioner. The state may on its own initia-
tive obtain copies of any record or records, or all of the
records, or such part or parts thereof as may be sufficient,
as aforesaid, for its use and for examination and review by
the court and the petitioner. If, after judgment is entered
under the provisions of this article, an appeal or writ of
error is sought by the petitioner in accordance with the
provisions of section nine of this article, and the court
which rendered the judgment is of opinion that the review
is being sought in good faith and the grounds assigned
therefor have merit or are not frivolous, and such court
finds that the petitioner is unable to pay the costs inci-
dent thereto or to employ counsel, the court shall, upon
the petitioner's request, order that the petitioner proceed
in forma pauperis and shall appoint counsel for the pe-
titioner. If an appeal or writ of error is allowed, whether
upon application of the petitioner or the state, the re-
viewing court shall, upon the requisite showing the re-
quest as aforesaid, order that the petitioner proceed in
forma pauperis and shall appoint counsel for the peti-
tioner. If it is determined that the petitioner has the
financial means with which to pay the costs incident to
any proceedings hereunder and to employ counsel, or
that the petition was filed in bad faith or is without
merit or is frivolous, or that review is being sought or
prosecuted in bad faith or the grounds assigned therefor
are without merit or are frivolous, the request to
proceed in forma pauperis and for the appointment of
counsel shall be denied and the court making such de-
termination shall enter an order setting forth the findings
pertaining thereto and such order shall be final.
(b) Whenever it is determined that a petitioner shall proceed in forma pauperis, all necessary costs and expenses incident to proceedings hereunder, originally, or on appeal pursuant to section nine of this article, or both, including, but not limited to, all court costs, and the cost of furnishing transcripts, shall, upon certification by the court to the state auditor, be paid out of the treasury of the state from the appropriation for criminal charges. Any attorney appointed in accordance with the provisions of this section shall be paid for his services and expenses in accordance with the provisions of article eleven, chapter fifty-one of the code. All costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the petitioner is proceeding in forma pauperis, and the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be paid out of the treasury of the state, upon certification by the court to the state auditor, from the appropriation for criminal charges. All such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs.

(c) In the event a petitioner who is not proceeding in forma pauperis does not substantially prevail, all such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs. In any case
where the petitioner does not proceed in forma pauperis, the court shall adjudge all costs and expenses to be paid as shall seem to the court to be right, consistent with the immediately preceding sentence of this subsection (c) and with the provisions of chapter fifty-nine of this code, as amended.

CHAPTER 62. CRIMINAL PROCEDURE.

Article
3. Trial of Criminal Cases.

ARTICLE 3. TRIAL OF CRIMINAL CASES.

§62-3-1. Time for trial; depositions of witnesses for accused; counsel, copy of indictment, and list of jurors for accused; remuneration of appointed counsel.

1 When an indictment is found in any county, against a person for a felony or misdemeanor, the accused, if in custody, or if he appear in discharge of his recognizance, or voluntarily, shall, unless good cause be shown for a continuance, be tried at the same term. If any witness for the accused be a nonresident of the state, or absent therefrom in any service or employment, so that service of a subpoena cannot be had upon him in this state, or is aged or infirm so that he cannot attend upon the court at the trial, the accused may present to the court in which the case is pending, or to the judge thereof in vacation, an affidavit showing such facts, and stating therein what he expects to prove by any such witness, his name, residence, or place of service or employment; and if such court or judge be of the opinion that the evidence of any such witness, as stated in such affidavit, is necessary and material to the defense of the accused on his trial, an order may be made by such court or judge for the taking of the deposition of any such witness upon such notice to the prosecuting attorney, of the time and place of taking the same, as the court or judge may prescribe; and in such order the court or judge may authorize the employment of counsel, practicing at or near the place where the deposition is to be taken, to cross-examine the witness on behalf of the state,
the reasonable expense whereof shall be paid out of
the treasury of the state, upon certificate of the court
wherein the case is pending. Every deposition so taken
may, on the motion of the defendant, so far as the evi-
dence therein contained is competent and proper, be
read to the jury on the trial of the case as evidence
therein. A court of record may appoint counsel to assist
an accused in criminal cases at any time upon request.
A copy of the indictment and of the list of the jurors
selected or summoned for his trial, as provided in sec-
tion three of this article, shall be furnished him, upon
his request, at any time before the jury is impaneled.
In every case where the court appoints counsel for the
accused and the accused presents an affidavit showing
that he cannot pay therefor, the attorney so appointed
shall be paid for his services and expenses in accor-
dance with the provisions of article eleven, chapter
fifty-one of this code. The amount so paid, in the
event the accused shall not prevail, shall be and con-
stitute a judgment of said court against the accused to
be recovered as any other judgment for costs.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-22. Appointment of counsel for parole violators; au-
thority to appoint; payment of counsel.

Any person accused of a violation of his parole, as
set forth in this article, may be represented by counsel
at any hearing held for the purpose of determining
whether his parole should be revoked. In the event the
person accused of a violation of his parole is unable to
pay for counsel and desires to have counsel appointed
for him, he shall present his application for the appoint-
ment of counsel and an affidavit reflecting his inability
to pay for such counsel to the circuit court in the county
in which such person is confined or in the county in which
the hearing is to be held for the purpose of determining
whether his parole should be revoked, or to the judge
thereof in vacation. If it appears to the satisfaction of
the court or judge that such person is in fact unable to
pay for counsel, such court or judge may appoint counsel
to represent such person. Counsel so appointed shall be paid for his services and expenses in accordance with the provisions of article eleven, chapter fifty-one of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 11. DEFENSE OF NEEDY PERSONS.

§51-11-1. Statement of legislative findings and policy.


§51-11-3. Right to representation; stages at which representation available.

§51-11-4. Notification of right to an attorney.

§51-11-5. Appointment of counsel; procedure for determining eligibility; revocation of order of appointment of counsel.

§51-11-6. Determination of eligibility; false statement prohibited; penalties.

§51-11-7. Recovery of amounts advanced; offense of making false statements, and penalty therefor.

§51-11-8. Compensation of attorneys for services and expenses of defense; vouchers; order of approval by circuit court; payment.

§51-11-9. Director of administrative office of supreme court of appeals; duties; expenses.

§51-11-1. Statement of legislative findings and policy.

In order that needy persons who have been charged with the commission of serious crimes against this state, or who have been convicted of crimes, or who are subject to a court having jurisdiction over juveniles, or who are incarcerated or subject to incarceration in a public or private institution pursuant to a judicial commitment order, be afforded the rights and privileges guaranteed to them by the constitution of the United States of America and by the constitution of the state of West Virginia, it is necessary and in the public interest to provide a system of legal representation for persons who are financially unable to employ counsel.


For the purpose of this article:

"Detain" means to have in custody or otherwise significantly deprive of freedom of action;

"Expenses" includes the expenses of investigation, other preparation and trial expenses and the cost of transcripts of testimony, not otherwise provided at public expense;
"Needy person" means any person, whether juvenile or adult, who at the time his need is determined is unable to pay counsel to represent him and to pay the other necessary expenses of representation without undue hardship;

"Serious crime" means:

(a) A felony;

(b) A misdemeanor or offense, the penalty for which involves the possibility of confinement or a fine of more than five hundred dollars, or any other offense in which, in the opinion of the court, either the complexity of the matter, or the youth, inexperience, or mental capacity of the accused, may require representation of the accused by an attorney; and

(c) An act which except for the age of the person involved, would otherwise be a serious crime.

The term "serious crime" shall not include an alleged violation which is exclusively a violation of a municipal ordinance.

§51-11-3. Right to representation; stages at which representation available.

A needy person who is being detained by a law-enforcement officer, or who is under formal charge of having committed, or is being detained under a conviction of, a serious crime, is entitled to representation by an attorney, to investigative services and other services necessary to his defense. The attorney, investigative services, and other services, and the cost and expense thereof, shall be provided to such needy person at all stages of the proceedings through sentencing, including direct, collateral, or post-conviction appeals to state or federal courts.

The right of a needy person to a benefit conferred by this section is not affected by his having provided a similar benefit at his own expense, or by his having waived it at an earlier stage.

§51-11-4. Notification of right to an attorney.

It shall be the duty of the circuit court or magistrate
before whom a person accused of a serious crime initially shall appear, to inform the accused of his right to an attorney and investigative and other services in and about his defense, and that an attorney and such services will be provided if the accused is financially unable to employ an attorney and otherwise to provide for his defense, without undue hardship.

§51-11-5. Appointment of counsel; procedure for determining eligibility; revocation of order of appointment of counsel.

(a) A circuit court at any time upon request, and upon the filing of an affidavit of indigency as hereinafter provided shall appoint one or more counsel, at least one of whom shall be reasonably competent in the practice of criminal law:

(1) to represent one accused of a felony, or of a misdemeanor punishable by imprisonment;

(2) to represent a juvenile under the provisions of article five of chapter forty-nine of this code;

(3) to represent a person in custody in seeking a writ of habeas corpus;

(4) to represent a person entitled to counsel under the provisions of chapter twenty-seven of this code;

(5) to represent a person whose order of probation or parole has been revoked under the provisions of article twelve of chapter sixty-two of this code.

(b) The affidavit of indigency and the attorney voucher and affidavit shall be upon such form as shall be prescribed by the supreme court of appeals, and shall be signed by the accused or other needy person or the attorney, or, in the event of his disability, by another person in his behalf.

(c) It shall be the duty of the circuit court, upon the basis of the affidavit of a person requesting appointment of counsel and of such evidence as may be adduced in open court, to determine whether such person is a needy person so as to be entitled to appointed counsel. If the court should determine that such person is not entitled to appointed counsel, the appointment previously made shall
be revoked, and the attorney previously appointed shall be entitled to compensation under the provisions of this article, for services already rendered.

§51-11-6. Determination of eligibility; false statement prohibited; penalties.

In determining whether a person is a needy person, the circuit court shall consider such factors as his net worth and the liquidity of his assets, his disposable income, and the number and ages of his dependents, and may consider such other factors as it may deem pertinent and material, but the fact that the accused has been released on bond shall not be determinative of the question of eligibility. The court shall advise such person of the penalties for giving false information and of the possibility of a civil suit for recovery of moneys advanced under this article for his defense.

If any attorney shall willfully give false information to the court with respect to his services or expenses he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars and may be imprisoned in the county jail not less than three months nor more than a year, or both fined and imprisoned.

§51-11-7. Recovery of amounts advanced; offense of making false statements, and penalty therefor.

To the extent that a person is financially able to pay for counsel and other services furnished him under this article, without undue hardship, the court having jurisdiction over him may order that he make such payment. If such person shall willfully give false information to the court with respect to his income or resources, or obligations, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or imprisoned in the county jail not less than three months nor more than one year, or both fined and imprisoned.
§51-11-8. Compensation of attorneys for services and expenses of defense; vouchers; order of approval by circuit court; payment.

1 In each case in which an attorney is assigned under the provisions of this article to perform legal services for a needy person, he shall be compensated for actual and necessary services rendered at the rate of twenty dollars per hour for work performed out of court, and at the rate of twenty-five dollars per hour for work performed in court, but the compensation for services shall not exceed one thousand dollars. Expenses of the attorney in rendering such services, including, but not limited to, necessary expenses for travel, transcripts, investigative services and expert witnesses, shall be reimbursed to a maximum of five hundred dollars, unless the attorney, for good cause shown to the court, shall have received advance approval to incur expenses for a larger sum.

2 The attorney shall present to the circuit court an itemized voucher for such services and expenses and an affidavit certifying the same to have been actually performed or incurred, which shall be forwarded to the director of the administrative office of the supreme court of appeals, with an order of the circuit court approving payment of the amount of the voucher or of such lesser sum to which the circuit court shall believe the attorney to be entitled.

3 Payment shall be made by the director of the administrative office of the supreme court of appeals from a fund entitled "Representation of needy persons fund," from appropriations made by the Legislature. Such fund shall not be part of the judicial account.

§51-11-9. Director of administrative office of supreme court of appeals; duties; expenses.

1 It shall be the duty of the director of the administrative office of the supreme court of appeals to administer the program of legal representation of needy persons established by this article, and to administer the fund created by this article.
The director shall serve without additional compensation but may employ such assistants, investigators, auditors, secretaries and other persons necessary to the effective, uniform and prudent administration of this article, and may incur such other expenses as may be necessary for such purpose. Such expenses shall be paid from the fund established by this article.

CHAPTER 83
(S. B. 11—By Mr. Steptoe)

[Passed March 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article four, chapter forty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to disclaimer of gifts under wills or property passing by intestacy; increasing time within which such disclaimer may be made from two to six months; allowing disclaimer in whole or in part.

Be it enacted by the Legislature of West Virginia:

That section three, article four, chapter forty-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. GENERAL PROVISIONS.

§42-4-3. Disclaimer of gifts under wills or property passing by intestacy.

Any devisee or legatee who is sui juris, shall have the right, within six months from the date on which the will is admitted to probate, to disclaim such devise or bequest in whole or in part. If the will be contested, or the order admitting it to probate be appealed from, such disclaimer may be made within six months of the final decision on such contest or appeal. The devise or bequest so disclaimed shall pass as the will directs where there is
a provision for disclaimer contained in the will making a
specific alternative disposition of such property, and, in
the absence of any such provision said devise or bequest
shall pass as if the person so disclaiming had immediately
predeceased the testator.

Any heir at law or distributee under the laws of
descent and distribution who is sui juris, shall have the
right, within six months of the date of death of the
decedent, to disclaim such real or personal property in
whole or in part. The property so disclaimed shall pass by
the laws of descent and distribution of this state as if the
person so disclaiming had immediately predeceased the
decedent.

Any such disclaimer shall be made by a writing signed
by the person so disclaiming and acknowledged in such
manner as would authorize a deed to be admitted to
record and shall be filed and recorded in the office of the
clerk of the county commission by which the will is
admitted to probate or, in the event of intestacy, in the
office of the clerk of the county commission in which the
decedent's estate is administered; and in either event,
such disclaimer shall be recorded with fiduciary orders
or probate documents, or both. Said gift or property so
disclaimed shall be considered as never having vested in
any manner whatsoever in the person so disclaiming.

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CHAPTER 84
(Com. Sub. for H. B. 806—By Mr. Damron and Mr. O'Neal)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, thirteen and fourteen,
article two, chapter forty-eight of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating to
divorce; adding additional grounds for divorce; shortening
times for abandonment and living separate and apart as grounds
for divorce; maintenance of spouse and children during pendency of action and clarifying instances when a divorce shall not be granted.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-14. When a divorce not to be granted.


1 (a) A divorce may be ordered:

2 (1) For adultery; or

3 (2) When either of the parties subsequent to the marriage has, in or out of this state, been convicted for the commission of a crime which is a felony, and such conviction has become final; or

4 (3) To the party abandoned, when either party willfully abandons or deserts the other for six months; or

5 (4) For cruel or inhuman treatment, or reasonable apprehension of bodily hurt, and false accusation of adultery or homosexuality by either party against the other shall be deemed cruel treatment within the meaning of this subdivision; cruel and inhuman treatment shall also be deemed to exist when the treatment by one spouse of another, or the conduct thereof, is such as to destroy or tend to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable and under no circumstances whatever shall it be necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce; or

6 (5) For habitual drunkenness of either party subsequent to the marriage; or
(6) For the addiction of either party, subsequent to the marriage, to the habitual use of any narcotic drug or drugs or dangerous drug or drugs as those terms are defined in this code; or

(7) Where the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, whether such separation was the voluntary act of one of the parties or by the mutual consent of the parties; and a plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party's obtaining a divorce on this ground. If alimony is sought under the provisions of section fifteen of this article, the court may inquire into the question of who is the party at fault and may award such alimony according to the right of the matter and such determination shall not affect the right of either party to obtain a divorce on this ground; or

(8) For permanent and incurable insanity. No divorce shall be granted on the ground of insanity unless such permanently incurable insane person shall have been confined in a mental hospital or other similar institution for a period of not less than three consecutive years next preceding the filing of the complaint; nor shall a divorce be granted on these grounds unless the court shall have heard competent medical testimony that such insanity is permanently incurable. The court granting a divorce under this subdivision may in its discretion order support and maintenance for such permanently incurable insane party by the other. Where an insane person, within the meaning of this section, is a plaintiff in an action for divorce or annulment, the defendant shall not enter a plea of recrimination which is based upon the insanity of the plaintiff; or

(9) For abuse of a child of the parties or of one of the parties or for neglect of a child for which the neglecting party has the legal responsibility. For purposes of this subdivision, "abuse" means any physical injury including, but not limited to, sexual molestation, or mental injury inflicted on such child; and "neglect" means willful failure to provide, by one of the parties who is legally responsible for the care and maintenance
of a child, the proper or necessary support, education as
required by law, or medical, surgical or other care necessary
for the well-being of a child. No divorce shall be granted
upon this ground except upon clear and convincing evidence
sufficient to justify permanently depriving the offending
party of his or her parental rights to the custody and control
of said abused or neglected child; or

(10) If one party to a marriage shall file a verified com-
plaint, for divorce, against the other, alleging that irreconcil-
able differences have arisen between the parties, and stating
the names of the dependent children of the parties or of either
of them, and if the defendant shall file a verified answer to
the complaint and admit or aver that irreconcilable differences
exist between the parties, the court may grant a divorce, but
no order of divorce entered pursuant to the provisions of this
subdivision shall be entered unless sixty days shall have
elapsed after the filing of the complaint. In such case no
corroboration of the grounds for divorce shall be required.
The court may make such order for alimony, for the custody,
support and maintenance of children, and for visitation rights
as may be just and equitable, or may approve, modify, or
reject any agreement between the parties pertaining to alimony,
the custody, maintenance and support of children, or visitation
rights; such provision shall not affect the right to obtain a
divorce upon the ground of irreconcilable differences between
the parties to a marriage.

(b) It shall not be necessary to allege the facts constituting
the ground or grounds relied upon, and a complaint or counter
complaint shall be sufficient if any one of the grounds is
alleged in the language of such ground as set forth in subsec-
tion (a) of this section.

§48-2-13. Maintenance of spouse and children pendente lite; con-
trol of property.

The court may, at any time after commencement of the
action and reasonable notice to the other party, make any order
that may be proper to compel either party to pay any sum
necessary for the maintenance of the other party and to enable
him or her to carry on or defend the action in the trial
court and on appeal should one be taken, or to prevent either party from imposing any restraint on the personal liberty of the other, or to provide for the custody and maintenance of the minor children of the parties, during the pendency of the action, or to preserve the estate of either party, so that it be forthcoming to meet any order which may be made in the action, or to compel either party to give security to abide such order, or to compel either party to deliver to the other any of his or her separate estate which may be in the possession or control of the other, or to prevent either from interfering with the separate estate of the other, or to grant exclusive use and occupancy of the marital home to one of the parties during the pendency of the action.

At any time after a party is abandoned or deserted or after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation, the party abandoned or either party living separate and apart may apply for relief pursuant to this section by instituting an action for divorce as provided in section ten of this article, alleging that the plaintiff reasonably believes that the period of abandonment or of living separate and apart will continue for the period prescribed by the applicable provisions of section four of this article. If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provision of section four of this article, the divorce action may proceed to a hearing as provided in sections twenty-four and twenty-five of this article without a new complaint being filed: Provided, That the party desiring to proceed to a hearing shall give the opposing party at least twenty days' notice of the time, place and purpose of the hearing, such notice to be served in the same manner as a complaint, regardless of whether the opposing party has appeared or answered.

§48-2-14. When a divorce not to be granted.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the action; nor shall a divorce be granted for any cause when it appears that the offense
charged has been condoned, or was committed by the procurement or connivance of the plaintiff, or that the plaintiff has, within three years before the institution of action, been guilty of adultery not condoned, but such exception shall not be applicable to causes of action brought pursuant to subdivisions (7) and (10), subsection (a), section four of this article. The defense of collusion shall not be pleaded as a bar to a divorce.

CHAPTER 85

(S. B. 563—By Mr. Brotherton, Mr. President, Mr. Palumbo and Mr. Hamilton)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal article nine, chapter five; to amend article one, chapter five by adding thereto a new section, designated section twenty-seven; to amend and reenact sections two and three, article seventeen, chapter five; to amend and reenact section three, article thirteen, chapter seven; to amend and reenact sections one and two, article twenty-six, chapter eight; to amend and reenact sections two and eight, article eight, chapter twenty-one; to amend and reenact section one, article seventeen, chapter twenty-nine; and to amend and reenact section four, article eighteen, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to providing a statement of legislative policy and purpose; creating an office of economic and community development in the office of the governor; providing for the appointment of a director of such office; specifying effective date; providing for functions, duties, responsibilities, programs and personnel; abolishing former department of commerce; providing for annual reports; providing for transferring of records and property of former department of commerce; providing for continuation of contracts and obligations; relating to the composition of the West Virginia commission on energy, economy and environment; providing for the
governor to appoint citizen representative members of the commission on energy, economy and environment; relating to the duties and composition of the economic opportunity advisory committee; providing for one representative of the commission on aging to serve on the economic opportunity advisory committee; relating to the representation on interstate regional planning commissions and relating to approval for an area's inclusion in an interstate region; relating to membership on and cooperation with the West Virginia commission on manpower, technology and training; relating to the arts and humanities council; and relating to the board of directors of the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Officers, Programs, Etc.
on Energy, Economy and Environment; West Virginia Beautification Commission.

7. County Commissions and Officers.

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.


29. Miscellaneous Boards and Officers.


CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

Article

1. The Governor.

17. West Virginia Commission on Energy, Economy and Environment.

ARTICLE 1. THE GOVERNOR.

§5-1-27. Creation of office of economic and community development; appointment and duties of director; department of commerce abolished; records and property of department of commerce transferred.

1 Because of the importance to this state of a unified and coordinated effort toward total and complete development of its communities in order to provide for a better quality of life for its citizens through improvement of government services and sound economic growth, it is hereby found and declared to be necessary: 1 (1) To create an office of economic and community development, within the office of the governor; (2) to confer upon the governor and the office the powers provided herein; and (3) to provide for the rendering of mutual economic and community devel-
ECONOMIC AND COMMUNITY DEVELOPMENT

Effective the first day of July, one thousand nine hundred seventy-seven, there is hereby created within the office of the governor a new office of economic and community development.

A director of the office of economic and community development, hereinafter called the director, shall be appointed by the governor.

The director shall have general administrative supervision over the affairs of the office, and may employ such personnel and make such expenditures within the appropriation or available funds therefor, as may be necessary to carry out the purposes of the office.

The director shall, prior to the thirty-first day of January of each year, submit an annual report of activities and expenditures to the governor, which report shall be transmitted at the same time to members of the Legislature and shall be made available to the public.

The director shall promulgate rules and regulations to carry out the purposes and programs of the office, to include generally the programs available, and the procedure and eligibility of application relating to assistance under such programs; these rules and regulations shall not be subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the secretary of state.

The West Virginia department of commerce is hereby abolished and the governor shall, by executive order, transfer to the office of economic and community development or other state agencies, the functions, personnel and property, with any liens relative thereto, of the department of commerce, as he may deem necessary.

All books, papers, maps, charts, plans, literature and
other records and all equipment and property in the
possession of the department of commerce or of any
officer or employee thereof, upon the effective date of
this section shall be turned over or delivered to the office
of the governor.

All existing contracts and obligations of the depart-
ment of commerce shall remain in full force and effect
and shall be performed by the governor.

ARTICLE 17. WEST VIRGINIA COMMISSION ON ENERGY,
ECONOMY AND ENVIRONMENT.

§5-17-2. Composition of commission.
§5-17-3. Terms of citizen representative members; vacancies.

§5-17-2. Composition of commission.

1 The "West Virginia Commission on Energy, Economy
2 and Environment," heretofore created and hereinafter
3 referred to as the "commission," is hereby continued.
4 The commission shall consist of nineteen members, as
5 follows: Nineteen members, herein referred to as govern-
6 ment representatives, who shall be the tax commissioner,
7 the commissioner of banking, the finance and adminis-
8 tration commissioner, the oil and gas conservation com-
9 missioner, the director of the department of mines, the
director of the department of natural resources, the
director of the geological and economic survey com-
misson, the director of the air pollution control com-
misson, the chairman of the public service commission,
a representative from the board of regents, and the gov-

§5-17-3. Terms of citizen representative members; vacancies.
1 The citizen representative members shall be appointed
2 for terms of one year each, and shall serve until their
successors have been appointed and have qualified. Any vacancy as to a citizen representative member shall be filled by appointment by the governor for the unexpired term of such citizen representative member.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-3. Economic opportunity advisory committee.

To assist in the promotion and development of community action program organizations, and other phases of the federal Economic Opportunity Act of 1964, the governor may consult with and request reports from a governor's economic opportunity advisory committee, on which the governor, or his designated representative, shall sit as chairman.

The economic opportunity advisory committee shall consist of:

(a) The governor,
(b) The state superintendent of schools,
(c) The commissioner of agriculture,
(d) The commissioner of employment security,
(e) The commissioner of welfare,
(f) The commissioner of banking,
(g) The commissioner of labor,
(h) The director of the department of natural resources,
(i) The commissioner of the department of highways,
(j) The director of mental health,
(k) The director of the department of health,
(l) The president of the Senate of West Virginia,
(m) The speaker of the House of Delegates of West Virginia,
(n) The director of the division of vocational rehabilitation,
(o) One representative of the commission on aging,
(p) At least one representative, who shall be desig-
nated by the board of regents, from the state-supported
colleges and universities of West Virginia, or their desig-
nated representatives, temporary or permanent, and
such other members as the governor may appoint or the
committee may select by affirmative vote of a majority
of the members present and voting.

The committee shall meet upon call of the chairman.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND
COUNTRIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 26. INTERGOVERNMENTAL RELATIONS—INTERSTATE
REGIONAL PLANNING COMMISSIONS.

§8-26-1. Creation of commission; state may be ex officio member.
§8-26-2. "Region" defined.

§8-26-1. Creation of commission; state may be ex officio
member.

Any municipality or county or any two or more munici-
palities or counties, or any combination thereof, may
cooperate with the political subdivisions of other states
bordering on this state for the purpose of creating, by
an agreement, an interstate regional planning commis-
sion, whenever such political subdivisions comprise a
region which would benefit from cooperative planning.
The agreement entered into by the several political sub-
divisions shall specify the extent of the region included
within the jurisdiction of the interstate regional planning
commission; and shall fix the membership comprising
the commission, the terms of office and method of ap-
pointment of the members thereof, the duration of the
commission, the method for terminating the commission,
the method of disposal of all property belonging to the
commission, the distribution of the proceeds, and the
apportionment of the costs of maintaining the planning
commission to be borne respectively by the various politi-
cal subdivisions included within the agreement, such
apportionment to be based on the population of the
various participating political subdivisions. Any such
agreement shall be executed on behalf of any munici-
The state of West Virginia may be an ex officio member of any such interstate regional planning commission formed under the provisions of this article. The governor or a representative designated by him shall represent the state in the deliberations of any interstate regional planning commission or its agencies or instrumentalities but this state shall not be a voting member of any interstate regional planning commission or any agency or instrumentality thereof.

§8-26-2. “Region” defined.

1 The term “region,” as used in this article, shall mean a specific metropolitan interstate area designated by the proper federal agency pursuant to the “Demonstration Cities and Metropolitan Development Act of 1966” and any amendments thereto, as well as all other interstate areas which would benefit from cooperative planning. Before any area in this state is included within an interstate region for interstate planning, it shall be approved by the governor: Provided, That no territory within any municipality or county not having a planning commission shall be included in an interstate area.

CHAPTER 21. LABOR.

ARTICLE 8. WEST VIRGINIA COMMISSION ON MANPOWER, TECHNOLOGY AND TRAINING.

§21-8-2. Composition of commission.

1 The West Virginia commission on manpower, technology and training is continued. The commission shall consist of fifteen members to be appointed by the governor by and with the advice and consent of the Senate and seven ex officio members. The governor shall appoint five members who represent the employer interest of the state, five members who represent labor organizations, and five members who represent the general public. The ex officio members shall be the commissioners of the
10 state departments of agriculture, employment security,  
11 labor and welfare, and the state directors of mines, the  
12 division of vocational education and the division of voca-  
13 tional rehabilitation.

§21-8-8. Studies by other departments.

1 The state departments of employment security, mines,  
2 labor and education shall cooperate with the commission  
3 in conducting studies, in making surveys and in per-  
4 forming similar activities whenever such is authorized  
5 under the laws, rules and regulations under which said  
6 departments operate.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 17. THE WEST VIRGINIA ARTS AND HUMANITIES  
COUNCIL.

§29-17-1. Composition; appointment and terms of members;  
organization; reimbursement for expenses.

1 There is continued an arts and humanities council to  
2 be known as “the West Virginia arts and humanities  
3 council,” to consist of fifteen members, to be appointed  
4 by the governor, by and with the advice and consent of  
5 the Senate, from among the citizens of the state. The  
6 members of the council shall elect the council chairman  
7 and such other officers as it deems necessary. The mem-  
8 bers shall serve a term beginning the first day of July,  
9 one thousand nine hundred sixty-seven, five to serve for  
10 a term of one year, five to serve for a term of two years,  
11 and the remaining five to serve for a term of three  
12 years. The successors of the members initially appointed  
13 as provided herein, shall be appointed for a term of  
14 three years each in the same manner as the members  
15 initially appointed under this article, except that any  
16 person appointed to fill a vacancy occurring prior to the  
17 expiration of the term for which his predecessor was  
18 appointed shall be appointed for the remainder of such  
19 term. Each member shall serve until the appointment  
20 and qualification of his successor.

21 No member shall receive any salary for his services,  
22 but each shall be reimbursed for actual and necessary
expenses incurred by him in the performance of his duties.

CHAPTER 31. CORPORATIONS.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

1 (a) There is continued as a governmental instrumentality of the state of West Virginia, a public body corporate to be known as the West Virginia housing development fund.

(b) The housing development fund is created and established to serve a public corporate purpose and to act for the public benefit and as a governmental instrumentality of the state of West Virginia, to act on behalf of the state and its people in improving and otherwise promoting their health, welfare and prosperity.

(c) The housing development fund shall be governed by a board of directors, consisting of eleven members, four of whom shall be the governor or his designated representative, the attorney general, the secretary of state, and the state treasurer, as public directors, and seven of whom shall be chosen from the general public residing in the state, as private directors. No more than four of the private directors shall be from the same political party.

(d) Upon organization of the housing development fund, the governor shall appoint, by and with the advice and consent of the Senate, the seven private directors to take office and to exercise all powers thereof immediately, with two each appointed for terms of two years and three years, and with three each appointed for terms of four years, respectively, as the governor shall designate; at the expiration of said terms and for all succeeding terms, the governor shall appoint a successor to the office of private director for a term of four years in each case.
(e) In cases of any vacancy in the office of a private
director, such vacancy shall be filled by appointment by
the governor for the unexpired term.

(f) The governor may remove any private director
whom he may appoint in case of incompetency, neglect
of duty, gross immorality, or malfeasance in office; and
he may declare his office vacant and may appoint a
person for such vacancy as provided in other cases of
vacancy.

(g) The chairman and vice chairman of the board of
directors shall be designated by the governor from
among the directors.

(h) Six members of the board of directors shall con-
stitute a quorum. No vacancy in the membership of the
board shall impair the right of a quorum to exercise all
the rights and perform all the duties of the board of
directors.

(i) No action shall be taken by the board of directors
except upon the affirmative vote of at least six of the
directors.

(j) The directors, including the chairman, vice chair-
man and the treasurer of the board of directors, and the
secretary of the board of directors, shall receive no com-
ensation for their services but shall be entitled to their
reasonable and necessary expenses actually incurred in
discharging their duties under this article.

CHAPTER 86

(Com. Sub. for H. B. 1392—By Mr. Farley and Mr. Albright)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, by
adding thereto a new section, designated section five-a; and to amend article twenty-six of said chapter by adding thereto a new section, designated section eight-b, all relating to requiring the board of regents and the state board of education to deliver to the legislative rule-making review committee a copy of any proposed rule to be promulgated, adopted, amended or repealed; rule defined.

Be it enacted by the Legislature of West Virginia:

That article two, 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 five-a; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section eight-b, all to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-5a. Board rules to be filed with Legislature.

1 The state board of education shall file a copy of any rule that it proposes to promulgate, adopt, amend or repeal under the authority of the constitution or of this chapter with the legislative rule-making review committee created pursuant to section eleven, article three, chapter twenty-nine-a. “Rule,” as used herein, means a regulation, standard, statement of policy, or interpretation of general application and future effect.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-8b. Board rules to be filed with Legislature.

1 The board of regents shall file a copy of any rule that it proposes to promulgate, adopt, amend or repeal under the authority of this article with the legislative rule-making review committee created pursuant to section eleven, article three, chapter twenty-nine-a. “Rule,” as used herein, means a regulation, standard, statement of policy, or interpretation of general application and future effect.
AN ACT to amend and reenact section two, article two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to education; area vocational program; and providing that the West Virginia board of education has authority to delegate its operational power for multi-county vocational centers to an administrative council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-2. State board of vocational education; authority to establish programs, etc.; division of vocational education established; rules and regulations; director.

1 For the purpose of this article, the state board of education is designated as the state board of vocational education serving and meeting as the sole agency responsible for the administration of vocational education and for supervision of the administration thereof by local educational agencies and is hereby authorized and empowered to establish, operate and maintain area vocational educational programs including the acquisition by purchase, lease, gift or otherwise of necessary lands and the construction, expansion, remodeling, alteration and equipping of necessary buildings for the purpose of operating and conducting educational training centers. The state board of vocational education may delegate for such period of time as it may determine its operational authority for multi-county vocational centers to an administrative council composed of equal representation from each of the participating county boards of
education, the superintendent of schools from each participating county, and the state director of vocational education or his representative. To this end, there is hereby expressly established in the state board of education a division of vocational education which shall establish the area or areas in which the programs are to be conducted and shall have authority to promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, rules and regulations necessary to carry out the provisions of this article. The administration and supervision of the area vocational educational programs shall be administered by the director of the division of vocational education.

CHAPTER 88

(S. B. 580—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to community education in West Virginia; setting forth certain legislative findings and a legislative purpose; providing a definition of "community education"; authorizing the state board of education to promote the implementation and operation of community education programs and to promulgate rules and regulations incident thereto; and authorizing county boards of education to coordinate community education programs.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-d, to read as follows:
ARTICLE 2D. COMMUNITY EDUCATION.

§18-2D-1. Legislative findings and purpose.

The Legislature hereby finds and declares that the public school system in any community is most effective when it involves and serves all of the people of that community and not just the kindergarten, elementary and secondary school students of that community; and that community education promotes a more efficient use of community facilities through an extension of buildings, personnel and equipment. In recognition of these findings and declarations, it is hereby declared to be the purpose of this article to facilitate the providing of educational, recreational, cultural, social, health and other community services, in accordance with the needs, interests and concerns of the community, through the establishment of community education programs, in cooperation with other governmental agencies and community service organizations.

§18-2D-2. Definition.

For the purpose of this article "community education" means a process by which public facilities in a community are utilized as community centers operated in conjunction with governmental agencies and community service organizations to provide educational, including, but not limited to, driver education courses, recreational, cultural, social, health and other community services for all persons in such community in accordance with the needs, interests and concerns of such community.

§18-2D-3. Implementation and operation of programs.

The state board of education shall promote the implementation and operation of community education programs throughout the state, and shall, by rules and regulations promulgated pursuant to the provisions of chapter twenty-nine-a of this code, provide for the government and supervision of such programs.
§18-2D-4. County boards of education authorized to participate.

1 Each county board of education in this state is hereby authorized, but not obligated, to coordinate a community education program within its county.

CHAPTER 89

(Com. Sub. for S. B. 399—By Mr. Brotherton, Mr. President and Mr. Susman)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation and operation of a coal and energy research bureau at West Virginia University; investigations and research concerning the mining, transporting and use of coal and developing new uses and markets for coal, other energy fuels and allied minerals; mine safety and development of the mineral industry; creation of a new advisory committee on coal and energy research.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA UNIVERSITY.

§18-11-9a. Coal and energy research bureau; advisory committee on coal and energy research.

1 The coal research bureau, heretofore established at West Virginia University shall be continued and be designated as the coal and energy research bureau. Subject to such rules and regulations as may be prescribed by the board of regents, it shall conduct investigations and research into the development of new, safer and more economical ways to mine, transport and use coal, consider environmental problems created through the use and production
of coal, develop new uses and markets for coal, other
energy fuels and allied minerals, develop new methods of
combustion of coal and new uses of coal in the chemical
industry, develop greater efficiency and conservation in
the mining and mineral industries, and make such tests
and investigations as may be required by the department
of mines in the prosecution of its work. It shall conduct
such experiments, tests and activities as will promote the
development of the mineral industries in the state, and
shall cooperate with the department of mines in the in-
vestigation of the causes of mine disasters and common
mine accidents. It shall also initiate and carry on a pro-
gram of research designed to discover and develop new
uses and new processes for the utilization of West Virginia
coal and other mineral resources.

The costs of financing the research program shall be
paid from any funds appropriated by the Legislature for
the purpose, from any grants or gifts received by the
university, and from any income received for research
carried on under contract with any federal or state agency,
or with any private corporation, association or individual.
Within the limits of available funds, research activities
may be conducted by the university itself, or under
contract with some other research group, corporation or
individual.

In order to avoid wasteful duplication, the research pro-
gram shall be carried on in close cooperation with the
federal bureau of mines, the federal energy research and
development agency, the Morgantown energy research
center, the state department of mines, the planning and
research division of the state department of commerce,
and other appropriate agencies, research organizations
and establishments. The university shall from time to
time, but at least annually, publish and distribute to the
governor, the Legislature, and to interested persons and
agencies reports of its activities, findings and recommen-
dations.

The “advisory committee on coal research,” heretofore
existing, is abolished and a new “advisory committee on
coal and energy research” is hereby created to advise and counsel with the university concerning the programs of the coal and energy research bureau and to make recommendations to the board of regents, the governor and the Legislature concerning the support of the programs of the coal and energy research bureau.

The advisory committee on coal and energy research shall consist of at least nine appointed members, and the president of the Senate or his designate, the speaker of the House of Delegates or his designate, and the president of the university or his designate as ex officio members. The chairman of the committee shall be the president of the university or his designate. Appointed members shall be specialists or experts in the various areas of energy production, conversion and utilization. Three members shall be appointed by the president of the Senate, three members shall be appointed by the speaker of the House of Delegates, and three members shall be appointed by the governor. Except for the original appointments, each official shall make his appointments for overlapping terms of three years and until such members’ respective successors have been appointed and qualified. For the purpose of the original appointments, the president of the Senate, the speaker of the House of Delegates and the governor shall appoint one member each for a term of one year and until his successor has been appointed and qualified, one member each for a term of two years and until his successor has been appointed and qualified, and one member each for a term of three years and until his successor has been appointed and qualified. Members may be reappointed for any number of terms. Vacancies shall be filled by appointment for the unexpired term by the official who appointed such member for the term vacated. To these members may be added specialists as deemed desirable and appropriate by a majority vote of the committee.

The committee shall meet at least semiannually upon the call of the chairman. The members shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as such members.
AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding there­to a new article, designated article twelve-b, relating to the issuance of revenue bonds of the West Virginia board of regents; authorizing board of regents to issue revenue bonds for certain capital improvements; directing board to issue bonds for specified purposes within certain time; providing for payment of relocation costs in connection with acquisition of private property for certain projects; providing for the creation of a state system tuition fee special capital improvements fund in the state treasury; authorizing transfer of moneys from preexisting capital improvements funds to state system tuition fee special capital improvements fund; requiring payment of tuition fees into such fund; authorizing board of regents to fix, establish, main­tain and collect tuition fees from students at state institutions of higher education; authorizing pledge of moneys in such fund as security for revenue bonds; authorizing board to finance projects on a cash basis; providing for the method and manner by which revenue bonds are to be issued and executed; providing for the issuance of revenue refunding bonds; authorizing the issuance of bonds for combined purposes; providing that the bonds are negotiable instruments; authorizing the board of regents to enter into trust agreements for the bondholders; pro­viding for payments to the state sinking fund commission; pro­viding that bonds are not obligations of the state; providing for such bonds to be exempt from taxation by the state of West Vir­ginia, or any county, school district, municipality, or political subdivi­sion thereof; making attorney general bond counsel; and providing that the provisions of the act supersede provisions of any other law or laws in conflict therewith.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding there­to a new article, designated article twelve-b, to read as follows:
ARTICLE 12B. REVENUE BONDS FOR STATE INSTITUTIONS OF HIGHER EDUCATION—CAPITAL IMPROVEMENTS ON SYSTEM BASIS.

§18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.

§18-12B-2. State system tuition fee special capital improvements fund in state treasury; collections to be paid into special fund; authority of board of regents to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.

§18-12B-3. Board of regents to fix and collect fees.

§18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

§18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

§18-12B-6. Bonds may be issued for combined purposes.

§18-12B-7. Bonds shall be negotiable instruments.

§18-12B-8. Trust agreements for holders of bonds.


§18-12B-10. Credit of state not pledged.

§18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.

§18-12B-12. Powers of board are supplemental; conflicting laws superseded.

§18-12B-1. Board of regents authorized to issue revenue bonds for certain capital improvements; payment of relocation costs.

The West Virginia board of regents shall have authority, as provided in this article, to issue revenue bonds of the state from time to time, either to finance the cost of major renovations, repairs and safety upgrading and providing new capital improvements consisting of facilities, buildings and structures, for those state institutions of higher education as determined by resolution of the board of regents, including any college, university or community college under its supervision, management and control, or to refund, at the discretion of the board of regents, bonds issued and outstanding under and pursuant to the provisions of this article or article eleven-b of this chapter, or both. Such major renovations, repairs and safety upgrading and capital improvements may, in each case, include land for current or future use in connection therewith and equipment and machinery and other similar items essential or convenient in connection with the foregoing but shall not include such items as books, fuel, supplies or other items which are customarily deemed to result in a current operating
charge. The principal of, interest and redemption premium, if any, on such bonds shall be payable solely from the special fund herein provided for such payment. The costs of any such major renovations, repairs and safety upgrading and capital improvements shall include the cost of acquisition of land, the construction and acquisition of any such major renovations, repairs and safety upgrading and capital improvements and equipment and machinery therefor, and the provision of roads, utilities, and other services necessary, appurtenant or incidental to the foregoing; and shall also include all other charges or expenses necessary, appurtenant or incidental to the construction, acquisition, and financing including, but not limited to, debt service reserve requirements and capitalized interest, and placing in operation of any such major renovations, repairs and safety upgrading and capital improvements:

Provided, That from time to time but not later than the first day of March, one thousand nine hundred seventy-eight, the board shall issue and sell bonds pursuant to this article in an amount which, when combined with cash available under the provisions of section two of this article, will be sufficient to finance the costs of the following purposes and projects:

(1) Refunding of all bonds issued and outstanding under and pursuant to the provisions of article eleven-b of this chapter;

(2) A building to house the music, arts and theatre programs at Shepherd College, at a cost not to exceed two million five hundred thousand dollars;

(3) A field house at West Liberty State College at a cost not to exceed two million seven hundred thousand dollars;

(4) A shop and laboratory building at West Virginia State College at a cost not to exceed two million six hundred thousand dollars;

(5) A multipurpose physical education facility at Marshall University, at a cost not to exceed eighteen million dollars;

(6) A new football stadium at West Virginia University (at a different location than the existing stadium) at a cost not to exceed twenty million dollars; and

(7) An all-purpose shell building for sports and physical education at West Virginia University, at a cost not to exceed four million five hundred thousand dollars.
In the event that private real property is acquired in connection with the above enumerated projects, the board shall reimburse individuals, families and business concerns for relocation costs incurred as a consequence of being displaced by such acquisition. With respect to payment of such relocation costs, the board shall follow the same procedure and be subject to the same limitations as required for the commissioner of highways under section twenty, article two-a, chapter seventeen of this code and regulations promulgated pursuant thereto, but in no event shall such payments exceed the sum of three hundred dollars for individuals and families and two thousand five hundred dollars for business concerns.

§18-12B-2. State system tuition fee special capital improvements fund in state treasury; collections to be paid into special fund; authority of board of regents to pledge such collections as security for revenue bonds; authority of board to finance projects on a cash basis.

There is created in the state treasury a state system tuition fee special capital improvements fund to be expended by the board of regents for the benefit of the state institutions of higher education, which shall include any college, university or community college under its supervision, management and control.

On and after the first day of July, one thousand nine hundred seventy-seven, the board of regents may periodically transfer from the special nonrevolving West Virginia University capital improvements fund created in the state treasury pursuant to the provisions of article eleven-b of this chapter and from the special nonrevolving Marshall University capital improvements fund created in the state treasury pursuant to the provisions of article twelve-a of this chapter, into the state system tuition fee special capital improvements fund moneys in excess of the amount pledged for the payment of the principal of, interest and redemption premium, if any, on any revenue bonds or revenue refunding bonds issued pursuant to such articles eleven-b or twelve-a prior to the first day of July, one thousand nine hundred seventy-seven. Said Marshall University capital improvements fund is hereby continued notwithstanding the retirement of outstanding bonds
issued pursuant to such article twelve-a, but on and after the first day of July, one thousand nine hundred seventy-seven, no bonds shall be issued pursuant to article twelve-a, nor shall any moneys be expended (unless the board of regents shall by board action have made a commitment with respect thereto) pursuant to such article twelve-a. On and after the first day of July, one thousand nine hundred seventy-seven there shall be paid directly into such state system tuition fee special capital improvements fund subject to the prior lien and pledge, if any, of outstanding bonds issued pursuant to the provisions of articles eleven-b and twelve-a of this chapter all tuition fees collected under the provisions of section one, article twenty-four, chapter eighteen of this code, from students at West Virginia and Marshall Universities; and on and after the first day of July, one thousand nine hundred seventy-eight, in addition to said fees from students at West Virginia University and Marshall University (and subject to said prior lien and pledge, if any) there shall be paid directly into such state system tuition fee special capital improvements fund all tuition fees collected under the provisions of section one, article twenty-four, chapter eighteen of this code, from students at all other state institutions of higher education which are under the supervision, management and control of the board of regents: Provided, that tuition fees from students at community colleges shall not be paid into the state system tuition fee special capital improvements fund unless the board shall otherwise determine by resolution.

The board of regents shall have authority to pledge all or such part of the revenues and tuition fees paid into the state system tuition fee special capital improvements fund as may be needed to meet the requirements of any revenue bond issue or issues authorized by this article, including the payment of principal of, interest and redemption premium, if any, on such revenue bonds, the establishing and maintaining of a reserve fund or funds for the payment of the principal of, interest and redemption premium, if any, on such revenue bond issue or issues when other moneys pledged may be insufficient therefor and including such additional protective pledge of revenues and fees as the board of regents in its discretion may provide by resolution authorizing the issue of such bonds and in any
trust agreement made in connection therewith, and the board of regents may further provide in such resolution and in such trust agreement, for such priorities on the revenues and fees paid into such state system tuition fee special capital improvements fund as may be necessary for the protection of the prior rights of the holders of bonds issued at different times under the provisions of this article.

Any balance remaining in the state system tuition fee special capital improvements fund after the board of regents has issued bonds authorized by this article, and after the requirements of all funds including reserve funds established in connection with the bonds issued pursuant to this article have been satisfied, may be used (i) for the redemption of any of the outstanding bonds issued hereunder which by their terms are then redeemable, or for the purchase of such bonds at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued or (ii) for any lawful purpose for which the board of regents may expend funds.

The board of regents, in its discretion, may use the moneys in such state system tuition fee special capital improvements fund to finance the cost of projects and purposes on a cash basis. Any pledge of moneys in such fund for revenue bonds shall be a prior and superior charge on such fund over the use of any of the moneys in such fund to pay for the cost of any project or purpose on a cash basis: Provided, That except for the projects and purposes expressly enumerated in section one of this article, any expenditures from such fund, other than for the retirement of revenue bonds, may only be made by the board to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in such order or priority as shall have been agreed upon by the board of regents and presented to the governor for inclusion in the annual budget bill, and only with the approval of the Legislature as indicated by direct appropriation for the purpose.

§18-12B-3. Board of regents to fix and collect fees.

The board of regents shall fix, establish, maintain and collect
the tuition fees provided for in section one, article twenty-four, chapter eighteen of this code, from students at all state institutions of higher education other than (unless the board of regents shall otherwise determine by resolution) tuition fees from students attending community colleges, in amounts at least sufficient, at all times, after depositing (subject to, or until termination of, the lien and pledge referred to in section two of this article) in the special non-revolving Marshall University capital improvements fund, and the special non-revolving West Virginia University capital improvements fund referred to in section two of this article such tuition fees as are now required to be deposited therein pursuant to section one, article twenty-four, chapter eighteen of this code, to provide revenues for deposit in the state system tuition fee special capital improvements fund which are adequate to pay the principal of, interest and redemption premium, if any, on the bonds authorized to be issued pursuant to this article as the same mature and become due and to make all reserve and other payments to be required by the proceedings which authorize such bonds, and to provide any additional protective pledge of revenues and fees and reserve or other payments as the board of regents may in its discretion require by the resolution authorizing any issue of bonds pursuant to this article and any trust agreement made in connection therewith, and to make all other payments required by this article or any such proceedings, resolutions or trust agreements.

18-12B-4. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.

The issuance of revenue bonds under the provisions of this article shall be authorized from time to time by resolution or resolutions of the board of regents, which shall set forth the proposed major renovations, repairs and safety upgrading and capital improvements authorized by section one of this article; and shall provide for the issuance of bonds in amounts sufficient, when sold as hereinafter provided, to provide moneys deemed by the board of regents sufficient to pay such costs, less the amounts of any other funds available for said costs from any other moneys of the board of regents available therefor or from any appropriation, grant or gift
therefor. Such resolution shall prescribe the rights and duties
of the bondholders and the board of regents, and for such
purpose may prescribe the form of the trust agreement here¬
inafter referred to. The bonds may be issued from time to
time, in such amounts, shall be of such series, bear such
date or dates, mature at such time or times not exceeding
forty years from their respective dates, bear interest at such
rate or rates; be in such denominations; be in such form,
either coupon or registered, carrying such registration, ex¬
changeability and interchangeability privileges; be payable in
such medium of payment and at such place or places within
or without the state; be subject to such terms of redemption at
such prices not exceeding one hundred five percent of the
principal amount thereof; and be entitled to such priorities
on the revenues and fees paid into the state system tuition
fee special capital improvements fund as may be provided
in the resolution authorizing the issuance of the bonds or in
any trust agreement made in connection therewith. The bonds
shall be signed by the governor, and by the president or
vice president of the board of regents, under the great seal
of the state, attested by the secretary of state, and the coupons
attached thereto shall bear the facsimile signature of the
president or vice president of the board of regents. In case any
of the officers whose signatures appear on the bonds or
coupons cease to be such officers before the delivery of such
bonds, such signatures shall nevertheless be valid and suffi¬
cient for all purposes the same as if such officers had remained
in office until such delivery. Such revenue bonds shall be
sold in such manner as the board of regents may determine
to be for the best interests of the state.

Any pledge of funds and fees for such revenue bonds
made by the board of regents shall be valid and binding
between the parties from the time the pledge is made; and
the funds so pledged shall immediately be subject to the
lien of such pledge without any further physical delivery
thereof or further act. The lien of such pledge shall be
valid and binding against all parties having claims of any
kind in tort, contract or otherwise, irrespective of whether
such parties have notice of the lien of such pledge, and such
pledge shall be a prior and superior charge over any other use of such funds so pledged.

The proceeds of such bonds shall be used solely for the payment of the cost of those major renovations, repairs and safety upgrading and capital improvements as generally and specifically set forth in section one of this article, and shall be deposited in the state treasury in a special fund to be disbursed as provided by law for the disbursement of any other state funds. If the proceeds of such bonds, by error in calculations or otherwise, shall be less than the cost of such major renovations, repairs and safety upgrading and capital improvements, additional bonds may in like manner be issued to provide the amount of the deficiency; and unless otherwise provided for in the resolution or trust agreement hereinafter mentioned, such additional bonds shall be deemed to be of the same issue, and shall be entitled to payment from the same fund, without preference or priority, as the bonds before issued for major renovations, repairs and safety upgrading and capital improvements. If the proceeds of bonds issued for such major renovations, repairs and safety upgrading and capital improvements shall exceed the cost thereof, the surplus may be used for such other capital improvements as the board of regents may determine or in such other manner as the resolution authorizing such bonds may provide. Prior to the preparation of definitive bonds, the board may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of such definitive bonds. The term "cost," as used in this section, shall be deemed to include all of the items contemplated by the use of that term in section one of this article.

After the issuance of any of such revenue bonds, the tuition fees at the state institutions of higher education pledged therefor shall not be reduced as long as any of such revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the resolution, trust agreement or other proceedings under which such revenue bonds were issued.

Such revenue bonds and the revenue refunding bonds, and bonds issued for combined purposes shall, together with the interest thereon, be exempt from all taxation by the state of
§18-12B-5. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.

The issuance of revenue refunding bonds under the provisions of this article shall be authorized by resolution of the board of regents and shall otherwise be subject to the limitations, conditions and provisions of section four of this article. Such revenue refunding bonds may be issued in an amount at the option of the board of regents sufficient to pay either in full or together with interest earned on the investment of the proceeds thereof, whether or not at the time of the issuance of the revenue refunding bonds the hereafter mentioned bonds are payable or callable for optional redemption, (1) the principal of any outstanding bonds heretofore issued pursuant to the provisions of article eleven-b of this chapter or this article (hereinafter referred to as the "outstanding bonds"); (2) the redemption premium, if any, on such outstanding bonds or the prior redemption thereof; (3) the interest due and payable on such outstanding bonds to and including the first date upon which said outstanding bonds are callable prior to maturity, not exceeding, however, ten years from the date of issuance of such revenue refunding bonds, or the dates upon which the principal of said outstanding bonds mature before such first date on which the same are callable prior to maturity, including any interest theretofore accrued and unpaid; and (4) all expenses of the issuance and sale of said revenue refunding bonds, including all necessary financial and legal expenses, and also including the creation of initial debt service reserve funds. Any moneys in funds pledged with respect to the outstanding bonds may be used for any or all of the purposes stated in (1), (2), (3) and (4) above or may be deposited in a sinking fund or reserve fund or other funds for the issue of bonds which have been issued wholly or in part for the purpose of such refunding. Such amount of the proceeds of the revenue refunding bonds as shall be sufficient for the payment of the principal of, interest and redemption premium, if any, on such outstanding bonds which will not be immediately due and payable shall be deposited in trust, for
the sole purpose of making such payments, with the treasurer of the state of West Virginia or the state sinking fund commission. Any of the moneys so deposited in trust may, prior to the date on which such moneys will be needed for the payment of principal of, interest and redemption premium, if any, on such outstanding bonds, be invested and reinvested as determined by the board of regents, in whole or in part: (a) In direct obligations issued by the United States of America or one of its agencies or in direct obligations of the state of West Virginia, (b) in obligations unconditionally guaranteed by the United States of America as to principal and interest, or (c) in certificates of deposit of a banking corporation or association which is a member of the federal deposit insurance corporation, or successor; but any such certificates of deposit must be fully secured as to both principal and interest by pledged collateral consisting of direct obligations of or obligations guaranteed by the United States of America, or direct obligations of the state of West Virginia, having a market value, excluding accrued interest, at all times at least equal to the amount of the principal of and accrued interest on such certificates of deposit. Any such investments must mature, or be payable in advance of maturity at the option of the holder, and must bear interest in such manner as to provide funds which, together with uninvested money, will be sufficient to pay when due or called for redemption the bonds refunded, together with interest accrued and to accrue thereon and redemption premiums, if any, and such refunding bonds' proceeds or obligations so purchased therewith shall be deposited in escrow and held in trust for the payment and redemption of the bonds refunded: Provided, That if interest earned by any investment in such escrow is shown to be in excess of the amounts required from time to time for the payment of interest on and principal of the refunded bonds, including applicable redemption premium, then such excess may be withdrawn from escrow and disbursed in such manner as the board of regents shall by resolution determine, subject to the provisions of section two of this article. Any moneys in the sinking or reserve funds or other funds maintained for the outstanding bonds to be refunded may be applied in the same manner and for the same purpose as are the net proceeds of refunding bonds or may be deposited in the
special fund or any reserve funds established for account of the refunding bonds.

The authority to issue revenue refunding bonds shall be in addition to any other authority to refund bonds conferred by law.

The board of regents shall have power to enter into such escrow agreements and to insert therein such protective and other covenants and provisions as it may consider necessary to permit the carrying out of the provisions of this article and to insure the prompt payment of principal of and interest and redemption premiums on the revenue bonds refunded.

Where any revenue bonds to be refunded are not to be surrendered for exchange or payment and are not to be paid at maturity with escrowed obligations, but are to be paid from such source prior to maturity pursuant to call for redemption exercised under a right of redemption reserved in such revenue bonds, the board of regents shall, prior to the issuance of the refunding bonds, determine which redemption date or dates shall be used, call such revenue bonds for redemption and provide for the giving of the notice of redemption required by the proceedings authorizing such revenue bonds. Where such notice is to be given at a time subsequent to the issuance of the refunding bonds, the necessary notices may be deposited with the state sinking fund commission or the bank acting as escrow agent of the refunding bond proceeds and the escrow agent appropriately instructed and authorized to give the required notices at the prescribed time or times. If any officer of the public body signing any such notice shall no longer be in office at the time of the utilization of the notice, the notice shall nevertheless be valid and effective for its intended purpose.

§18-12B-6. Bonds may be issued for combined purposes.

The board of regents may authorize by one or more resolutions a single issue of bonds for the combined purposes of refunding the outstanding bonds as herein authorized and financing one or more of the major renovations, repairs and safety upgrading and capital improvements herein authorized.

§18-12B-7. Bonds shall be negotiable instruments.

The revenue bonds, revenue refunding bonds and bonds
issued for combined purposes under the provisions of this article shall, independently of the requirements of any other provision of law and solely by virtue of the provisions of this section, be and have all the qualities and incidents of negotiable instruments.

§18-12B-8. Trust agreements for holders of bonds.

The board of regents may enter into an agreement or agreements with any trust company, or with any bank having the powers of a trust company, either within or outside the state, to act as trustee for the holders of bonds issued hereunder, setting forth therein such duties and containing such legally binding covenants of the board of regents with the holders of the bonds in respect to the payment of the bonds, the fixing, establishing and collecting of the fees hereinbefore referred to; the acquisition, construction, improvement, maintenance, operation, repair and insurance of authorized major renovations, repairs and safety upgrading and capital improvements; the custody, safeguarding and disposition of the proceeds of the bonds, and the moneys in such special funds, sinking funds, reserve funds, or any other moneys or funds, notwithstanding provisions of this article to the contrary; the security for moneys on hand or on deposit, and the rights and remedies of the trustee and the holders of the bonds, as may be agreed upon with the purchasers of such bonds; provisions restricting the individual right of action of bondholders as is customary in trust agreements respecting bonds and debentures of municipal corporations, protecting and enforcing the rights and remedies of the trustee and the bondholders; and provisions as to any other matters which are deemed necessary and advisable by the board of regents in the best interests of the state and to enhance the marketability of the bonds. Any such agreement entered into by the board of regents shall be binding in all respects on such board and its successors from time to time in accordance with the terms thereof; and all the provisions thereof shall be enforceable by appropriate proceedings at law or in equity, or otherwise.


From the state system tuition fee special capital improvements fund the board of regents shall make periodic payments
to the state sinking fund commission in an amount sufficient to meet the requirements of any issue of bonds sold under the provisions of this article, as may be specified in the resolution of the board authorizing the issue thereof and in any trust agreement entered into in connection therewith. The payments so made shall be placed by the commission in a special sinking fund which is hereby pledged to and charged with the payment of the principal of the bonds of such issue and the interest thereon, and to the redemption or repurchase of such bonds, such sinking fund to be a fund for all bonds of such issue without distinction or priority of one over another, except as may be provided in the resolution authorizing such issue of bonds. The moneys in the special sinking fund, less such reserve for payment of principal and interest and redemption premium, if any, as may be required by the resolution of the board of regents, authorizing the issue and any trust agreement made in connection therewith, may be used for the redemption of any of the outstanding bonds payable from such fund which by their terms are then redeemable, or for the purchase of bonds at the market price, but at not exceeding the price if any, at which such bonds shall in the same year be redeemable; and all bonds redeemed or purchased shall forthwith be canceled and shall not again be issued.

§18-12B-10. Credit of state not pledged.

No provisions of this article shall be construed to authorize the board of regents at any time or in any manner to pledge the credit or taxing power of the state, nor shall any of the obligations or debts created by the board under the authority herein granted be deemed to be obligations of the state.

§18-12B-11. Attorney general or his duly appointed legal representative to serve as bond counsel.

The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of bonds under this article.

§18-12B-12. Powers of board are supplemental; conflicting laws superseded.

The powers conferred by this article shall be in addition
and supplemental to the existing powers of the board of regents. The provisions of any other law or laws conflicting with the provisions of this article shall be and the same are hereby superseded to the extent of any such conflict.

CHAPTER 91
(H. B. 1156—By Mr. Speaker, Mr. Kopp)
[Passed March 14, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six, nine-a and nine-b, article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to composition, terms, meetings, compensation, expenses and qualifications of members of the board of regents; providing for terms and selection of the members and chairmen of the advisory council of faculty and the advisory council of students; and providing for the chairmen of such councils to serve as voting members of the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.
§18-26-4. Composition of board; terms of members; qualifications of members.
§18-26-5. Commencement of terms of members; vacancies; eligibility for reappointments; 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.

1 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 be entitled to vote, and one shall be the chairman of the advisory council of faculty, ex officio, who shall be entitled to vote. The other nine members shall be citizens of the state, appointed by the governor, by and with the advice and consent of the Senate, for overlapping terms of six years, except that three of the original appointments shall be for terms of two years, three of the original appointments shall be for terms of four years and three of the original appointments shall be for terms of six years.

Each of the members appointed to the board by the governor shall be especially qualified in the field of higher education by virtue of his knowledge, learning, experience or interest in the field.

Except for the ex officio members no person shall be eligible for appointment to membership on the board who is an officer, employee or member of an advisory board of any state college or university, or any officer or member of any political party executive committee, or the holder of any other public office or public employment under the federal government or under the government of this state or any of its political subdivisions, or any appointee or employee of the board. Of the nine members appointed by the governor from the public at large, not more than five thereof shall belong to the same political party and at least two members of the board shall be appointed from each congressional district.

Except as provided in this section, no other person may be appointed to the board.

§ 18-26-5. Commencement of terms of members; vacancies; eligibility for reappointments; oath of office; removal from office.

The governor shall appoint 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 the terms for which they were elected by their respective advisory councils; these members shall be eligible to succeed themselves. All members of the board of regents serving as of the effective date of this enactment 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 twelve members, six members of the board shall constitute a quorum, and a majority vote of the quorum shall be necessary to pass upon matters before the board.

The members of the board shall be paid fifty dollars per diem for actual time spent in the performance of duties under this article, and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the board.

§18-26-9a. Advisory council of faculty.

During the month of April, one thousand nine hundred seventy-seven, 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 of 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 May of each year.

The advisory council of faculty shall meet at least once each quarter, and shall meet during each month of June, at which meeting the council shall elect a chairman, who shall be by virtue of his office a voting 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 reim­
bursement 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
the state’s colleges and universities.

§18-26-9b. Advisory council of students.

The student government organization at each state college,
community college, including Potomac State College of West
Virginia University, and university shall elect a student, who
shall be a resident of the state of West Virginia and who may be
the elected head, or president, of such organization, to serve on
the advisory council of students which is hereby created, con­
sisting of the elected representatives of 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 May of each year.

The advisory council of students shall meet at least once
each quarter, and shall meet during each month of June, at
which meeting, the council shall elect a chairman, who shall be
a resident of the state of West Virginia and who shall be, by
virtue of his office, a voting 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 the state’s colleges and universities
may have an interest.

Members of the advisory council shall be eligible to suc­
cceed themselves. Members of the advisory council shall
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...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.

CHAPTER 92
(Com. Sub. for H. B. 1547—By Mr. Prunty)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-five, relating to tenure of position with respect to tenured professional and other teaching personnel at higher educational institutions; tenure of position; insuring tenure when on leave to accept governmental appointments.

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 twenty-five, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.
§18-26-25. Effect of leave of absence on academic tenure, rank, etc.

Any other provision of law to the contrary notwithstanding, any tenured professional or other teaching personnel at any higher educational institution subject to the control and supervision of the West Virginia board of regents, who shall, with the consent of the governing authority of the higher educational in-
stitions by which he is employed, absent himself from his
duties at such institution to accept employment in any
nonelected governmental capacity shall be afforded such bene-
fits of academic tenure, rank and position as if such person
had remained continuously in the position retained and held
at such higher educational institutions immediately preceding
any such absence: Provided, That in no event shall such leave
of absence exceed four years: Provided, however, That any
individual who remains in governmental employment which
exceeds the limitations imposed by this section shall forfeit
all rights to academic tenure, rank and position formerly
held by him at such institution.

CHAPTER 93

(Com. Sub. for S. B. 356—By Mr. Gilligan)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chap-
ter eighteen-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the
assignment, transfer, promotion, demotion, suspension and
recommendation and dismissal of school personnel by
school superintendent; preliminary notice required; rea-
sons required for transfer; notice; hearing and proof re-
quired.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter eighteen-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. SCHOOL PERSONNEL.

§18A-2-7. Assignment, transfer, promotion, demotion, suspen-
sion and recommendation of dismissal of school
personnel by superintendent; preliminary notice of
transfer; hearing on the transfer; proof required.

The superintendent, subject only to approval of the
board, shall have authority to assign, transfer, promote, demote or suspend school personnel and to recommend their dismissal pursuant to provisions of this chapter. However, an employee shall be notified in writing by the superintendent on or before the first Monday in April if he is being considered for transfer or to be transferred. Any teacher or employee who desires to protest such proposed transfer may request in writing a statement of the reasons for the proposed transfer. Such statement of reasons shall be delivered to the teacher or employee within ten days of the receipt of the request. Within ten days of the receipt of the statement of the reasons, the teacher or employee may make written demand upon the superintendent for a hearing on the proposed transfer before the county board of education. The hearing on the proposed transfer shall be held on or before the first Monday in May. At the hearing, the reasons for the proposed transfer must be shown.

The superintendent at a meeting of the board on or before the first Monday in May, shall furnish in writing to the board a list of teachers and other employees to be considered for transfer and subsequent assignment for the next ensuing school year. All other teachers and employees not so listed shall be considered as reassigned to the positions or jobs held at the time of this meeting. The list of those recommended for transfer shall be included in the minute record of such meeting and all those so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such persons’ last known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment and the reasons therefor. The superintendent’s authority to suspend school personnel shall be temporary only pending a hearing upon charges filed by the superintendent with the board of education and such period of suspension shall not exceed thirty days unless extended by order of the board.

The provisions of this section respecting hearings upon notice of transfer shall not be applicable in emergency
situations where the school building becomes damaged or
destroyed through an unforeseeable act and which act
necessitates a transfer of such school personnel because
of the aforementioned condition of the building.

CHAPTER 94
[S. B. 429—By Mr. Galperin]

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 eight-a, relating to the hiring of probationary per­
sonnel and providing for notice in the event they are not
hired or not recommended to be rehired and the reasons
therefor; and hearing before board.

Be it enacted by the Legislature of West Virginia:

That article two, 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 sec­
section eight-a, to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.
§18A-2-8a. Notice to probationary personnel of rehiring or
nonrehiring; hearing.

1 The superintendent at a meeting of the board on or
2 before the first Monday in May of each year shall provide
3 in writing to the board a list of all probationary teachers
4 that he recommends to be rehired for the next ensuing
5 school year. The board shall act upon the superinten­
dent's recommendations at that meeting in accordance
7 with section one of this article. The board at this same
8 meeting shall also act upon the retention of other proba­
tonary employees as provided in sections four and five
9 of this article. Any such probationary teacher or other
probationary employee who is not rehired by the board at that meeting shall be notified in writing, by certified mail, return receipt requested, to such persons' last-known addresses within ten days following said board meeting, of their not having been rehired or not having been recommended for rehiring.

Any probationary teacher who receives notice that he has not been recommended for rehiring or other probationary employee who has not been reemployed may within ten days after receiving the written notice request a statement of the reasons for not having been rehired and may request a hearing before the board. Such hearing shall be held at the next regularly scheduled board of education meeting or a special meeting of the board called within thirty days of the request for hearing. At the hearing, the reasons for the nonrehiring must be shown.

CHAPTER 95

(Com. Sub. for S. B. 461—By Mr. Brotherton, Mr. President)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum monthly pay for school auxiliary and service employees; rights, privileges and benefits for such employees; and providing additional class titles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8. Minimum monthly pay for service and auxiliary personnel.

The purpose of this section is to establish a state minimum
monthly pay scale and employment term for auxiliary and
service personnel. The employment term for auxiliary and
service personnel shall be no less than ten months, a month
being defined as twenty employment days: Provided, That the
county board of education may contract with all or part of such
personnel for a longer term. The beginning and closing dates
of the ten-month term shall not exceed forty-three weeks.
Auxiliary and service personnel employed on a yearly or
twelve-month basis may be employed by calendar months.
Whenever there is a change in job assignment during the
school year, the minimum pay scale and any county supple-
ment shall be applicable.

Auxiliary and service personnel employed in the same
classification for more than the two hundred day minimum
employment term shall be paid for such additional employment
at a daily rate of no less than the daily rate paid for the two
hundred day minimum employment term.

Upon the change in classification or upon meeting the
requirements of an advanced classification of or by any
employee, his salary shall be made to comply with the re-
quirements of this article, and to any county salary schedule
in excess of the minimum requirements of this article, based
upon his advanced classification and allowable years of em-
ployment.

An employee's contract as provided in sections four and five,
article two of this chapter shall state the appropriate monthly
salary the employee is to be paid based on the class title as
provided in this article and any county salary schedule in
excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class
titles, set forth below are defined as follows:

"Pay grade" means the monthly salary applicable to class
titles of auxiliary and service personnel.

"Years of employment" means the number of years which
an employee classified as auxiliary or service personnel has
been employed by a board of education in any position prior to
or subsequent to the effective date of this section and in-
cluding service in the armed forces of the United States if the
employee were employed at the time of his induction. For the
purpose of this section, years of employment shall be limited
to the number of years shown and allowed under the state
minimum pay scale set forth hereinafter.

“Class title” means the name of the position or job held by
auxiliary and service personnel.

“Accountant I” means personnel employed to maintain
payroll records and reports and perform one or more opera-
tions relating to a phase of the total payroll.

“Accountant II” means personnel employed to maintain
accounting records and to be responsible for the accounting
process associated with billing, budgets, purchasing and related
operations.

“Accountant III” means personnel who are employed in the
county board of education office to manage and supervise
accounts payable and/or payroll procedures.

“Aide I” means auxiliary personnel as defined in section
one, article one of this chapter.

“Aide II” means auxiliary personnel as defined in section
one, article one of this chapter who have completed a training
program approved by the state board of education.

“Audiovisual technician” means personnel employed to
perform minor maintenance on audiovisual equipment, films,
supplies and the filling of requests for equipment.

“Bus operator” means personnel employed to operate
school buses and other school transportation vehicles as
provided by the state board of education.

“Buyer” means personnel employed to review and write
 specifications, negotiate purchase bids and recommend pur-
chase agreements for materials and services that meet predeter-
mined specifications at the lowest available costs.

“Cabinet maker” means personnel employed to construct
cabinets, tables, bookcases and other furniture.

“Cafeteria manager” means personnel employed to direct
the operation of a food services program in a school, including
assigning duties to employees, approving requisitions for
supplies and repairs, keeping inventories, inspecting areas to
maintain high standards of sanitation, preparing financial
reports and keeping records pertinent to food services of a
school.

“Carpenter I” means personnel classified as a carpenter’s helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Chief mechanic” means personnel employed to be responsible for directing activities which ensure that student transportation or other board-owned vehicles are properly and safely maintained.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Computer operator” means qualified personnel employed to operate computers.

“Cook I” means personnel employed as a cook’s helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a food service program of a school system.

“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a food service program of a school system.

“Crew leader” means personnel employed to organize the work for a crew of maintenance employees to carry out assigned projects.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.
“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Director or coordinator of services” means personnel not defined as professional personnel or professional educators in section one, article one of this chapter, who are assigned to direct a department or division.

“Draftsman” means personnel employed to plan, design and produce detailed architectural/engineering drawings.

“Electrician I” means personnel employed as an apprentice electrician helper or who holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or who holds a journeyman electrician license issued by the state fire marshal.

“Electronic technician I” means personnel employed at the apprentice level to repair and maintain electronic equipment.

“Electronic technician II” means personnel employed at the journeyman level to repair and maintain electronic equipment.

“Executive secretary” means personnel employed as the county school superintendent’s secretary or as a secretary who is assigned to a position characterized by significant administrative duties.

“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators as in section one, article one of this chapter, employed to manage and supervise a county school system’s food service program. The duties would include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, and keeping aggregate records and reports.
“Foreman” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Glazier” means personnel employed to replace glass or other materials in windows and doors and to do minor carpentry tasks.

“Graphic artist” means personnel employed to prepare graphic illustrations.

“Groundsman” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.

“Heating and air conditioning mechanic I” means personnel employed at the apprentice level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heating and air conditioning mechanic II” means personnel employed at the journeyman level to install, repair and maintain heating and air conditioning plants and related electrical equipment.

“Heavy equipment operator” means personnel employed to operate heavy equipment.

“Inventory supervisor” means personnel who are employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies.

“Key punch operator” means qualified personnel employed to operate key punch machines or verifying machines.
“Locksmith” means personnel employed to repair and maintain locks and safes.

“Lubrication man” means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

“Machinist” means personnel employed to perform machinist tasks which include the ability to operate a lathe, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

“Maintenance clerk” means personnel employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts.

“Mason” means personnel employed to perform tasks connected with brick and block laying and carpentry tasks related to such laying.

“Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Such personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.
“Plumber II” means personnel employed as a journeyman plumber.

“Printing operator” means personnel employed to operate duplication equipment, and as required, to cut, collate, staple, bind and shelve materials.

“Printing supervisor” means personnel employed to supervise the operation of a print shop.

“Programmer” means personnel employed to design and prepare programs for computer operation.

“Roofing/sheet metal mechanic” means personnel employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promoting good relationships with parents, pupils, bus operators and other employees.

“Secretary I” means personnel employed to transcribe from notes or mechanic equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed as school, office or program secretaries to perform general clerical tasks, transcribe, prepare reports, receive callers and refer them to proper persons, operate office machines, keep records and handle routine correspondence.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs or departments with particular responsibilities of purchasing and financial control.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as
in section one, article one of this chapter. His responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures, mechanical and electrical equipment of a board of education.

"Supervisor of transportation" means qualified personnel employed to direct school transportation activities, properly and safely, and to supervise the maintenance and repair of vehicles, buses, and other mechanical and mobile equipment used by the county school system.

"Switchboard operator-receptionist" means personnel employed to refer incoming calls, to assume contact with the public, to direct and to give instructions as necessary, to operate switchboard equipment, call director or other supervising personnel, and to provide clerical assistance.

"Truck driver" means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

"Warehouse clerk" means personnel employed to be responsible for receiving, storing, packing and shipping goods.

"Watchman" means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

"Welder" means personnel employed to provide acetylene or electric welding services for a school system.

On and after the first day of July, one thousand nine hundred seventy-seven, the minimum monthly pay for each auxiliary and service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the following "State Minimum Pay Scale," and the minimum monthly pay for each auxiliary or service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the following "State Minimum Pay Scale":
## STATE MINIMUM PAY SCALE

### YEARS OF EMPLOYMENT

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In addition to the compensation herein provided for auxiliary and service personnel, each auxiliary and service employee shall, notwithstanding any provisions in this code to the contrary, be entitled to all auxiliary and service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Auxiliary and service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale heretofore set forth shall not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, such county schedules to be uniform throughout the county with regard to any training classification, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Uniformity shall apply to any additional salary increments or compensation for all persons performing like assignments and duties within the county. In establishing such local salary schedules, no county, from the effective date of this article, shall reduce local funds allocated for auxiliary and service personnel salaries used for supplementing federal and state funds provided for such salaries.

The state board of education is hereby authorized to establish other class titles of auxiliary and service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale of this section.

No auxiliary or service employee, without his written consent, shall be reclassified by class title or relegated to any condition of employment which would result in a reduction of his salary earned during the current fiscal year or which would result in a reduction of his salary for which he would qualify by
continuing in the same job position and classification held during said fiscal year.

Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fee, as determined and established by the court.

The provisions of this section shall become effective July one, one thousand nine hundred seventy-seven.

CHAPTER 96

(S. B. 521—By Mr. Brotherton, Mr. President)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to authorize the issuance and sale, subsequent to the first day of February, one thousand nine hundred seventy-eight, by the governor of bonds of the state of West Virginia, under authority of the better school buildings amendment of 1972, in the amount not exceeding fifty million dollars, 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; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such
bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; establishing a special account designated state school buildings bond debt service account and stating what moneys shall be deposited therein and disposition thereof; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of the bonds shall be paid into a separate and distinct account and for expenditures from such account and investment of the proceeds in such account; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; providing for the state treasurer to be financial advisor; providing for the attorney general or his duly appointed legal representative to serve as bond counsel; and providing that all necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state school buildings bond debt service account on warrants of the auditor of the state drawn on the state treasurer.

Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF SCHOOL BUILDINGS BONDS.

§ 1. School buildings bonds; amount; when may issue.
§ 2. Transfer fee; registration fee; where payable; interest rate; tax exempt.
§ 3. Form of bond.
§ 4. Form of coupon.
§ 5. Listing by auditor.
§ 7. Covenants of state.
§ 8. Sale by governor; minimum price.
§ 9. Proceeds paid into separate account; expenditures.
§ 10. Plates, etc., property of state.
§ 11. Auditor to be custodian of unsold bonds.
§ 12. Interim certificates.
§ 13. State treasurer to be financial advisor.
§ 14. Attorney general or his duly appointed legal representative to serve as bond counsel.
§ 15. Approval and payment of all necessary expenses.

§ 1. School buildings bonds; amount; when may issue.

1 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, are hereby authorized to be issued and sold, at some date subsequent to the first day of February, one thousand nine hundred seventy-eight, 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 February, one thousand nine hundred seventy-eight, 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 semiannually, 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.

§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for each such transfer a fee of one dollar shall be charged by and paid to the state of West Virginia, to the credit of the state school buildings bond debt service account. Bonds taken in exchange shall be canceled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds and for each bond registered a
fee of one dollar shall likewise be charged by and paid
to the state of West Virginia, to the credit of the state
school buildings bond debt service account. All such
bonds shall be payable at the office of the treasurer of
the state of West Virginia, or, at the option of the holder,
at a bank in the city of New York to be designated by
the governor, or, at the option of the holder at such other
bank or banks, within the state, as may be designated or
approved by the governor. The bonds shall bear interest,
payable semiannually, to bearer, at the office of the
treasurer of the state of West Virginia, at the capitol of
the state, or at the banks designated and approved by the
governor, upon presentation and surrender of interest
coupons, then due, in the case of coupon bonds. For the
payment of interest on registered bonds, the treasurer of
the state of West Virginia shall requisition a warrant
from the auditor of the state to be drawn on the state
treasurer, and shall mail such warrant to the registered
owner at the address as shown by the record of registra-
tion. Both the principal and interest of the bonds shall
be payable in lawful money of the United States of
America and the bonds shall be exempt from taxation
by the state of West Virginia, or by any county, district
or municipality thereof, which facts shall appear on the
face of the bonds as part of the contract with the holder
thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state of
West Virginia, by the manual or facsimile signature of
the treasurer thereof, under the great seal of the state
or a facsimile thereof, and countersigned by the manual
or facsimile signature of the auditor of the state: Pro-
vided, That one of said signatures on said bonds shall be
a manual signature and said bonds shall be in the fol-
lowing form or to the following effect, as nearly as may
be, namely:
COUPON SCHOOL BUILDINGS BOND
(or registered school buildings bond, as the case may be)

OF THE
STATE OF WEST VIRGINIA

$_________________________  No._________________________

The state of West Virginia, under and by virtue of
authority of an amendment to the constitution, which
was proposed by Senate Joint Resolution No. 4, adopted
the ninth day of March, one thousand nine hundred
seventy-two, and was ratified by a vote of the people at
the general election on the seventh day of November,
one thousand nine hundred seventy-two, which is hereby
made a part hereof as fully as if set forth at length
herein, acknowledges itself to be indebted to and hereby
promises to pay to the bearer hereof (in case of a coupon
bond) or to_____________________or assigns (the owner of
record, in case of registered bonds) on the__________day
of__________, 19____, in lawful money of the United
States of America at the office of the treasurer of the
state of West Virginia at the capitol of said state, or,
at________________________bank in the city of New York,
or at________________________bank, within the state, at the
option of the holder, the sum of_____________dollars,
with interest thereon at __________percent a year from the
date, payable semiannually in like lawful money of the
United States of America at the treasurer's office or
banks aforesaid, on the first day of________________and the
first day of________________of each year (and in the case of
coupon bonds) according to the tenor of the annexed
coupons bearing the facsimile signature of the treasurer
of the state of West Virginia, upon surrender of such
coupons. This bond (in case of a coupon bond) may be
exchanged for a registered bond of like tenor upon
application to the treasurer of the state of West Virginia.

(Redemption provisions, if any, to be inserted here.)

To secure the payment of the principal and interest
of this bond, the state of West Virginia covenants and
agrees with the holder as follows: (1) That this bond
shall constitute a direct and general obligation of the
state of West Virginia; (2) that the full faith and credit
of the state is pledged to secure the payment of the
principal and interest of this bond; (3) that an annual
state tax shall be collected in an amount sufficient to
pay as it may accrue the interest on this bond and the
principal as the same mature; and (4) that to the full
extent permitted by the constitution of West Virginia
any of the covenants, agreements and provisions of this
act may be enforced in any court of competent jurisdic-
tion by any holder of such bonds or of any interest coupon
appertaining thereto.

This bond is hereby made exempt from any taxation
by the state of West Virginia, or by any county, district
or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile
signature of the treasurer of the state of West Virginia,
and the manual or facsimile countersignature of the audi-
tor of the state, hereto affixed according to law, dated
the________day of______________, one thousand nine hun-
dred________________, and the seal of the state of West Vir-
ginia or a facsimile thereof.

Treasurer of the State of West Virginia

(SEAL)

Countersigned:

Treasurer of the State of West Virginia

Auditor of the State of West Virginia

§4. Form of coupon.

The form of coupon shall be substantially as follows,
to wit:

STATE OF WEST VIRGINIA

Bond No.__________ Coupon No.__________

On the first day of________________, 19____, the state
of West Virginia will pay to the bearer, in lawful money
of the United States of America, at the office of the
treasurer of the state, or, at____________________
bank in the city of New York, or, at
bank, within the state, at the option of the holder, the
sum of ................................dollars, the same being semi-
annual interest on School Buildings Bond No..................

Treasurer of the State of West Virginia
The signature of the treasurer to such coupon shall be
by his facsimile signature and the coupons shall be
numbered in the order of their maturity, from number
one consecutively. The bonds and coupons may be signed,
as provided in this act, by the present treasurer and
auditor, or by any of their respective successors in office,
and the bonds signed by the persons now in the office
may be sold by the governor or his successor in office
without being signed by the successor in office of the
present treasurer or auditor.

§5. Listing by auditor.

All coupons and registered bonds issued under this act
shall be separately listed by the auditor of the state in
books provided for the purpose, in each case giving the
date, number, character and amount of obligations issued,
and in the case of registered bonds, the name and post-
office address of the person, firm or corporation registered
as the owner thereof.

§6. Establishment of state school buildings bond debt service
account; deposit therein.

The treasurer shall establish in his office a special ac-
count designated state school buildings bond debt service
account. Into such account and from the appropriation
made by the Legislature for such purpose there shall be
transferred sufficient moneys to pay the interest as the
same may accrue and the principal as the same mature
on such bonds. Moneys received from transfer and regis-
tration fees shall likewise be deposited into said special
account.

§7. Covenants of state.

The state of West Virginia covenants and agrees with
the holders of the bonds issued pursuant hereto as fol-
§ 3. Laws: (1) That such bonds shall constitute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal and interest of such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal as the same mature; and (4) that to the full extent permitted by the constitution of West Virginia any of the covenants, agreements and provisions of this act may be enforced in any court of competent jurisdiction by any holder of such bonds or of any interest coupon appertaining thereto.

§ 8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the construction, renovation, remodeling and equipping of elementary or secondary public school buildings or facilities as herein provided, and subject to the limitations contained in this act. All sales shall be at not less than par and accrued interest. All interest coupons becoming payable prior to the sale date shall be canceled by the treasurer and rendered ineffective, before the delivery of the bonds so sold.

§ 9. Proceeds paid into separate account; expenditures.

The proceeds of all sales of bonds herein authorized shall be paid into a separate and distinct account and shall be used and appropriated solely for the construction, renovation, remodeling and equipping of elementary and secondary public school buildings or facilities as provided for by the state constitution and the laws enacted thereunder. Except for such sums necessary for current operating balances, such account shall be invested and reinvested in short-term obligations of the United States treasury: Provided, That no such investment or reinvestment shall adversely affect the current operating balances of such account.

§ 10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the
bonds authorized by this act are produced or made shall be the property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.
1 The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this act.

§12. Interim certificates.
1 The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this act just as fully and completely as the permanent bonds.

§13. State treasurer to be financial advisor.
1 The state treasurer shall serve as financial advisor to the governor for the issuance and sale of such bonds.

§14. Attorney general or his duly appointed legal representative to serve as bond counsel.
1 The attorney general or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds.

§15. Approval and payment of all necessary expenses.
1 All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be chargeable to and paid out of the state school buildings bond debt service account on warrants of the auditor of the state drawn on the state treasurer.

CHAPTER 97
(S. B. 328—By Mr. Palumbo)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new article, designated article eighteen-a, relating to the creation and establishment of the West Virginia energy conservation revolving loan fund; short title; legislative findings; declaration of policy and responsibility; purpose and intent of article; definitions of terms; administration of revolving loan fund; powers and duties of the housing development fund respecting the revolving loan fund; creation of the revolving loan fund; purpose; investment of funds; loan agreements; expenditures from the revolving loan fund; terms and conditions of loans; prohibition on funds inuring to the benefit of directors, officers or private persons; termination or dissolution; annual audit; and rule of construction of provisions of this article.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18A. WEST VIRGINIA ENERGY CONSERVATION REVOLVING LOAN FUND.

§31-18A-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.
§31-18A-4. Administration of revolving loan fund by West Virginia housing development fund.
§31-18A-6. Revolving loan fund created; purpose; investment of funds; loan agreements; expenditures.
§31-18A-7. Terms and conditions of loans from revolving loan fund.
§31-18A-8. Prohibition on funds inuring to the benefit of or being distributable to the directors or officers.
§31-18A-10. Annual audit.


1 This article shall be known and may be cited as the
2 "West Virginia Energy Conservation Revolving Loan
3 Fund."
§31-18A-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

1 It is hereby determined and declared as a matter of legislative finding: (a) That an energy shortage exists within the state of West Virginia; (b) that the energy shortage is severe in certain areas of the state and may become severe, from time to time, in other areas of the state; (c) that the cost to the consumer for energy usage continues to increase at an accelerated rate; (d) that the energy shortage has produced widespread unemployment, threatening the economic stability of this state; and (e) that these conditions are inimical to the health, welfare and prosperity of all residents of the state and to the sound growth of the state.

2 It is hereby declared to be the public policy and a responsibility of this state to assist its residents in improving the energy efficiency of their residential dwellings. It is the purpose and intent of the Legislature in enacting this article to provide low interest loans to residents of this state of low and moderate income, who own and occupy single family residential dwellings, as an incentive for the improvement of the energy efficiency of such dwellings.

3 The Legislature finds that the public policy and responsibility of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of the energy conservation revolving loan fund.


1 As used in this article, unless the context otherwise requires:

2 (1) "Residential dwelling" means a single family residence located in the state of West Virginia, which it is determined by the housing development fund can be substantially aided in the conservation of energy by the making of improvements financed with a loan under this article;

3 (2) "Eligible owner of a residential dwelling" means:
(a) Person or persons of low and moderate income who own and occupy a residential dwelling; or

(b) Person or persons of higher income who own and occupy a residential dwelling in such area or areas of this state which are determined by the West Virginia housing development fund, in consultation with the public service commission, by resolution, to be a critical energy shortage area; or

(c) Person or persons who own and occupy a residential dwelling and who because of age or disability are found and determined by the West Virginia housing development fund, by resolution, to require assistance in improving the energy efficiency of such dwellings to insure their health, safety and welfare;

(3) “Housing development fund” means the West Virginia housing development fund created and established by section four, article eighteen, chapter thirty-one of this code;

(4) “Revolving loan fund” means the West Virginia energy conservation revolving loan fund which is created and established by section six of this article;

(5) “Person or persons of low and moderate income” means a person or persons, irrespective of race, creed, national origin or sex, determined by the housing development fund to require such assistance as is made available by this article on account of personal or family income not sufficient to afford to implement or install energy conservation materials or equipment designed to improve the energy efficiency of residential dwellings, and in making such determination the housing development fund shall take into account the following: (a) The amount of the total income of such persons and families for housing energy needs; (b) the size of the family; (c) the cost and condition of the residential dwelling; and (d) the eligibility of such persons or families for federal housing energy conservation assistance of any type based upon low or moderate income basis.
§31-18A-4. Administration of revolving loan fund by West Virginia housing development fund.

The West Virginia energy conservation revolving loan fund, established and authorized by section six of this article, shall be administered by the board of directors of the West Virginia housing development fund, a public corporate body, created and established by section four, article eighteen, chapter thirty-one of this code.


The West Virginia housing development fund is hereby authorized and empowered:

1. To accept appropriations, gifts, grants, bequests and devises, and to utilize or dispose of the same to carry out the purposes of this article;

2. To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its purposes under this article;

3. To collect reasonable fees and charges in connection with making and servicing loans, notes, obligations, commitments and other evidences of indebtedness, which fees shall be limited to the amounts required to pay the costs of the housing development fund, including operating and administrative costs;

4. To invest funds not required for immediate disbursement in any of the following securities:

   (i) Direct obligations of or obligations guaranteed by the United States of America;

   (ii) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Bank for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;

   (iii) Public housing bonds issued by public agencies
or municipalities and fully secured as to the payment of both principal and interest by a pledge or annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisite or payment agreement with the United States of America;

(iv) Certificates of deposit secured by obligations of the United States of America;

(v) Direct obligations of or obligations guaranteed by the state of West Virginia;

(vi) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond rating agency; and

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

(5) To sue and be sued;
(6) To promulgate and publish rules and regulations not inconsistent with the provisions of this article;

(7) To appoint such employees and consultants as it deems advisable and to fix their compensation and prescribe their duties;

(8) To acquire, hold and dispose of personal property for its purposes under this article;

(9) To enter into agreements or other transactions with any federal or state agency, any person, or any domestic or foreign partnership, corporation, association or organization;

(10) To sell, at public or private sale, any mortgage or other negotiable instrument or obligation securing a loan made under the provisions of this article;

(11) To establish guidelines to be complied with by any person, firm, association, partnership or corporation, engaged in supplying, retailing or installing energy conservation materials or equipment designed to improve the energy efficiency of residential dwellings to be improved with financing under this article;

(12) To approve any person, firm, association, partnership or corporation who shall enter into any bargain, agreement or contract to furnish or install energy conservation materials or equipment for a residential dwelling, the cost and expense of which shall be defrayed by a loan made pursuant to this article;

(13) To make loans in the manner and under the terms and conditions prescribed by this article to eligible owners of residential dwellings to defray the costs of financing the purchase and installation of energy conservation materials and equipment, designed to improve the energy efficiency of such dwelling;

(14) To establish and supervise an inspection program to assure the satisfactory nature of all materials and workmanship for energy efficiency improvements financed by loans made pursuant to this article and to utilize to the extent possible the services of municipal building inspectors;
(15) To enter into agreements with banks, public utilities and other entities for advertising the energy conservation revolving loan fund, for taking applications for loans from such fund, for supervising the execution of promissory notes, deeds of trust and other papers associated with the energy conservation revolving loan fund, for approving and inspecting energy conservation loan contracts to insure compliance with the provisions of this article, for accepting and transmitting loan payments, for the operation and administration of any other aspect of the energy conservation revolving loan fund established by this article and for reimbursing such banks, public utilities and other entities for any reasonable and necessary expenses incurred in the implementation of any such agreements.

§31-18A-6. Revolving loan fund created; purpose; investment of funds; loan agreements; expenditures.

(a) The board of directors of the housing development fund shall create and establish a special revolving fund of moneys made available by appropriations, grants, contributions, bequests, devises, loan payments, interest and investment income, to be known as the energy conservation revolving loan fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose trust account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the energy conservation revolving loan fund shall be to provide a source from which the housing development fund may make loans to eligible owners of residential dwellings.

(c) The housing development fund may invest and reinvest all moneys in the revolving loan fund in any investments authorized by section five of this article, pending the disbursement thereof in connection with loans made pursuant to this article.

(d) The housing development fund may expend any
income from loans or investments authorized by this article in payment or reimbursement of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors, are fairly allocable to such financing or activities authorized by this article: Provided, That no funds shall be used to carry on propaganda or otherwise attempt to influence legislation.

§31-18A-7. Terms and conditions of loans from revolving loan fund.

1 No loans shall be made by the housing development fund except to eligible owners of residential dwellings who meet reasonable criteria of credit worthiness as defined by the housing development fund and in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

(1) No loan shall be made under the provisions of this article, unless an affidavit shall be executed by the eligible owner asserting his title to the residential dwelling and submitted to the housing development fund together with evidence of his source of title;

(2) The proceeds of all such loans shall be used only for financing the cost of improving the energy efficiency of residential dwellings through the installation or upgrading of insulation, storm windows and doors, caulking, weather stripping, heat pumps, or other energy conservation materials or equipment in such dwellings;

(3) All such loans shall be repaid in full over a period of time not to exceed three years and at a rate of interest not to exceed three percent;

(4) All such loans shall be limited to a maximum amount of two thousand dollars for each residential dwelling: Provided, That in no event shall the amount of the loan exceed the actual cost of materials purchased, or the actual cost of materials and labor furnished or supplied by any person, firm, association, partnership or corporation certified by the housing development fund;
(5) Each such loan shall be evidenced by a negotiable promissory note executed and delivered by the eligible owner or owners and shall be secured by a deed of trust upon the property and dwelling improved by the proceeds of the loan: Provided, That in no event shall a certificate of title, title insurance or other title security be required;

(6) All notes and deeds of trust accepted as security for loans under this article shall be payable to the order of and for the use and benefit of the West Virginia housing development fund;

(7) Payment of the loan proceeds shall be made by the housing development fund jointly to the owner and any person, firm, association, partnership or corporation supplying and furnishing materials or labor and materials upon a determination by the housing development fund and certification by the eligible owner that the workmanship and materials for energy efficiency improvements are satisfactory.

§31-18A-8. Prohibition on funds inuring to the benefit of or being distributable to the directors or officers.

No part of the funds of the energy conservation revolving loan fund shall inure to the benefit of or be distributable to the directors or officers of the housing development fund except that the housing development fund shall be authorized and empowered to pay reasonable compensation for services rendered and to make loans as previously specified in furtherance of its purposes under this article.


Upon termination or dissolution of the housing development fund or the energy conservation revolving loan fund, all rights and properties held pursuant to the provisions of this article shall pass to and be vested in the state of West Virginia, subject to the rights of lien-holders and other creditors.
§31-18A-10. Annual audit.

1 The housing development fund shall cause an annual audit to be made of the energy conservation revolving loan fund by a resident independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages or deeds of trust, assignments, loans and all other matters relating to its financial operations of the revolving loan fund. The person, firm, association, partnership or corporation performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public.


1 If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 98

[Passed March 2, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article two, chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to number of times legal advertisement must be published for summary proceeding to sell or lease estate subject to future interests when nonresidents or unknown or unascertainable parties are defendants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DISPOSITION OF ESTATES SUBJECT TO FUTURE INTERESTS.

§36-2-12a. Summary proceedings for sale or lease; petition.

1 In addition to the proceedings authorized by the first section of this article, any person having any interest mentioned in section two of this article in the personal property, land, timber, oil, gas, coal or other minerals sought to be sold, leased or otherwise conveyed, may apply by petition, in a summary way, to the circuit court, or to any court of concurrent jurisdiction with the circuit court, of the county in which the estate proposed to be sold, leased or otherwise conveyed, or some part thereof, may be. Such petitions shall describe the property sought to be sold, leased or otherwise conveyed with reasonable certainty and shall set forth the names of all persons interested in such property, together with their respective interests or estates, either vested, contingent or executory, so far as is known by the plaintiff. Such petition shall also set forth the facts which, in the opinion of the plaintiff, would justify the sale, lease or other conveyance of such property. The petition shall be verified by the oath of the plaintiff or one of the plaintiffs, and all persons interested shall be made defendants, and ten days' notice shall be given to such defendants before such petition can be heard: Provided, That in the case of nonresident defendants, or unknown or unascertainable parties, or both, an order of publication may be entered, on proper affidavit as in any other chancery proceeding, requiring publication of such notice with respect to any nonresident defendants, or any unknown or unascertainable parties, or both, who may have or claim any interest or estate in such property, as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the property or the greater part of the property concerned is situate. Such published notice, with the certificate of publication, when filed with the record in said proceedings, shall be and
constitute valid and sufficient notice herein. All other
provisions of this article not inconsistent herewith shall
apply to and implement the procedures provided in this
section.

CHAPTER 99
(S. B. 416—By Mr. Palumbo)

[Passed April 7, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, requiring reference of an estate, by a county commission, to a commissioner of accounts; providing division of work among commissioners of accounts; providing that estates appraised at ten thousand dollars or less exclusive of property held in joint tenancy with survivorship may be withdrawn from reference to a commissioner of accounts; allowing the clerk of the county commission to collect a fee for recordation of report and publication of notice; requiring such clerk to publish notice of filing of estate accounts and providing the form therefor; and allowing the county commission to confirm the report of the personal representative or refer the estate to a commissioner of accounts if request therefor or objection to the report is made.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

1 Upon the qualification of any personal representative,
2 the estate of his decedent shall, by order of the county
3 commission to be then made, be referred to a commis-
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sioner of accounts for proof and determination of debts
d and claims, establishment of their priority, determination
of the amount of the respective shares of the legatees and
distributees, and any other matter necessary and proper
for the settlement of the estate: Provided, That in coun-
ties where there are two or more such commissioners, the
estates of decedents shall be referred to such commis-
sioners in rotation, in order that, so far as possible, there
may be an equal division of the work: Provided, however,
That if and when the personal representative shall de-
 deliver to the clerk an appraisement of the assets of the
estate showing their value to be ten thousand dollars or
less, exclusive of property held by the decedent and an-
other person or other persons as joint tenants with rights
of survivorship, the clerk shall record said appraisement
and shall notify the commissioner of accounts that refer-
ence of said estate to the commissioner of accounts has
been withdrawn; the personal representative shall, within
two months from the date of recordation of the appraise-
ment in such case, make report to the clerk of his receipts,
disbursements, and distribution, and shall make affidavit
that all claims against the estate, for expenses of ad-
ministration, taxes, and debts of the decedent, have been
been paid in full; the clerk shall be entitled to collect and
receive a fee of ten dollars for recording such report and
affidavit, and for publication of the notice hereinafter
provided, said fee to be in lieu of any other fee provided
by law for recording a report of settlement of the ac-
counts of a decedent's personal representative; it shall be
the duty of the clerk, at least once a month, to cause to
be published once a week for two successive weeks in a
newspaper of general circulation within the county of
the administration of the estate, a notice substantially as
follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

I have before me the accounts of the executor(s) or
administrator(s) of the estates of the following deceased
persons:

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Any person having a claim against the estate of any such deceased person, or who has any beneficial interest therein, may appear before me or the county commission at any time within thirty days after first publication of this notice, and request reference of said estate to a commissioner of accounts, or object to confirmation of said accounting. In the absence of such request or objection, the accounting may be approved by the county commission.

Clerk of the County Commission of _________________ County, W. Va.

If no such request or objection be made to the clerk or to the county commission, the county commission may confirm the report of the personal representative, and thereupon the personal representative and his surety shall be discharged; but if such objection or request be made, the county commission may confirm the accounting or may refer the estate to one of its commissioners of accounts.

CHAPTER 100

[(S. B. 546—By Mr. Brotherton, Mr. President)]

[Passed March 28, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the leasing of space by commissioner of finance and administration and delegation of authority when rental and costs do not exceed two thousand dollars in any one fiscal year or in an emergency.

Be it enacted by the Legislature of West Virginia:

That section two, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.

§5A-5-2. Leasing of space by commissioner; delegation of authority when rental and costs do not exceed two thousand dollars in fiscal year or in emergency.

The commissioner is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government: Provided, That the commissioner may expressly delegate, in writing, the authority granted to him by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum of two thousand dollars in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.

CHAPTER 101

[Passed March 28, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to approval by the commissioner of finance and administration for permanent changes to premises leased by state agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. LEASING OF GROUNDS, BUILDINGS, OFFICE OR OTHER SPACE BY STATE GOVERNMENT.

§5A-5-3. Selection of grounds, etc.; acquisition by contract or lease; requiring approval of commissioner for permanent changes.

The commissioner shall have sole authority to select and
to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state. The commissioner shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with this section may not order or make permanent changes of any type thereto, unless the commissioner has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit. For purposes of this section, a “permanent change” means any addition, alteration, improvement, remodeling, repair or other change involving the expenditure of state funds for the installation of any tangible thing which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.

CHAPTER 102

(Com. Sub. for S. B. 585—By Mr. Brotherton, Mr. President, Mr. Palumbo and Mr. Hamilton)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to repeal sections eighteen and nineteen, article one, chapter sixteen; to repeal section six, article four-d of
said chapter sixteen; to repeal section nine, article five-b of said chapter sixteen; to repeal article five-d of said chapter sixteen; to repeal article five-e of said chapter sixteen; to repeal section one, article six of said chapter sixteen; to repeal sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen; to repeal article twenty-four of said chapter sixteen; to amend and reenact sections one, two, three, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen; to amend and reenact sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven; and to further amend said chapter twenty-seven by adding thereto a new section, designated section six, article two; and to further amend said chapter twenty-seven by adding thereto a new article, designated article three; to amend and reenact section fifteen, article one, chapter thirty; section two, article three-b; sections one and three, article six; and section two, article seventeen; to further amend said chapter thirty by adding
there to a new section, designated section four-a, article one; to further amend said chapter thirty by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and to amend and reenact sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reorganizing and consolidating health and mental health services in the state; increasing the membership of the board of health; providing that the board of health have rule-making power; transferring certain administrative powers from the board of health to the director of health; increasing rule-making authority of the board of health; authorizing the board of health to establish certain advisory councils; providing for the appointment of the director of health by the governor with Senate confirmation; consolidating the functions of the present department of mental health into the department of health; requiring the director of health to report to the governor and the Legislature as to consolidation and reorganization; establishing an executive secretary to consolidate the administrative functions of professional medical-related licensing boards; abolishing the nursing home licensing board and transferring its powers to the department of health; establishing a health resources advisory council to be headed by a chairman appointed by the governor with Senate confirmation; transferring certain state hospitals from the commissioner of public institutions to the department of health; setting forth a legislative purpose; providing for composition of the department of health; continuing civil service coverage; relating to membership, appointment, removal and composition of the board of health; relating to powers and duties of the board of health; relating to appointment, compensation, qualifications, term, oath, bond and vacancy of the director of health; relating to the powers and duties of the director of health, including the power of condemnation; relating to the state hygienic laboratory and branches; relating to disposition of moneys received by the director, reports to auditor compliance; authorizing the director of health
to cooperate with state health planning and development agency and federal government; relating to receipt and disbursement of federal aid and other moneys for health purposes; relating to employees of the department of health; relating to county and municipal boards of health and officers; reports by physicians; relating to full-time county and municipal officers and nurse; relating to counties and municipalities combining in employment of officers, equipment and boards; relating to director of health's supplanting local health authority; relating to family planning and child spacing; relating to prevention and control of communicable and other infectious diseases; relating to venereal diseases; relating to prenatal examination; providing that the director and board of health be given authority with respect to emergency medical service; providing that the office of emergency medical services become a part of the department of health; providing the director and board of health with the authority to supervise vital statistics; providing the director and board of health with the authority in cancer control; providing the director and board of health authority to license and oversee hospitals and health facilities including those for ambulatory health care and ambulatory surgical care; providing for the director to license, inspect and oversee nursing homes and personal care homes; requiring the department of health to publish certain information about nursing homes in the state; providing for enforcement of provisions relating to nursing homes and personal care homes; providing the director with authority to license and oversee personal care facilities; relating to revising the general laws regarding the regulation of nursing homes by expanding the board's jurisdiction to include personal care homes, expanding the powers and duties of the board, and revising the rights, duties and obligations of nursing homes, personal care homes and patients; transferring to the director of health authority previously vested in the hotel inspector; providing the director of health with authority concerning pure food and drugs; the committee of barbers and beauticians and transferring some of its authority to the department
of health; transferring certain benevolent institutions from the commissioner of public institutions to the department of welfare or the department of health; providing for management supervision fees and transfers of residents in benevolent institutions transferred to the department of health; providing that certain state hospitals and mental health facilities operated by the department of mental health shall be transferred to the department of health; continuing civil service coverage; relating to operation and administration of such state hospitals and mental health facilities; authorizing the department of health to establish, maintain, and operate comprehensive health centers, and providing how such institutions are to be operated; restricting the department of health from operating certain comprehensive health centers; relating to defining confidential medical information; relating to the authority of the department of health concerning voluntary hospitalization; concerning custody for medical examinations; relating to hospitalization by agency of the United States; relating to authority of department of health for commitment of persons charged or convicted of a crime; relating to authority of department of health concerning escapees and veterans in mental health facilities; relating to funding of state hospitals; relating to authority of department of health in local mental health programs; relating to authority of director of health in providing care of patients in boarding homes; relating to authority of director of health in licensing of institutions providing care and treatment of the mentally ill or mentally retarded; providing that the director of health shall be compact administrator for the Interstate Compact on Mental Health; relating to the Interstate Compact on the Mentally Disordered Offender; providing lay members on health profession boards; establishing an office of executive secretary for health profession licensing boards; relating to mobile intensive care paramedics; and funeral directors; relating to the board of sanitarians; creating a nursing home administrators licensing board to provide for licensing of nursing home administrators, including provisions for suspensions and revocations; relating to the board of hearing-aid dealers and fitters within the depart-
ment of health including suspension, removal, prohibited acts, offenses and penalties; extending requirements for examinations before anyone can be fitted for a hearing aid; creating a board of barbers and beauticians with certain powers and duties including licensing provisions, violations, penalties and validity of prior certificates; providing that the office of medical examinations is to be operated under the control and supervision of the director of health; and providing penalties for violations of the sections, articles and chapters amended or enacted within.

Be it enacted by the Legislature of West Virginia:

That sections eighteen and nineteen, article one, chapter sixteen be repealed; that section six, article four-d of said chapter sixteen be repealed; that section nine, article five-b of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that article five-e of said chapter sixteen be repealed; that sections three, five and six, article five-c of said chapter sixteen be repealed; that article five-d of said chapter sixteen be repealed; that section one, article six of said chapter sixteen be repealed; that sections four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article fourteen of said chapter sixteen be repealed; that article twenty-four of said chapter sixteen be repealed; that sections one, two, three, four, five, six, seven, eight, ten, eleven, thirteen, fourteen, fifteen and seventeen, article one; sections one, two, three and four, article two; sections three, seven and eight, article two-a; section one, article two-b; sections one, two, five, six, ten and twelve, article three; sections six, seven and twenty-one, article four; section three, article four-a; sections two, four, five, six, nine and ten, article four-c; sections three and four, article four-d; sections two, three, four, five, six, twenty-eight and thirty-two, article five; sections one, two, three, four and five, article five-a; sections one, two, four, six, eight, eleven and twelve, article five-b; sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article five-c; sections two, four, five, seven, eight, nine, ten and twenty-four, article six; section three, article seven; and sections one and three, article fourteen, all of said chapter sixteen be amended and re-
enacted; that sections six and nine, article one; sections one, three, four and five, article two; section one, article two-a; section one, article four; sections three, seven and nine, article five; section one, article six-a; section five, article seven; sections one, two-a and three, article eight; section one, article nine; section two, article fourteen; and section two, article fifteen, all of chapter twenty-seven, be amended and reenacted; that said chapter twenty-seven be further amended by adding thereto a new section, designated section six, article two; that said chapter twenty-seven be further amended by adding thereto a new article, designated article three; that section fifteen, article one, chapter thirty be amended and reenacted; that section two, article three-b; sections one and three, article six; and section two, article seventeen; and that said chapter thirty be further amended by adding thereto a new section, designated section four-a, article one; that said chapter thirty be further amended by adding thereto three new articles, designated articles twenty-five, twenty-six and twenty-seven; and that sections three, four, five, six, seven and fourteen, article twelve, chapter sixty-one be amended and reenacted, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all to read as follows:

Chapter

16. Public Health
27. Mentally Ill Persons.
30. Professions and Occupations.
61. Crimes and Their Punishment.

CHAPTER 16. PUBLIC HEALTH.

Article

2. Local Health Officers.
2A. Alternative Method of Organizing Local Health Agencies.
2B. Family Planning and Child Spacing.
3. Prevention and Control of Communicable and Other Infectious Diseases.
4. Venereal Diseases.
4A. Prenatal Examination.
4C. Emergency Medical Service.
4D. Emergency Medical Services Act.
5A. Cancer Control.
ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-1. Purpose.

§16-1-2. Health resources advisory council created; composition; terms; vacancies; meetings, etc.

§16-1-3. Powers of health resources advisory council; report; duration.

§16-1-4. Composition of department.

§16-1-5. Board of health; membership; appointment and removal of members; compensation.

§16-1-6. Promulgation of rules and regulations; references to board to mean director of health.

§16-1-7. Director of health—Appointment; compensation; qualifications; term; oath and bond; vacancy.


§16-1-9. State hygienic laboratory; branches thereof.

§16-1-10. Disposition of moneys received by state director of health; report to auditor; noncompliance.

§16-1-11. Director authorized to cooperate with the state health planning and development agency and federal government in hospital and other health facility programs.

§16-1-12. Receipt and disbursement of federal aid and other moneys for health purposes.

§16-1-13. Administrative and other employees of department; interfering with inspectors, etc.

§16-1-1. Purpose.

1. It is the policy of this state to effect a significant improvement in the delivery of health and mental health services for the benefit of the citizens of this state; to develop and implement a coordinated and comprehensive continuum of health and mental health services to meet current and future needs at a reasonable cost; to promote the delivery of preventive care by emphasis on primary care and community based services; to achieve equal access to all types of quality care for all citizens of the state; to encourage the active participation of the citizens of this state in matters relating to the delivery of health and mental health services; to avoid duplication of services and costs created and fostered by separation of such services; to review and regulate the delivery of health care services to contain the spiraling costs of health care; to integrate a broad variety of health services and functions and to reorganize and innovatively...
modify existing responsibilities, and where necessary, plan and develop new responsibilities for the most effective and efficient delivery of services; and thereby, to provide quality health and mental health services to the citizens of this state.

§16-1-2. Health resources advisory council created; composition; terms; vacancies; meetings, etc.

There is hereby created the "Health Resources Advisory Council", hereinafter referred to as the "council." The council shall be made up of twenty-nine members, all of whom are citizens and residents of this state appointed by the governor, by and with the advice and consent of the Senate. Members of the council shall include:

(1) Fourteen representatives of the health professions licensed and certified in the state and of the allied health professions;

(2) Five representatives of health professional schools and programs;

(3) Five representatives of voluntary health agencies;

and

(4) Five representatives of the consumer public.

Members shall be representative of the geographic areas and congressional districts of the state. Members shall be appointed so that each of the congressional districts shall have at least five representatives on the advisory council who shall be residents of the district. No more than fifteen members of the council shall belong to the same political party.

Members of the council, except for the chairman, shall be appointed for terms of three years each, except that of the members first appointed, nine members shall be appointed for terms of one year, ten members for terms of two years, and nine members for terms of three years. Members shall be eligible for reappointment for a second three-year term. Vacancies shall be filled in the same manner as the original appointments, for the duration of the unexpired term. The governor shall appoint, by and with the advice and consent of the Senate, a chair-
man of the council who shall serve at the pleasure of the governor.

A majority of the members of the council shall constitute a quorum for the transaction of business. The council shall elect from among its members a vice chairman and such other officers as it shall deem necessary. The council shall meet at least four times during the calendar year, and meetings shall be held upon a call of the chairman or a majority of the members.

§16-1-3. Powers of health resources advisory council; report; duration.

The council shall serve as an advisory body to the governor on the development of guidelines for the supply, distribution, and organization of health resources. Recognizing that it is critical to identify current and prospective health manpower needs, the council shall study and advise the governor on the supply of health manpower including consideration of the interrelationship among the different types of health manpower; shall study and advise the governor on the distribution of health manpower within and without institutions and geographically in the state; and shall study and advise the governor on the most effective organization of health manpower, including consideration of the relationship of health manpower to institutions and the relationship among different types of health manpower.

The council shall also undertake a study of national standards for health resources, determine the appropriateness of such standards for the citizens of this state, and make recommendations for such additional standards as it may deem necessary in order to best serve the needs of the citizens of this state.

On or before January first of each year, the council shall submit a written report to the governor and the Legislature, summarizing its activities and findings of the preceding year, in addition to such other recommendations and studies as it may submit from time to time. Unless hereinafter extended by the Legislature, the provisions of section two and three of this article shall
§16-1-5. Composition of department.

There shall be a state department of health which shall consist of the board of health, the director of the department, the subdivisions of the board of health and other employees as hereinafter provided. Any person employed by the state department of health or any local boards of health who on the effective date of this article is a classified civil service employee shall, within the limits contained in section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee.

§16-1-6. Board of health; 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. The state board of health shall consist of fifteen 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, three shall be from mental health disciplines, one shall be an administrator of a licensed hospital, one shall be an optometrist and three shall be representative citizens, none of which representative citizens shall be an employee of, spouse of an employee of, or receive any other financial benefit from any health facility located in this state, and none of whom shall be a member of, or the spouse, child, or parent of, or connected in any way with, any of the professions named.

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 such profession on the date of appointment and shall have been so licensed and in active practice of the profession for at least five years immediately preceding the date of such appointment. Before appointing any professional member, the governor shall request any professional society of the profession practiced by the 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 five years each: Provided, That persons appointed prior to the effective date of this section shall continue until the completion of their terms of original appointment: Provided, however, That in the case of the initial appointments of the representative citizens, one shall be designated to serve for a term of one year, one for a term of two years and one for a term of four years; and in the case of the initial appointments of the members from mental health disciplines, one shall be designated to serve for a term of two years, one for a term of three years and one for a term of five years. Thereafter, the term of each new appointee shall be five years except in the case of any vacancy on the board which shall be filled by the governor by appointment for the unexpired term. No member shall be eligible for more than two terms.

No more than eight of the members of the board shall belong to the same political party. At least one member, but not more than four, shall be appointed from each congressional district. No person shall be eligible for appointment to membership on the state board who is a member of any political party executive committee, or who holds any public office or employment under the federal government or under the government of this state or any of its political subdivisions.

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 expira-
tion, suspension or revocation of the professional license of any professional member of the board shall be cause for 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 reimbursed 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; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

The director of health shall serve as secretary to the board, but shall not be entitled to vote. He shall be in charge of the offices of the board and shall be responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to the development of drafts and other materials concerning rules and regulations promulgated by the board.

§16-1-7. Promulgation of rules and regulations; references to board to mean director of health.

The state board of health shall have the power to promulgate such rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code, as are necessary and proper to effectuate the purposes of this chapter and prevent the circumvention and evasion thereof. The board shall have the power to appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians, post-mortem examinations, mental health and mental retardation centers and such other areas as it deems necessary to advise the board on rules and regulations. Such rules and regulations shall include, but not be limited to, the regulation of:

(1) The sanitary condition of all institutions and schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, all
other places open to the general public and inviting public
patronage or public assembly, or tendering to the public
any item for human consumption, and places where trades
or industries are conducted;

(2) Occupational and industrial health hazards, the
sanitary conditions of streams, sources of water supply,
sewerage facilities, and plumbing systems, and the qual-
ifications of personnel connected with any of such facili-
ties, without regard to whether such supplies or systems,
are publicly or privately owned; and the design of all
water systems, plumbing systems, sewerage systems,
sewage treatment plants, excreta disposal methods,
swimming pools in this state, whether publicly or private-
ly owned;

(3) Food and drug standards, including cleanliness,
proscription of additives, proscription of sale, and other
requirements in accordance with article seven of this
chapter, as are necessary to protect the health of the
citizens of this state;

(4) The training and examination requirements for
emergency medical service attendants and mobile in-
tensive care paramedics; the designation of the health
care facilities, health care services, and the industries
and occupations in the state which must have emergency
medical service attendants and mobile intensive care
paramedics employed, and the availability, communica-
tions, and equipment requirements with respect thereto;

(5) The collection of data on health status, the health
system and the costs of health care;

(6) Other health-related matters which the depart-
ment of health is authorized to supervise, and for which
the rule-making authority has not been otherwise as-
signed.

Notwithstanding any other provision of this code to
the contrary, whenever in this code there is a reference
to the state board of health and such reference does not
relate to the making or promulgation of rules and regula-
tions, it shall be construed to mean and shall be a refer-
ence to the director of the state department of health.
§16-1-8. Director of health—Appointment; compensation; qualifications; term; oath and bond; vacancy.

The chief executive officer and administrative head of the department shall be appointed by the governor, with the advice and consent of the Senate, and shall serve in the manner prescribed by section two-a, article seven, chapter six of this code and shall hereafter be referred to as the director. The annual salary of the director shall be not more than forty-five thousand dollars. In addition thereto, the director shall be reimbursed for all necessary travel incurred in the performance of his duties; except that in the event the expenses are paid, or are to be paid, by a third party, the director shall not be reimbursed by the state. The director so appointed shall be a physician licensed under the laws of this state to practice medicine or a person holding a doctorate degree in public health administration. Such a person shall have not less than four years' experience in health services administration or a related field. The director shall serve at the will and pleasure of the governor and shall not be actively engaged or employed in any other business, vocation or employment, serving full time in the duties of the office as prescribed by this article.

Before entering upon the duties of the office, the director shall take and subscribe to the oath of office prescribed by section five, article four of the constitution of this state, and shall execute a bond with surety approved as to form by the attorney general and as to sufficiency by the governor in the penal sum of fifteen thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. If a vacancy occurs in the position of director, the governor shall make a temporary appointment until the next session of the Legislature, at which time the governor shall present to the Senate the nomination for the office.

As used in this chapter, the term "director" shall mean director of the state department of health or his designee.

§16-1-10. Powers and duties of the director of health.

The director shall be the chief executive, administrative, and fiscal officer of the department of health and
shall have the following powers and duties:

(1) To supervise and control the business, fiscal, administrative and health affairs of the department of health, and in that regard and in accordance with law, employ, fix the compensation of, and discharge all persons necessary for the proper execution of the laws of this state relating to health and mental health, and the efficient and proper discharge of the duties imposed upon, and execution of powers vested in the director by law; to that end the director may promulgate such written rules as are necessary and proper to delegate functions, establish divisions, specify duties and responsibilities, prescribe qualifications of division directors and otherwise administer or supervise the department, subject to the safeguards of the state civil service system as it now exists;

(2) To enforce all laws of this state concerning public health, health, and mental health; to that end, the director shall make, or cause to be made, sanitary investigations and inquiries respecting the cause of disease, especially of epidemics and endemic conditions, and the means of prevention, suppression or control of such conditions; the source of sickness and mortality, and the effects of environment, employment, habits and circumstances of life on the public health. The director shall further make, or cause to be made, inspections and examinations of food, drink and drugs offered for sale or public consumption, in such manner as he shall deem necessary to protect the public health and shall report all violations of laws and regulations relating thereto to the prosecuting attorney of the county in which such violations occur;

(3) To make complaint or cause proceedings to be instituted against any person, corporation or other entity for the violation of any health law before any court or agency, without being required to give security for costs; such action may be taken without the sanction of the prosecuting attorney of the county in which the proceedings are instituted or to which the proceedings relate;

(4) To supervise and coordinate the administration and operation of the state hospitals named in article two,
chapter twenty-seven of this code, and any other state
facility hereafter created for the mentally ill, mentally
retarded or addicted:

(5) To supervise and coordinate the administration
and operation of the health and other facilities named
in chapter twenty-six of this code, except as otherwise
therein provided, and any other state facility hereafter
created relating to health, not otherwise provided for;

(6) To supervise and coordinate the administration
and operation of the county and municipal boards of health
and health officers;

(7) To develop and maintain a state plan of operation
which sets forth the needs of the state in the areas of health
and mental health; goals and objectives for meeting those
needs; methods for achieving the stated goals and objec-
tives; and needed personnel, funds, and authority for
achieving the goals and objectives;

(8) To collect data as may be required to foster
knowledge on the citizenry's health status, the health
system and costs of health care;

(9) To delegate to any appointee, assistant or employee
any and all powers and duties vested in the director, in-
cluding, but not limited to, the power to execute contracts
and agreements in the name of the department: Provided,
That the director shall be responsible for the acts of such
appointees, assistants and employees;

(10) To transfer any patient or resident between hospi-
tals and facilities under the control of the director and, by
agreement with the state commissioner of public institu-
tions or his successor and otherwise in accord with law,
accept a transfer of a resident of a facility under the juris-
diction of the state commissioner of public institutions or
his successor;

(11) To make periodic reports to the governor and to
the Legislature relative to specific subject areas of public
health or mental health, the state facilities under the
supervision of the director, or other matters affecting the
health or mental health of the people of the state;
(12) To accept and use for the benefit of the state, for the benefit of the health of the people of this state, any gift or devise of any property or thing which is lawfully given: Provided, That if any gift is for a specific purpose or for a particular state hospital or facility, it shall be used as specified. Any profit which may arise from any such gift or devise of any property or thing shall be deposited in a special revenue fund with the state treasurer, and shall be used only as specified by the donor or donors;

(13) To acquire by condemnation or otherwise any interest, right, privilege, land or improvement and hold title thereto, for the use or benefit of the state or a state hospital or facility, and, by and with the consent of the governor, to sell, exchange, or otherwise convey any interest, right, privilege, land or improvement acquired or held by the state, state hospital or state facility; which condemnation proceedings shall be conducted pursuant to chapter fifty-four of this code;

(14) To inspect, and enforce rules and regulations to control the sanitary conditions of and license all institutions and health care facilities as set forth in this chapter, including, but not limited to, schools, whether public or private, public conveyances, dairies, slaughterhouses, workshops, factories, labor camps, places of entertainment, hotels, motels, tourist camps, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where trades or industries are conducted;

(15) To make inspections, conduct hearings, and to enforce the rules and regulations of the board concerning occupational and industrial health hazards, the sanitary condition of streams, sources of water supply, sewerage facilities, and plumbing systems, and the qualifications of personnel connected with such supplies, facilities or systems without regard to whether they are publicly or privately owned; and to make inspections, conduct hearings and enforce the rules and regulations of the board concerning the design of chlorination and filtration facilities and swimming pools;
(16) To reorganize the functions and divisions of the department of health, structuring all functions previously assigned to the board of health, department of health, department of mental health, and otherwise assigned to the department of health by this chapter, to the end of establishing the most efficient and economic delivery of health services in accord with the purposes of this chapter; to achieve such goal the director shall establish such divisions, and delegate and assign such responsibilities and functions as he deems necessary to accomplish such reorganization. On or before the first day of February, one thousand nine hundred seventy-eight, the director shall submit to the Legislature a report on the reorganization of such department and the effect thereof, including, but not limited to, the cost, the administrative results, and the effect on the delivery of health services;

(17) To direct and supervise the provision of dental services in all state institutions;

(18) To provide for, except as otherwise specified herein, a comprehensive system of community mental health and mental retardation supportive services to the end of preventing the unnecessary institutionalization of persons and promoting the community placement of persons presently residing in mental health and mental retardation facilities and other institutions and for the planning of the provisions of comprehensive mental health and mental retardation services throughout the state;

(19) To provide for a comprehensive program for the care, treatment and rehabilitation of alcoholics and drug abusers; for research into the cause and prevention of alcoholism and drug abuse; for the training and employment of personnel to provide the requisite rehabilitation of alcoholics and drug abusers; and for the education of the public in relation thereto.

The department's program for the care, treatment, and rehabilitation of alcoholics and drug abusers may include, when intended for such purposes, the establishment of special clinics or wards within, attached to, or upon the grounds of, one or more of the state hospitals
under the control of the department of health; the acqui-
sition in the name of the department of real and personal
property and the construction of buildings and other
facilities; the leasing of suitable clinics, hospitals, or other
facilities; and the utilization, through contracts or other-
wise, of the available services and assistance of any pro-
fessional or nonprofessional persons, groups, organiza-
tions or institutions in the development, promotion and
conduct of the department's program.

The department of health shall not be required to
accept any alcoholic or drug abuser voluntarily seeking
hospitalization for clinical or hospital care, treatment, or
rehabilitation; but the department may accept, pursuant
to its adopted and promulgated rules and regulations,
responsibility for clinical or hospital care, treatment, or
rehabilitation of any alcoholic or drug abuser through
arrangements made voluntarily with the department by
him or some person acting in his behalf: Provided, That
any such person accepted by the department on a volun-
tary basis shall be charged a minimum fee unless he
shows, to the satisfaction of the department, that he is
unable to pay the fee.

The department's program of research into the causes,
prevention, and treatment of alcoholism and drug abuse
may include the utilization, through contracts or other-
wise, of the available services and assistance of any pro-
fessional or nonprofessional persons, groups, organiza-
tions or institutions, as well as cooperation with private
and public agencies engaged in research in alcoholism or
drug abuse or rehabilitation of alcoholics or drug
abusers.

The department's programs shall also provide for the
training of personnel to work with alcoholics and drug
abusers and the informing of the public as well as inter-
ested groups and persons concerning alcoholism and
drug abuse and the prevention and treatment thereof.

The department may employ such medical, psychiatric,
psychological, secretarial and other assistance as may be
necessary to carry out the provisions of this section.
As used in this subdivision (19):

(a) "Alcoholic" shall mean any person who chronically and habitually uses alcoholic beverages to the extent that he has lost the power of self-control as to the use of such beverages, or, while chronically and habitually under the influence of alcoholic beverages, endangers public morals, health, safety or welfare.

(b) "Alcoholism" shall mean the condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages.

(c) "Drug abuser" shall mean a person who is in a state of psychic or physical dependence, or both, arising from the administration of any controlled substance, as that term is defined in chapter sixty-a of this code, on a continuous basis.

(d) "Drug abuse" shall mean the use of any controlled substance, as that term is defined in said chapter sixty-a, until such time as the user has become dependent upon or addicted to the same; and

(20) To exercise all other powers delegated to the department by this chapter or otherwise in this code, to enforce all health laws and the rules and regulations promulgated by the board, and to pursue all other activities necessary and incident to the authority and area of concern entrusted to the department or director.

§16-1-11. State hygienic laboratory; branches thereof.

The director may establish and maintain a state hygienic laboratory as an aid in performing the duties imposed upon the director of the department of health, and may employ chemists, bacteriologists, and other employees that may be necessary to properly operate such laboratory.

The director may establish branches of the state laboratory at such points within the state as the director may deem necessary in the interest of the public health.

§16-1-13. Disposition of moneys received by state director of health; report to auditor; noncompliance.

The state director of health shall receive and account for all moneys required to be paid as fees for permits,
licenses or registrations, pursuant to the provisions of this code, and shall pay such moneys into the state treasury monthly, on or before the tenth day of the month succeeding the month in which such moneys were received. The director of health shall, on the first day of January and the first day of July in each year, or within five days thereafter, certify to the state auditor a detailed statement of all such moneys received by him during the preceding six months. If the director of health shall fail or refuse to comply with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined for each offense not less than fifty dollars, nor more than two hundred dollars.

§16-1-14. Director authorized to cooperate with the state health planning and development agency and federal government in hospital and other health facility programs.

The director is hereby authorized to cooperate with the state health planning and development agency and the federal government in their programs for construction of public or private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions; and is authorized to make such inventories of existing public health centers, public and private hospitals, diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, and the laboratories and other facilities thereof, to make surveys of the need for construction of such health facilities, and to adopt, develop, and supervise the administration of such statewide plans or programs for the construction of additional public and private hospitals, public health centers, public or private diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, nursing homes, and similar or related facilities and institutions, as may be necessary to comply with the requirements and conditions of federal law in respect to the granting of federal aid for such purposes. The director shall promulgate standards to assure that all requirements to obtain
The state health plan of operation set forth in section ten of this article and the state medical facilities plan shall be a part of the state health plan developed by the state health planning and development agency.

§16-1-15. Receipt and disbursement of federal aid and other moneys for health purposes.

The director is authorized to accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any county or municipality thereof, for public health purposes, or for the establishment or construction of public health facilities, whether such work is to be done by the state, or by such county or municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are, or may be, prescribed by the laws of the United States and any rules or regulations made thereunder. The director is authorized to, and may, act as the agent of the state or any of its agencies, or of any county or municipality of this state, upon the request of any agency of the state or of any such county or municipality, in accepting, receiving, and receipting for such moneys in its behalf, for public health facilities financed either in whole or in part by federal moneys.

The state, or any agency thereof, or any county or municipality is authorized to, and may, designate the director as its agent for the purposes above set forth, and any such agency, county or municipality may enter into an agreement with the director prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations, and with the laws of this state. Such moneys as are paid over by the United States government shall be retained by the state or paid over to said counties or municipalities under such terms and conditions as may be imposed by the United States government in making such grants.

All moneys accepted for disbursement pursuant to this section shall be deposited in the state treasury, and
unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purposes for which the same were made available and shall be expended in accordance with federal laws and regulations and with the laws of this state. The director is authorized, whether acting for the state or one of its agencies, or as the agency for any county or municipality, when requested by the United States government or any agency or department thereof, or when requested by the state, a state agency, or any county or municipality for which the moneys have been made available, to disburse such moneys for the designated purposes, but this shall not include any other authorized method of disbursement.

§16-1-17. Administrative and other employees of department; interfering with inspectors, etc.

The director at such time or times as deemed necessary may employ such administrative employees, inspectors, examiners, or other persons as may be necessary to properly carry out the provisions of the public health laws of this state. Such inspectors, examiners, and other employees shall act as the director's representatives and, under the direction of the director of health, shall enforce the provisions of the public health laws and all duly promulgated rules and regulations of the board of health, and in the discharge of official duties, shall have the right of entry into any institution or school, whether public or private, public conveyances, dairy, creamery, slaughterhouse, workshop, factory, labor camp, place of entertainment, hotel, tourist camp, all other places open to the general public and inviting public patronage or public assembly, or tendering to the public any item for human consumption, and places where hazardous trades or industries are conducted.

Any person interfering with or attempting to interfere with any inspector, examiner, or other duly authorized employee of the department of health in the discharge of his duties under this section shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
less than ten dollars, nor more than five hundred dollars.

ARTICLE 2. LOCAL HEALTH OFFICERS.
§16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.
§16-2-2. Full-time county and municipal health officers; full-time public health nurse; levy.
§16-2-3. Counties, or counties and municipalities, may combine in employment of officers and installation and maintenance of equipment; combined local boards of health.
§16-2-4. State director of health may supplant local health authority; removal of delinquent local officer.

§16-2-1. County and municipal health officers; reports by physicians; county board of health; penalty for noncompliance.
1 It shall be the duty of the director of the West Virginia department of health, upon the recommendation of the county commission of the county, to appoint in each county of this state a legally qualified physician, who shall be known as the county health officer. It shall also be the duty of such director, upon the recommendation of the municipal council or other governing body of any municipality, to appoint in such municipality a legally qualified physician, who shall be known as the municipal health officer: Provided, That no municipality organized and existing without a special charter from the Legislature and located within a county which maintains a full-time county health officer, shall appoint a part-time municipal health officer. The county and municipal health officers in office on the date this section becomes effective shall, unless sooner removed, continue to serve until their respective terms expire, and until their successors have been appointed and have qualified. Beginning on the first day of July, one thousand nine hundred thirty-three, and on the first day of July of each fourth year thereafter, a county health officer shall be appointed as aforesaid to serve for a term of four years, unless sooner removed by the said county commission or by the West Virginia director of health. Beginning on the first day of July, one thousand nine hundred thirty-one, and on the first day of July of each alternate year thereafter, a municipal health officer shall be appointed as aforesaid to
serve for a term of two years, unless sooner removed by
the said municipality or by the West Virginia director of
health. Should the West Virginia director of health fail
to confirm the nomination of the person recommended as
county or municipal health officer, or should the West
Virginia director of health or the county or municipal
authority remove any such officer, another nomination
shall at once be made to the West Virginia director of
health by the nominating authority.

The county health officer shall receive an official salary
of not less than three hundred dollars per annum, and
such other amount as the county commission may add
for additional services, and actual necessary traveling
expenses, unless for work specially done under orders of
the state department of health. The salary of the county
health officer shall be paid out of the treasury of the
county. It shall be the duty of every practicing physician
to report to the municipal or county health officer, where
there is such official, immediately on diagnosis, every case
of communicable or infectious disease that may arise or
come under his treatment within the municipality, and to
the county health officer cases occurring outside of the
municipality, and also, where there is no municipal health
officer, cases occurring within such municipality. The
health officer receiving such reports shall make to the
state health department a weekly report of all such cases,
stating the number of each kind of disease reported, the
action taken to arrest the infection, and the result.

The county health officer together with the president of
the county commission and the prosecuting attorney shall
constitute the county board of health, of which the county
health officer shall be the executive officer. The county
board of health shall exercise all the powers, and enforce
all the rules and regulations of the West Virginia board
of health, so far as applicable to such county. In a county
which has a full-time county health officer, the jurisdict-
ion of the county board of health and of the county
health officer shall be coextensive with the county, and
shall include every city, town and village therein which
does not have a full-time health officer of its own, but
shall not include any city, town or village therein which has such full-time health officer. But in a county which has a part-time health officer only, the jurisdiction of the county board of health and of such part-time health officer shall not extend to any city, town or village therein having a full-time or part-time health officer of its own. All county and municipal boards of health and health officers shall be secondary to the West Virginia board of health, and the director of the West Virginia department of health, and subject to all orders of the director of the West Virginia department of health, who may, if deemed expedient, act through the county and municipal boards.

Any failure to comply with any of the provisions of this section shall constitute a misdemeanor, and, upon conviction thereof, the offender shall be fined not more than one hundred dollars.

§16-2-2. Full-time county and municipal health officers; full-time public health nurse; levy.

The county commission of any county or the municipal council or other governing body of any municipality shall have the power and authority to provide for a full-time county or municipal health officer and the expenses of his administration, and for that purpose may levy a county or municipal tax, as the case may be, of not exceeding three cents on each one hundred dollars' assessed valuation of the taxable property in such county or municipality according to the last assessment thereof. Such health officer shall be a legally qualified physician, and shall be nominated and appointed in the manner provided in section one of this article. He shall serve full time in the duties of his office in protecting and supervising the general health and sanitation of his county or municipality, including medical attendance by the county health officer upon the indigent of the county in the infirmary, and shall perform such duties in relation thereto as may be prescribed by order of the county commission or ordinance of the municipality duly entered or enacted, or by order of the director of the department of health.

The county commission of any county or the municipal council or other governing body of any municipality
which has not provided for a full-time health officer, may provide for a full-time public health nurse and the expenses of administration, and for that purpose may levy a county or municipal tax, as the case may be, of not exceeding two cents on each one hundred dollars assessed valuation of the taxable property in such county or municipality according to the last assessment thereof. Such public health nurse shall be a legally qualified nurse suitably trained in sanitary science and the nurse's qualifications shall be satisfactory to the director of the state department of health. The nurse shall be nominated and appointed in the manner provided in section one of this article. The nurse shall serve full time in protecting and supervising the general health and sanitation of the county or municipality, and shall perform such duties in relation thereto as may be prescribed by order of the county commission or ordinance of the municipality duly entered or enacted, or by order of the director of the state department of health.

§16-2-3. Counties, or counties and municipalities, may combine in employment of officers and installation and maintenance of equipment; combined local boards of health.

1 Any two or more counties, or any county or counties and any one or more municipalities within or partially within the said county or counties, may combine to cooperate with the state department of health, by vote of the county commission in the case of a county and by vote of the council or other governing body in the case of a municipality, and may participate in the employment of trained health officers and other agents and employees, or in the installation and maintenance of a common laboratory and other equipment. Whenever any such units shall decide so to cooperate and shall appropriate a sum or sums of money for such joint or cooperative action, the state department of health is authorized and empowered to pay over and contribute to such cooperating units, and the cooperating units are authorized and empowered to receive and expend for public purposes, such sum or sums of money as may be available from
funds included in appropriations made for the state department of health for such purposes: \textit{Provided}, That the general plan of cooperation, as well as the principal health officers, executive agent or laboratory director employed by the cooperating units, shall first have been approved by the director of the department of health. The amount of any such payment or contribution by the state department of health to such cooperating units shall be determined in accordance with regulations established by the state board of health. Such regulations shall provide a method for determining the amount of any payment or contribution, and this method shall be uniformly applied in determining the amount of any payment or contribution to any such local governmental unit or units.

Each county or municipality participating in any such cooperative action shall select and appoint by vote of the county commission in the case of a county, and by vote of the council or other governing body in the case of a municipality, not less than one nor more than three persons to be members of a combined board of health. No such person shall be selected by, nor represent on, any such combined board, more than one such county or municipality. The number of persons to be selected by each participating county or municipality as members of such board, subject to the limitation contained in the two preceding sentences, shall be agreed upon by the several counties or municipalities participating.

All members of such combined board of health shall be appointed for terms of five years each, except that the persons first appointed pursuant to the provisions of this section, if more than one such person is appointed at the same time by any one county commission or municipal governing body, shall be individually designated to serve for terms of one, two and three years, respectively, and if only one such person is appointed at such time by each participating county or municipality, the several participating counties or municipalities shall initially appoint such persons to serve for individually designated terms, which shall be agreed upon by the several appointing
58 authorities, of one, two, three, four and five years, respec-
59 tively. Upon the expiration of the term of such initial
60 appointments, the term of each new appointee shall be
61 five years. Any vacancy on such board shall be filled by
62 appointment, by the original appointing authority, for the
63 unexpired term. All members shall serve until their duly
64 qualified successors have been appointed. The number of
65 members of such board belonging to one political party
66 shall not exceed by more than one the number of mem-
67 bers of such board belonging to any other political party.

All members of any such board shall be citizens and
68 residents of the county or municipality they are appointed
69 to represent. All members shall be eligible for reappoint-
70 ment.

No member of such board may be removed from office
72 during the term for which he is appointed, except for
73 official misconduct, incompetence, neglect of duty or gross
74 immorality.

No member of such board shall receive any compen-
76 sation for his services, but each may be reimbursed for
77 all reasonable and necessary travel and other expenses
78 actually incurred by him in the performance of his duties
79 as a member of such board.

Any such combined board of health shall consist of the
81 several members so selected. Such board shall organize by
82 electing a chairman from among its members. It shall
83 have the power to adopt, and from time to time amend,
84 such rules and regulations as it may deem necessary con-
85 cerning the time and place of its meetings, the procedure
86 and method of conducting its meetings or business, and
87 any other matters affecting, or necessary to, the orderly
88 and efficient discharge of its duties or exercise of its
89 powers. All powers and duties belonging to or
90 vested in county boards of health or municipal
91 boards of health under any provision of the code
92 are hereby vested in, conferred upon, and declared
93 to be, the powers and duties of any combined board of
94 health created pursuant to the provisions of this section.
95 All powers and duties belonging to or vested in county
96 or municipal health officers, so far as they are applicable
and not in conflict with the provisions of this section, are hereby vested in, conferred upon, and declared to be, the powers and duties of any health officer appointed and employed by any combined board of health. Any health officer or other employee appointed or employed by any combined board of health shall be employed and serve, and may be discharged, at the will and pleasure of such board. The territorial jurisdiction of any such combined board of health shall be coextensive with the boundaries of all of the counties and municipalities which have been combined to cooperate as herein provided.

Upon the formation of a combined local board of health as herein provided, and during the period that it continues to exist, there shall be no separate county board of health or municipal board of health in any county or municipality represented on the combined board of health.

§16-2-4. State director of health may supplant local health authority; removal of delinquent local officer.

When, in the opinion of the director of the state health department, any local health authority shall fail or refuse to enforce necessary laws and regulations to prevent and control the spread of communicable or infectious disease declared to be dangerous to the public health, or when, in the opinion of the said director, a public health emergency exists, the director may enforce the rules and regulations of the state board of health within the territorial jurisdiction of such local health authorities, and for that purpose shall have and may exercise all the powers given by law to local health authorities. All expenses so incurred shall be a charge against the counties, cities or towns concerned. And in such cases the failure or refusal of any local health officer or local health body to carry out the lawful orders and regulations of the state board of health shall be sufficient cause for the removal of such local health officer or the members of such local health body from office, and upon such removal the proper county or municipal authorities shall at once nominate a successor, other than the person removed, as provided by law.
ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL HEALTH AGENCIES.


§16-2A-7. Charges by local boards of health for inspection of milk distribution, production or pasteurization facilities outside of state.

§16-2A-8. State director of health may supplant local health authority; removal of delinquent local officers.


County or municipal boards of health created and established pursuant to the provisions of this article shall direct, supervise, and control all matters relating to the general health and sanitation of their respective counties or municipalities, and shall possess and exercise such power in relation thereto as may be exercised and is possessed by the state board of health or the director, as the case may be, so far as such powers are applicable to such county or municipality. Such local boards of health shall also have the power and authority to adopt and promulgate and from time to time amend such rules and regulations, consistent with the laws of this state and the rules and regulations of the state board of health, as may be necessary and proper for the protection of the general health of the county or municipality and the prevention of the introduction, propagation and spread of disease therein. All such rules and regulations shall be filed, in the case of a county board, with the clerk of the county commission, and in the case of a municipal board, with the clerk, recorder, or similar officer of the municipality. Such rules and regulations shall be kept by such clerk or recording officer in a separate book and shall be public records.

It shall be the duty of such local boards of health to protect the general health and supervise and control the sanitation of their respective counties and municipalities; to enforce the laws of this state pertaining to public health, and the rules and regulations of the state board of health, insofar as they are applicable to such counties or municipalities, and to perform such duties in relation to public health as may be prescribed by order of the
county commission of such counties or ordinances of such municipalities, consistent with the public health laws of this state and the regulations duly adopted by the state board of health. All such local boards of health receiving state or federal funds for health purposes shall first receive approval by the director of the state department of health of their general plans of operation for health purposes. Such director may, if deemed necessary or expedient by him, act through any county or municipal board of health created, established and operated pursuant to the provisions of this article.

§16-2A-7. Charges by local boards of health for inspection of milk distribution, production or pasteurization facilities outside of state.

Any local board of health, whether created and maintained pursuant to the provisions of this article or article two of this chapter, may cause an inspection to be made of the physical plant and facilities of any distributor, producer, or pasteurizer of milk whose milk distribution, production, or pasteurization plant or facilities are located outside this state but who sells or distributes in this state, or transports, or causes or permits to be transported, into this state, milk, or milk products, for resale, use or consumption in this state and within the territorial jurisdiction of such local board of health. The local board of health may charge to, and collect from such distributor, producer, or pasteurizer of milk, all of the expense of such inspection.

The amount of such charge for expense of inspection shall be based on the number of inspections made, mileage traveled, and time consumed by the inspecting official in traveling to and from the place of the inspection and in actually making the inspection: Provided, That in any case in which such milk distribution, production, or pasteurization plant or facilities are regularly inspected in the course of a regular inspection schedule or itinerary by any duly authorized representative of any agency of this state or its governmental subdivisions, or any agency of any other state or its governmental subdivisions, which has been certified as an approved inspection agency by
the director of the state department of health, no charge
for expense of inspection shall be made by any local
board of health unless it is the agency making the regular
inspection. In any event, not more than one local board
of health shall act as and be deemed, the regular inspec-
tion agency for any such milk distribution, production, or
pasteurization plant or facility. Where two or more
agencies each include any such plant or facility in a
regular inspection schedule or itinerary, the director of
the health department shall designate one of such agencies
as the regular inspection agency for such plant or facility.

§16-2A-8. State director of health may supplant local health
authority; removal of delinquent local officers.

When, in the opinion of the director of the health de-
partment, any local health authority shall fail or refuse
to enforce laws and regulations necessary to prevent and
control the spread of communicable or infectious disease
declared to be dangerous to the public health, or when,
in the opinion of the director, a public health emergency
exists, the director may enforce the rules and regulations
of the state board of health within the territorial juris-
diction of such local health authority, and for that pur-
pose shall have and may exercise all the powers given by
law to local health authorities. All expenses so incurred
shall be a charge against the counties, cities or towns
concerned. And in such cases the failure or refusal of any
local health officer or local health body to carry out the
lawful orders and regulations of the state board of health
shall be sufficient cause for the removal of such local
health officer, or local health body or its members, from
office, and upon such removal a successor or successors to
the person or persons removed shall immediately be ap-
pointed in the manner, and for the term, provided for in
this article.

ARTICLE 2B. FAMILY PLANNING AND CHILD SPACING.

§16-2B-1. Family planning and child spacing; authorized
functions; funds.

The state department of health is authorized to pro-
vide printed material, guidance, advice, financial assis-
tance, appliances, devices, drugs, approved methods, and medicines to local boards of health requesting the same for use in the operation of family planning and child spacing clinics to the extent of funds appropriated by the Legislature and any federal funds made available for such purpose.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIOUS DISEASES.

§16-3-1. State director of health authority to quarantine and to enforce regulations; state board of health authority to issue regulations to control infectious or contagious diseases.

§16-3-2. Powers of county and municipal boards of health to establish quarantine; penalty for violation.

§16-3-5. Free serum or vaccine preventives of disease.

§16-3-6. Nuisances affecting public health.

§16-3-10. Inflammation of eyes of newborn; use of silver nitrate drops as prophylactic; birth report.

§16-3-12. Same—Duties of the state director of health, duties of board of health.

§16-3-1. State director of health authority to quarantine and to enforce regulations; state board of health authority to issue regulations to control infectious or contagious diseases.

The state director of health is empowered to establish and strictly maintain quarantine at such places as he may deem proper and forbid and prevent the assembling of the people in any place, when the state director of health or any county or municipal health officer deems that the public health and safety so demand, and the state board of health may adopt rules and regulations to obstruct and prevent the introduction or spread of smallpox or other communicable or infectious diseases into or within the state, and the state director of health shall have the power to enforce these regulations by detention and arrest, if necessary. The state director of health shall have power to enter into any town, city, factory, railroad train, steamboat or other place whatsoever, and enter upon and inspect private property for the purpose of investigating the sanitary and hygienic conditions and the presence of cases of infectious diseases, and may, at his discretion, take charge of any epidemic or endemic conditions, and enforce such regulations as the state board of health may prescribe. All expenses
incurred in controlling any endemic or epidemic condi-
tions shall be paid by the county or municipality in which
such epidemic occurs.

§16-3-2. Powers of county and municipal boards of health to
establish quarantine; penalty for violation.

The county board of health of any county may declare
quarantine therein, or in any particular district or place
therein, whenever in their judgment it is necessary to
prevent the spread of any communicable or infectious
disease prevalent therein, or to prevent the introduction
of any communicable or infectious disease prevailing in
any other state, county or place, and of any and all per-
sons and things likely to spread such infection. As soon
as such quarantine is established such board shall, in
writing, inform the director of health thereof, the duty
of whom it shall be to ascertain, as soon as practicable,
the necessity therefor, if any exists, and if the state di-
rector of health finds that no such necessity exists, the
same shall, by the said director, be declared raised. The
said county board of health shall have power and au-
thority to enforce such quarantine until the same is
raised as aforesaid, or by themselves, and may confine
any such infected person, or any person liable to spread
such infection, to the house or premises in which he re-
sides, or if he has no residence in the county, at a place
to be provided by them for the purpose; and if it shall
come necessary to do so, they shall summon sufficient
guard for the enforcement of their orders in the premises.
Every person who shall fail or refuse to comply with any
order made by such board under this section, and every
person summoned as such guard who shall, without a
lawful excuse, fail or refuse to obey the orders and direc-
tions of such board in enforcing said quarantine, shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than twenty-five nor more than two
hundred dollars. In cases of emergency or actual necessity,
and when the county commission or corporate authorities
are from any cause unable to meet or to provide for the
emergency or the necessity of the case, all actual expendi-
tures necessary for local and county quarantine, as pro-
vided for in this section, shall be certified by the county board of health to the county commission, and the whole, or as much thereof as the said commission may deem right and proper, shall be paid out of the county treasury. The board of health of any city, town or village shall have, within the municipality, the same powers and perform the same duties herein conferred upon and required of the county board of health in their county. So far as applicable the provisions of this section shall apply to any quarantine established and maintained by the state director of health pursuant to section one of this article.

§16-3-5. Free serum or vaccine preventives of disease.

1 The state director of health shall purchase vaccine lymph, diphtheria antitoxin, tetanus antitoxin and such other forms of serum or vaccine preventives of disease as he may deem necessary, and shall distribute the same, free of charge, in such quantities as he may deem neces-sary, to county and municipal health officers, to be used by them for the benefit of, and without expense to the indigent within their respective jurisdictions, and in other cases where it may be urgently necessary to check con-tagions and control epidemics.

11 The state director of health shall also deliver, free of charge, to such drugstores or other stores within each county as the health officer of such county may designate as proper depositories, such quantities of diphtheria anti-toxin as said director may deem necessary for the use of the indigent of such county, and such antitoxin shall be kept at said drugstores or other stores at all times and in sufficient quantities to permit immediate delivery to any licensed physician who may require the same for the treatment of any indigent person infected with diphtheria, or to prevent such infection, without cost to the patient so treated. The state director of health shall take a receipt from the proprietor of each drugstore or other store for any antitoxin delivered as herein provided.

25 The auditor of the state shall pay the actual cost of all said serum and vaccine preventives and the cost of delivering said diphtheria antitoxin to any drugstore or
§16-3-6. Nuisances affecting public health.

The state director of health or any county or municipal health officer shall inquire into and investigate all nuisances affecting the public health within his jurisdiction; and the said director or any such officer or the county commission of any county or any municipality is authorized and empowered to apply to the circuit court of the county in which any such nuisance exists, or to the judge thereof in vacation, for an injunction forthwith to restrain, prevent or abate such nuisance.

§16-3-10. Inflamation of eyes of newborn; use of silver nitrate drops as prophylactic; birth report.

It shall be unlawful for any physician, or midwife, practicing midwifery, to neglect or otherwise fail to instill or have instilled, immediately upon its birth, in the eyes of the newborn babe, one or two drops of a one percent solution of silver nitrate, furnished by the West Virginia director of health. Every physician or midwife shall, in making a report of a birth, state whether or not the above solution was instilled into the eyes of said infant.

§16-3-12. Same—Duties of the state director of health; duties of board of health.

It shall be the duty of the state director of health:

(a) To enforce the provisions of sections seven through thirteen, inclusive, of this article;

(b) To provide for the gratuitous distribution of one percent solution of silver nitrate outfits, together with proper directions for the use and administration thereof,
to all physicians and midwives who may be engaged in
the practice of obstetrics, or assisting at childbirth;
(c) To publish and promulgate such further advice and
information concerning the dangers of inflammation of
the eyes of the newborn as is necessary for prompt and
effective treatment;
(d) To furnish copies of sections seven through thir-
ten, inclusive, of this article to all physicians and mid-
wives who may be engaged in the practice of obstetrics,
or assisting at childbirth;
(e) To keep a proper record of any and all cases of
inflammation of the eyes of the newborn of which reports
are filed with the state director of health pursuant to law,
or which may come to his attention in any way, and to
constitute such records a part of the annual report to the
governor; and
(f) To report any and all violations of the public health
laws or of any rules or regulations lawfully adopted pur-
suant thereto that may come to his attention, to the prose-
cuting attorney of the county wherein said violations may
have occurred, and to assist said official in any way pos-
sible in the prosecution of such cases.

It shall be the duty of the state board of health to
promulgate such rules and regulations as shall be neces-
sary for the purpose of enforcing said provisions, and as
the state director of health may deem necessary for the
further and proper guidance of local health officers.

ARTICLE 4. VENEREAL DISEASES.
§16-4-6. Reports by physicians.
§16-4-7. False report or information.
§16-4-21. Quarantine.
§16-4-6. Reports by physicians.
1 It shall be the duty of every practicing physician or
other person who makes a diagnosis in, or treats a case
of, syphilis, gonorrhea or chancroid, to make two reports
of the case, as follows: One report shall be made to the
local municipal health officer, if the party for whom the
diagnosis was made or case treated lives within any
municipality having a health officer, and if the municipality has no health officer, or if the party lives outside of a municipality, then to the health officer of the county in which such person lives; the second report shall be made to the director of health of the state. And every superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of venereal disease shall report the same under like conditions.

The reports above required shall state the street number and address of the person reported as diseased, the age, sex, color, marital state and occupation of such person, the date of the onset of the disease, the source of infection, whether said disease is in an infectious state, and whether the person reported is at the time of making report engaged in any occupation forbidden under this article and hereafter mentioned. The reports, when made out, shall be mailed or handed to the parties to whom they are directed to be made within forty-eight hours after a diagnosis is made or treatment started; and the municipal health officer or county health officer, as the case may be, shall file and preserve said reports, and they shall be open to inspection by the director of the state department of health, and by local health officers, or officers whose duties are connected with executing the laws against these diseases.

§16-4-7. False report or information.

Any physician or other person required to make reports of a venereal disease hereunder, or who is required to report the failure of any patient to return for further treatment, who fails or refuses to make any such reports, or who knowingly reports a person under a false or fictitious name or address, or who makes any other statements on any report which he has reason to believe are untrue, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided; and each report that should have been made, and each name that should have been given, and each address that should have been given, or has been wrongfully reported or
given, shall be a separate offense; and a second conviction of a physician for failure to comply with any provision of this section shall be sufficient ground and reason for the director of health, upon the recommendation of the medical licensing board, to revoke the license of such physician. Any person suffering with a venereal disease, whose name is required to be reported hereunder, who gives to the physician or person required to make reports herein required a false or fictitious name or address, or who shall fail or refuse to answer any proper question required to be reported hereunder, or who makes any false statement in answer to any such question, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

§16-4-21. Quarantine.

1 In establishing quarantine for a venereal disease under the provisions of this article, the health officer establishing said quarantine may confine any person infected, or reasonably suspected of having such venereal disease, or any other person liable to spread such disease, to the house or premises in which such infected person lives, or he may require any such person to be quarantined in any other place, hospital or institution in his jurisdiction that may have been provided. If no such place has been provided, then such person shall be confined in the county or city jail under a quarantine order, and such jails shall always be available for such purposes. But if such person is to be quarantined in his home, then said health officer shall designate the area, room or rooms, that such person is to occupy while so confined, and no one except the attending physician or his immediate attendants shall enter or leave such room or rooms so designated without permission of said health officer, and no one except the local health officer shall terminate said quarantine, and this shall not be done until the diseased person has become noninfectious as determined by thorough clinical tests, or permission has been given by the West Virginia state director of health. If, to make any quarantine effective as provided herein, it becomes necessary, the
local health officer may summon a sufficient guard for the enforcement of his orders in the premises. And every person who fails or refuses to obey or comply with any order made by said health officer hereunder, or under any other section concerning quarantine, and every person summoned as a guard who shall, without a lawful excuse therefor, fail or refuse to obey the orders and directions of the health officer in enforcement of said quarantine, shall be guilty of a misdemeanor, and shall be punished as hereinafter provided.

ARTICLE 4A. PRENATAL EXAMINATION.

§16-4A-3. Identification of specimen; report.

Any physician who takes or causes to be taken from a woman in pregnancy or suspected pregnancy a blood test for syphilis shall identify such specimen as being from a pregnant woman, and the laboratory shall provide a report in triplicate on forms prepared and furnished by the state department of health showing the results of such tests. The original of each such report shall be sent at once to the physician submitting the specimen, a duplicate shall be forwarded to the state department of health during the week that the test was performed, and the triplicate shall be retained by the laboratory for its files. All laboratory reports shall be confidential and shall not be open to public inspection. The laboratory test for syphilis in compliance with this article shall be performed free of charge by the state hygienic laboratory on the application of any municipal or county health officer or other physician, or any other person permitted by law to secure such specimens.

ARTICLE 4C. EMERGENCY MEDICAL SERVICE.

§16-4C-2. Definitions.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.

§16-4C-5. Suspension or revocation of certificate or temporary certificate.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.

§16-4C-9. Violations; criminal penalties.

§16-4C-10. Actions to enjoin violations; injunctive relief.
§16-4C-2. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 "Ambulance" means any privately or publicly owned vehicle or aircraft which is designed, constructed or modified; equipped or maintained; and operated for the transportation of patients.

3 "Ambulance service" means the transportation, and treatment at the site of pickup and en route, of a patient to or from a place where medical, hospital or clinical service is normally available.

4 "Emergency medical service attendant" means any person who is responsible for attending, caring for and giving life-saving or life-preserving treatment to a patient transported in an ambulance. This term includes both the driver of an ambulance and any person assigned to the ambulance to attend patients.

5 "Governing body" shall have the meaning ascribed to it as applied to a municipality in subsection (b), subdivision (1), section two, article one, chapter eight of this code.

6 "Municipality" shall have the meaning ascribed to it in subsection (a), subdivision (1), section two, article one, chapter eight of this code.

7 "Patient" means any sick, injured, wounded or otherwise incapacitated or helpless person, or an expectant mother who needs medical, hospital or clinical service under an existing or imminent emergency situation.

8 "State board" means the state board of health.

9 "Director" means the director of the state department of health.

§16-4C-4. Standards for emergency medical service attendants; issuance, renewal, suspension and revocation of emergency medical service attendant certificates; issuance of temporary certificates.

1 After the first day of January, one thousand nine hundred seventy-five, every ambulance, except those vehicles
and aircraft exempted in section three of this article, shall have at least one physician, osteopathic physician, any state licensed health provider qualified to render first aid or mobile intensive care paramedic duly licensed to serve in such capacity under the laws of this state or one person who possesses a valid emergency medical service attendant certificate issued hereunder by the director in its patient compartment at all times when a patient is being transported.

In accordance with the provisions of chapter twenty-nine-a of this code, the state board shall promulgate rules regarding the age, training and physical requirements of emergency medical service attendants. As a minimum training requirement, every emergency medical service attendant shall have earned and possess a valid American red cross advanced first aid certificate, or an advanced first aid certificate issued by the United States bureau of mines (now referred to as the mining enforcement and safety administration, United States department of the interior) or the equivalent thereof; or have successfully completed the course on emergency care and transportation of the sick and injured recommended by the American academy of orthopedic surgeons or the equivalent thereof, before he is issued a certificate: Provided, That any member of a rescue unit organized and engaged in providing ambulance service prior to the first day of January, one thousand nine hundred seventy-five, which is operated by a rescue squad, fire department, police department, county or municipality of this state, who on that date is certified by the respective county health officer of the county wherein such unit is based, or, if there is no county health officer, by the county commission or governing body of the jurisdiction wherein such unit is based, that he is adequately trained and is capable of performing the service required of an emergency medical service attendant shall be issued an original emergency medical service attendant certificate by the director upon his submitting proper application for such certificate. The state board may promulgate rules for emergency medical service attendants which exceed this minimum training require-
Any person desiring certification as an emergency medical service attendant shall apply to the director using forms and procedures prescribed by the director. Upon receipt of such application, the director shall determine if the applicant meets the requirements for certification and examine the applicant as, in his discretion, is necessary to make such determination. If it is determined that the applicant meets all of the requirements, the director shall issue an emergency medical service attendant certificate to the applicant. Emergency medical service attendant certificates issued by the director shall be valid for two years from the date of their issuance unless sooner suspended or revoked by the director. Certificates may be renewed for additional two-year periods after examination of the certificate holder and determination by the director that such holder meets the requirements established for emergency medical service attendants: Provided, That if any county health officer of any county, or, if there is no county health officer, the county commission or governing body of the jurisdiction concludes that any area of that jurisdiction has not been afforded the necessary training or equipment to implement this section, then this section shall not apply.

The director may issue a temporary emergency medical service attendant certificate to an applicant, with or without examination of the applicant, when it finds such issuance to be in the public interest. Unless sooner suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding one hundred twenty days and it shall not be renewed thereafter unless it be in the public interest: Provided, That the expiration date of any such temporary certificate issued shall be extended until the holder of such certificate is afforded at least one opportunity to take an emergency medical care attendant training course within the general area where he serves as an emergency medical service attendant, but the expiration date shall not be extended for any longer period of time or for any other reason.

There shall be no fee or other payment required of an
§16-4C-5. Suspension or revocation of certificate or temporary certificate.

(a) The director may at any time upon his own motion, and shall, upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a certificate or temporary certificate issued under the provisions of this article.

(b) The director shall suspend or revoke any certificate or temporary certificate when he finds the holder thereof has:

(1) Obtained a certificate or temporary certificate by means of fraud or deceit; or

(2) Been incompetent, grossly negligent, or guilty of other malpractice as defined by the state board by rules and regulations; or

(3) Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the state board hereunder or any order or final decision of the director.

(c) The director shall also suspend or revoke any certificate or temporary certificate if he finds the existence of any grounds which would justify the denial of an application for such license or temporary permit if application were then being made for it.

§16-4C-6. Notice of refusal, suspension or revocation of certificate; appeals to director; judicial review.

An application for an original emergency medical service attendant certificate, for the renewal of an emergency medical service attendant certificate or for a temporary emergency medical service attendant certificate, shall be acted upon by the director and the director's certificate delivered or mailed, or a copy of any order of the director
denying any such application delivered or mailed to the applicant, by the director within fifteen days after the date upon which such application was received from the applicant.

Whenever the director shall refuse to issue an emergency medical service attendant certificate or a temporary emergency medical service attendant certificate, or shall suspend or revoke an emergency medical service attendant certificate, or a temporary emergency medical service attendant certificate, he shall make and enter an order to that effect, which order shall specify the reasons for such denial, suspension or revocation, and shall cause a copy of such order to be served in person or by certified mail, return receipt requested, on the applicant or certificate holder, as the case may be.

Whenever a certificate is suspended or revoked, the director shall in the order of suspension or revocation direct the holder thereof to return his certificate to the director. It shall be the duty of such certificate holder to comply with any such order following expiration of the period provided for an appeal to the director.

Any applicant or certificate holder, as the case may be, adversely affected by an order made and entered by the director may appeal to the director for an order vacating or modifying such order as the director should have entered. The person so appealing shall be known as the appellant. An appeal shall be perfected by filing a notice of appeal with the director within ten days after the date upon which the appellant received the copy of such order. Said notice of appeal shall be in such form and contain such information as may be prescribed by the director, but in all cases shall contain a description of any order appealed from and the grounds for said appeal. The filing of the notice of appeal shall operate to automatically stay or suspend execution of any order which is the subject matter of said appeal. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing on appeal and the administrative procedures in connection with and following such
hearing, with like effect as if the provisions of said article five were set forth in extenso herein.

The director shall set a hearing date which shall be not less than ten days after he received the notice of appeal unless there is a postponement or continuance. The director may postpone or continue any hearing on his own motion, or for good cause shown upon the application of the appellant. The appellant shall be given notice of said hearing in person or by certified mail, return receipt requested. Any such hearing shall be held in Charleston, Kanawha County, West Virginia, unless another place is specified by the director.

After such hearing and consideration of all of the testimony, evidence and record in the case, the director shall make and enter an order affirming, modifying or vacating his initial order or shall make and enter any new order. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, in person or by certified mail, return receipt requested. The order of the director shall be final unless vacated or modified upon judicial review thereof.

Any appellant adversely affected by a final order made and entered by the director is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso herein. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§16-4C-9. Violations; criminal penalties.

Any person who operates an ambulance or who provides ambulance service not in compliance with the provisions of this article or the rules promulgated by the state board
of health pursuant to this article, or who operates an
ambulance with uncertified emergency medical service
attendants aboard when not lawfully permitted to do so
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than one hundred dollars
nor more than three hundred dollars, or imprisoned in
the county jail not more than one month, or both fined
and imprisoned.

§16-4C-10. Actions to enjoin violations; injunctive relief.
1 Whenever it appears to the director that any person
2 has been or is violating or is about to violate any pro-
3 visions of this article or any final order of the director,
4 the director 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, for an injunction against such person
and any other persons who have been, are or are about
to be, involved in, or in any way participating in, any
practices, acts or omissions, so in violation, enjoining
such person or persons from any such violation or viola-
tions. Such application may be made and prosecuted
to conclusion whether or not any such violation or viola-
tions have resulted or shall result in prosecution or con-
viction under the provisions of section eight of this
article.

Upon application by the director, the circuit courts of
this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article and
all final orders of the state 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 applica-
tion 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 cases.
ARTICLE 4D. EMERGENCY MEDICAL SERVICES ACT.

§16-4D-3. Definitions.

§16-4D-4. Office of emergency medical services created; staffing.

§16-4D-3. Definitions.

1 For the purposes of this article:

2 (a) The term "director" shall mean the director of health;

3 (b) The term "council" shall mean the emergency medical services advisory council created pursuant to article four-c of this chapter;

4 (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 life-saving or life-preserving treatment to a patient transported in an ambulance; and

5 (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 situations.

§16-4D-4. Office of emergency medical services created; staffing.

1 There is hereby created within state government under the director of the department of health an office to be known as the office of emergency medical services.

2 The director may employ such technical, clerical, stenographic and other personnel as may be necessary to carry out the purposes of this article. Such 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.

ARTICLE 5. VITAL STATISTICS.

§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.

§16-5-3. Rules and regulations of state board of health.

§16-5-4. Appointment of state registrar of vital statistics.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.
§16-5-2. Vital statistics; statewide system; supervision by the director of health; offices, etc.

1 The director of the department of health shall have general supervision over the system of vital statistics, which shall be under the immediate supervision of the state registrar of vital statistics. The director shall provide for such clerical and other assistants as may be necessary for the purposes of this article. Suitable offices shall be provided at the seat of state government and such offices shall be properly equipped with a fire-proof vault and filing cases for the permanent and safe preservation of all official records made, maintained or filed under the provisions of this article.

§16-5-3. Rules and regulations of state board of health.

1 The state board of health is authorized to adopt, amend and repeal rules and regulations for the purpose of carrying out the specific provisions of this article.

§16-5-4. Appointment of state registrar of vital statistics.

1 The state director of the department of health shall appoint and prescribe the qualifications of the state registrar of vital statistics.

§16-5-5. Duties of state registrar of vital statistics; enforcement of article.

1 a. The state registrar of vital statistics shall:
2 (1) Administer and enforce the provisions of this article and all other applicable laws of this state and all lawful rules and regulations adopted and promulgated thereunder;
3 (2) Direct and supervise the statewide system of vital statistics and the operation of the division of vital statistics, and act as custodian of its records;
4 (3) Direct, supervise and control the activities of
local registrars and the activities of public officers in relation to the operation of the vital statistics system and provide them with the postage necessary for them to carry out their duties under this article;

(4) Prescribe, provide and distribute, subject to the rules and regulations promulgated by the board of health, all forms necessary to carry out the provisions of this article and of the rules and regulations adopted and promulgated thereunder; and

(5) Prepare and publish annual reports of vital statistics of this state, and such other reports as may be required by the director of the state health department.

b. The state registrar of vital statistics may delegate such functions and duties as are hereby vested in him to officers and employees of the division of vital statistics and to local registrars as the state registrar may deem necessary or expedient.

c. The state registrar, either personally or by a duly delegated representative, shall have authority to investigate cases of irregularity or violation of law arising under the provisions of this article, and all local registrars, deputy local registrars and subregistrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. When any such case is reported to him by the state registrar, the prosecuting attorney shall forthwith initiate and promptly prosecute the necessary court proceedings against the person or corporation responsible for the alleged violation of law. Upon request of the state registrar, the attorney general shall assist in the enforcement of the provisions of this article.

§16-5-6. Registration districts.

For the purposes of this article, subject to the rules and regulations promulgated by the state board of health, the director of the state health department may establish registration districts throughout the state. The
§16-5-28. Fees for copies and searches.

a. The state director of the department of health shall prescribe the fees, if any, to be charged and collected by the state registrar of vital statistics for certified copies of certificates or records, not to exceed two dollars per copy, or for a search of the files or records when no copy is made: Provided, That the state registrar shall, upon request of any parent or guardian, supply without fee a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment: Provided, however, That the state registrar may furnish certified copies of birth and death records to the state welfare department, and to organized charities, free of charge, when such certificates are needed in presenting claims to the federal government, or to the state department of welfare, and an accurate record shall be made of all such certificates so furnished.

b. Fees collected under this section by the state registrar of vital statistics shall be deposited to the state general fund.

§16-5-32. Uniform system of registration of marriage, divorce and annulment of marriage.

To the end that an efficient and uniform system of registration of marriage, divorce and annulment of marriage shall be established in this state, the state registrar of vital statistics shall provide for the registration of each marriage, divorce and annulment of marriage which shall occur in this state. In so doing, the state director of health subject to rules and regulations promulgated by the board of health shall have the authority and duty to:

a. Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage.
b. Make and amend necessary rules and regulations, give instructions, and prescribe and furnish forms, for collecting, transcribing, compiling and preserving records and statistics of marriage, divorce and annulment of marriage.

c. Make and publish a statistical report of marriage, divorce and annulment of marriage in this state.

ARTICLE 5A. CANCER CONTROL.


The director of the state department of health shall execute and administer the provisions of this article relating to the diagnosis, treatment and care of persons suffering from cancer. The director shall have authority to direct, control, govern and provide for the management of any state institution for the care and treatment of cancer patients which may hereafter be created by law.

§16-5A-2. Educational program.

The director shall formulate and put into effect throughout the state an educational program for the purpose of preventing cancer and of aiding in its early diagnosis, and for the purpose of giving information to hospitals and cancer patients concerning the proper treatment. In furtherance of this program, the director may assist and cooperate with any state or national organization conducting an educational program for the prevention of cancer.


The director shall have authority to prescribe standard minimum requirements for the organization, equipment and conduct of cancer units or clinics in general hospitals of the state. The director shall establish and maintain, or aid in the establishment and maintenance of, a sufficient number of cancer diagnostic and treat-
ment clinics meeting such requirements, so located that they are within reasonable traveling distance of any citizen of the state in need of treatment. In the establishment and operation of such clinics and in the fixing of such minimum requirements, the director shall consult and cooperate with the West Virginia state medical association.

In order to determine the progress of the disease and the success of the treatment being used, the director shall insofar as practicable provide a method for following up each case and bringing the patient back to the clinic at frequent intervals.

§18-5A-4. Tissue diagnostic service.

The director shall furnish, within the limits of available funds, free tissue diagnostic service to all needy patients. In providing this service the director may use either the state-owned laboratory in the department of health, or privately owned laboratories approved by the department.

§18-5A-5. Care of needy patients.

The board of health shall prescribe rules and regulations specifying to what extent and on what terms and conditions needy cancer patients may receive financial aid for the diagnosis and treatment of cancer in any approved hospital in this state. The director is authorized to furnish aid, within the limits of available funds, to such patients and shall have the power to administer such aid in any manner which in his judgment will afford the greatest benefit to cancer patients throughout the state.

In determining whether a particular patient is entitled to such assistance the director may call upon the department of welfare for such investigation as may be required. In order to receive such aid, however, the patient need not qualify for public assistance as administered by the department of welfare.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.
§16-B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

1 No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof shall establish, conduct, or maintain in the state of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, hospital or extended care facility operated in connection with a hospital, without first obtaining a license therefor in the manner hereinafter provided: Provided, That only one license shall be required for any person, partnership, association, corporation or any local governmental unit or any division, department, board or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location.

2 Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government or the state government shall be exempt from the provisions of this article.

3 A hospital or extended care facility operated in connection with a hospital, within the meaning of this article, shall mean any institution, place, building or agency in which an accommodation of five or more beds is maintained, furnished or offered for the hospitalization of the sick or injured: Provided, That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a
hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: Provided, however, That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation or control in any manner of (1) private offices of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.
§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.

1 No person, partnership, association, corporation, or any local governmental unit or any division, department, board or agency thereof may continue to operate an existing ambulatory health care facility, ambulatory surgical facility, hospital or extended care facility operated in connection with a hospital, or open an ambulatory health care facility, ambulatory surgical facility, a hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the state department of health that he is not less than eighteen years of age, of reputable and responsible character, and otherwise qualified. In the event the applicant is an association, corporation or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his ability to comply with the minimum standards and with all rules and regulations lawfully promulgated.

§16-5B-4. License fees.

1 The application of any person, partnership, association, corporation, or local governmental unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees: Those with five beds but less than fifty beds shall pay a fee of twenty dollars; those with fifty beds or more and less than one hundred beds shall pay a fee of thirty
dollars; those with one hundred beds or more and less than two hundred beds shall pay a fee of forty dollars; and those with two hundred beds or more shall pay a fee of fifty dollars. The application of any person, partnership, association, corporation, or local governmental unit for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility. No such fee shall be refunded. All licenses issued under this article shall expire on the thirtieth day of June following their issuance, shall be on a form prescribed by the state department of health, shall not be transferable or assignable, shall be issued only for the premises named and described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation, and payment of the license fee, as in the case of the procurement of an original license: Provided, That any such license in effect on the thirtieth day of June of any year, for which timely application for renewal, together with payment of the proper fee, has been made to the state department of health in conformance with the provisions of this article and the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until (a) the thirtieth day of June next following the expiration date of such license, or (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs. All fees received by the state department of health under the provisions of this article shall be paid into the state treasury general revenue fund.

§16-5B-6. State director of health to issue licenses; suspension or revocation.

The state director of health is hereby authorized to issue licenses for the operation of ambulatory health care facilities, ambulatory surgical facilities, hospitals or extended care facilities operated in connection with hospitals, which are found to comply with the provisions of
The state director of health is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution; or

(4) Operation of beds or services not specified in the license.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director of health if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.
§16-5B-8. State board of health to establish standards; director enforces.

The board of health shall have the power to promulgate rules and regulations and the director shall have the power to enforce such rules and regulations, as the board of health may establish, not in conflict with any provision of this article, as it finds necessary, or in the public interest, in order to protect patients in institutions required to be licensed under this article from detrimental practices and conditions, or to ensure adequate provision for their accommodations and care. No rule or regulation or standard of the board shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein: Provided, That such school or system of practice is recognized by the laws of this state.

§16-5B-11. Violations; penalties.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board or agency thereof establishing, conducting, managing or operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than five hundred dollars, with imprisonment in the county jail for a period of not more than ninety days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.
§16-5B-12. Injunction; severability.

1 Notwithstanding the existence or pursuit of any other remedy, the director may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any ambulatory health care facility, ambulatory surgical facility, hospital or extended care facility operated in connection with a hospital without first obtaining a license therefor in the manner hereinbefore provided.

If any part of this article shall be declared unconstitutional, such declaration shall not affect any other part thereof.

ARTICLE 5C. NURSING AND PERSONAL CARE HOMES.

§16-5C-1. Purpose.
§16-5C-2. Definitions.
§16-5C-3. Powers, duties and rights of director.
§16-5C-4. Administrative and inspection staff.
§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.
§16-5C-6. License required; application; fees; duration; renewal.
§16-5C-7. Cost disclosure, surety for patient funds.
§16-5C-8. Investigation of complaints.
§16-5C-9. Inspections.
§16-5C-10. Reports of inspections; plans of correction; assessment of penalties for failure to correct violations.
§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings.
§16-5C-12. Administrative appeals for facility ratings, civil assessments, license limitation, suspension or revocation.
§16-5C-14. Legal counsel and services for the director.
§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.
§16-5C-16. Availability of reports and records.
§16-5C-17. Licenses and regulations in force on effective date of article.

§16-5C-1. Purpose.

1 It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are convalescing or whose physical or mental condition requires
them to receive a degree of nursing or related health care
greater than that necessary for well individuals, but not
so acute as to require hospitalization. Such care and
treatment requires a living environment for such persons
which, to the extent practicable, will approximate a nor-
mal home environment. To this end, the guiding principle
for administration of the laws of the state is that such
persons shall be encouraged and assisted in securing ne-
cessary care and treatment in noninstitutional surround-
ings. In recognition that for many such persons effective
care and treatment can only be secured from proprietary,
voluntary and governmental nursing homes or personal
care homes it is the policy of this state to encourage,
promote and require the maintenance of institutions other
than hospitals offering nursing or related health care or
personal care so as to ensure protection of the rights and
dignity of those using the services of such facilities.

The provisions of this article are hereby declared to be
remedial and shall be liberally construed to effectuate its
purposes and intents.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:
3
4 (a) The term "director" means the director of the West
5 Virginia state department of health or his designee;
6
7 (b) The term "facility" means any nursing home or
8 personal care home as defined in subdivisions (c) and (d)
9 of this section: Provided, That the care or treatment in a
10 household, whether for compensation or not, of any per-
11 son related by blood or marriage, within the degree of
12 consanguinity of second cousin to the head of the house-
13 hold, or his or her spouse, may not be deemed to con-
14 stitute a nursing home or personal care home within the
15 meaning of this article. Nothing contained in this article
16 shall apply to hospitals, as defined under section one,
17 article five-b of this chapter, or state institutions as
18 defined under section six, article one, chapter twenty-
19 seven or section three, article one, chapter twenty-five,
20 all of this code, or institutions operated for the treatment
and care of alcoholic patients, or offices of physicians, or
hotels, boarding homes or other similar places that furnish
to their guests only board and room, or extended care
facilities operated in conjunction with a hospital;

(c) The term “nursing home” means any institution,
residence or place, or any part or unit thereof, however
named, in this state which is advertised, offered, main-
tained or operated by the ownership or management,
whether for a consideration or not, for the express or
implied purpose of providing accommodations and care,
for a period of more than twenty-four hours, for three or
more persons who are ill or otherwise incapacitated and
in need of nursing care due to physical or mental im-
pairment, or which provides services for the rehabilitation
of persons who are convalescing from illness or incapaci-
ation;

(d) The term “personal care home” means any institu-
tion, residence or place, or any part or unit thereof, how-
ever named, in this state which is advertised, offered,
maintained or operated by the ownership or management,
whether for a consideration or not, for the express or
implied purpose of providing accommodations and per-
sonal assistance, for a period of more than twenty-four
hours, to six or more persons who are dependent upon the
services of others by reason of physical or mental impair-
ment but who do not require nursing care;

(e) The term “nursing care” means those procedures
commonly employed in providing for the physical,
emotional and rehabilitational needs of the ill or other-
wise incapacitated which require technical skills and
knowledge beyond that which the untrained person
possesses, including, but not limited to, such procedures
as: Irrigations, catheterizations, application of dressings;
supervision of special diets; objective observation of
changes in patient condition as a means of analyzing and
determining nursing care required and the need for
further medical diagnosis and treatment; special pro-
cedures contributing to rehabilitation; administration of
medication by any method ordered by a physician such
as hypodermically, rectally, or orally; and carrying out
other treatments prescribed by a physician which involve
a like level of complexity and skill in administration;

(f) The term "personal assistance" means personal
services, including, but not limited to, the following: Help
in walking, bathing, dressing, feeding, or getting in or
out of bed, or supervision required because of the age or
mental impairment of the patient;

(g) The term "mental impairment" excludes mental
illness and mental retardation as defined in sections two
and three, article one, chapter twenty-seven of this code;

(h) The term "patient" means an individual under care
in a nursing home or personal care home;

(i) The term "sponsor" means the person or agency
legally responsible for the welfare and support of a
patient;

(j) The term "person" means an individual and every
form of organization, whether incorporated or unin-
corporated, including any partnership, corporation, trust,
association or political subdivision of the state.

The director may define in regulations any term used
herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To enforce regulations and standards for nursing
4 homes adopted, promulgated, amended or modified by
5 the board of health;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension and revocation of licenses of
8 nursing homes;

9 (c) To enforce rules adopted, promulgated, amended
10 or modified by the board of health governing the qualifi-
11 cation of applicants for nursing home licenses including,
12 but not limited to, educational requirements, financial
13 requirements, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper
and necessary to comply with the requirements and conditions for the receipt of such federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated to the department of health by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the department of health by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from the department of health's operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements and instruments shall be executed by the director;

(h) To appoint officers, agents, employees and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing home and personal care home administrative, management and operational personnel;

(j) To undertake survey, research and planning projects and programs relating to administration and operation of nursing homes and personal care homes, and to the health, care, treatment and service in general of patients of such homes;

(k) To assess civil penalties for violations of facility standards, in accordance with section ten of this article;

(l) To classify nursing homes into care categories such as skilled nursing facilities, intermediate care facilities, and other comparable categories under the terms of this article if, in the opinion of the director, the best interest of the public is served by so doing;

(m) To inspect any facility and any records maintained therein, subject to the provisions of section ten of this article;

(n) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of article three, chapter twenty-
nine-a of this code, and to enforce compliance with the provisions of this article and with regulations issued hereunder, by the board of health;

(o) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance;

(p) To make complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of regulations issued hereunder, by the board of health. Such action may be taken by the director without the sanction of the prosecuting attorney of the county in which proceedings are instituted, if said officer fails or refuses to discharge his duty. In no such case shall the director or any person acting under the director's direction be required to give security for costs;

(q) To delegate authority to the director's employees and agents to perform all functions of the director except the making of final decisions in adjudications; and

(r) To submit a report to the governor, the Legislature and the public, on or before the first day of December, one thousand nine hundred seventy-eight, and annually thereafter. The report shall describe the licensing and investigatory activities of the department during the year, and the nature and status of other activities of the department, and may include comment on the acts, policies, practices or procedures of any public or private agency that affect the rights, health or welfare of patients or residents of nursing homes and personal care homes. The annual report shall include a list of all nursing homes and personal care homes in the state; whether such homes are proprietary or nonproprietary; the classification of each such home; the name of the owner or owners; the total number of beds, the number of private and semi-
§16-5C-4. Administrative and inspection staff.

1 The director may, at such time or times as he may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the department shall be members of the state civil service system. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations of the board of health and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home or personal care home.

§16-5C-5. Rules and regulations; minimum standards for facilities; rating of facilities.

1 (a) All rules and regulations shall be approved by the board of health and promulgated in the manner provided by the provisions of article three, chapter twenty-nine-a of this code. The board of health shall adopt, amend or repeal such rules and regulations as may be necessary or proper to carry out the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred upon the director by this article.

10 (b) The board of health shall promulgate regulations establishing minimum standards for categories of opera-
tion of facilities including, but not limited to, the following:

(1) Administrative policies, including (i) an affirmative statement of the right of access to facilities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to patients, consistent with the right of patients to privacy, and (ii) a statement of the rights and responsibilities of patients in facilities which prescribes, as a minimum, such a statement of patients' rights as included in the United States department of health, education and welfare regulations, in force on the effective date of this article, governing participation of intermediate care facilities in the medicare and medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the facility;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made available; and

(9) Such other categories as the board of health determines to be appropriate to ensure patient's health, safety and welfare.

(c) The board of health shall include in its regulations detailed standards for each of the categories established pursuant to subsection (b) of this section, and shall classify such standards as follows: Class I standards are standards the violation of which, the board of health determines, would present either an imminent danger
to the health, safety or welfare of any patient or a substantial probability that death or serious physical harm would result; Class II standards are standards which the board of health determines have a direct or immediate relationship to the health, safety or welfare of any patient, but which do not create imminent danger; Class III standards are standards which the board of health determines have an indirect or a potential impact on the health, safety or welfare of any patient.

(d) The board of health shall assign a range of numerical values to each standard, based on its classification pursuant to subsection (c) of this section, representing compliance with the standard, lack of compliance, as well as performance significantly exceeding such standard. The board of health shall determine, for each category established pursuant to subsection (b) of this section, the minimum number of accumulated value points which constitutes an acceptable level of compliance with the overall standards of such category, and a facility must accumulate such established number for each and every category to be deemed in substantial compliance with this article.

(e) Not later than the first day of March, one thousand nine hundred seventy-eight, the board of health shall establish a system of rating facilities, as part of the licensing procedure, in accordance with the criteria established pursuant to this section. Such system shall include four rating categories entitled, from highest to lowest, "A", "B", "C" and "F". A rating of "F" shall be assigned to those facilities whose performance is not in substantial compliance with this article and regulations promulgated hereunder, and shall be the basis for issuance of a provisional license pursuant to subsection (d), section six of this article, or the limitation, suspension, revocation or denial of a license. The rating assigned to each facility shall be on the basis of its immediately prior inspection, and shall be deemed a part of the results and findings of that inspection, and shall be included on the license issued to the facility pursuant to section six of this article.
§16-5C-6. License required; application; fees; duration; renewal.

Subject to the provisions of section seventeen of this article, no person may establish, operate, maintain, offer or advertise a nursing home or personal care home within this state unless and until he obtains a valid license therefor as hereinafter provided, which license remains suspended, unrevoked and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any facility, as defined in section two of this article, which is being operated without a valid license from the director. The procedure for obtaining a license shall be as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes or personal care homes as established by this article and the rules and regulations lawfully promulgated by the board of health hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address and principal occupation (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in the applicant, (ii) of each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of an applicant which is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in an applicant, the name, address and principal occupation of each officer and director of such corporation;

(3) The name and address of the owner of the premises or the facility or proposed facility, if he is a different person from the applicant; and in such case, the name and address (i) of each person who, as a stockholder or otherwise, has a proprietary interest of ten percent or more in such owner, (ii) of
Each officer and director of a corporate applicant, (iii) of each trustee and beneficiary of such owner if he is a trust, and (iv) where a corporation has a proprietary interest of fifty percent or more in such owner, the name and address of each officer and director of such corporation;

(4) Where the applicant is the lessee or the assignee of the facility or the premises of the proposed facility, a signed copy of the lease and any assignment thereof;

(5) The name and address of the facility or the premises of the proposed facility;

(6) The type of institution to be operated;

(7) The proposed bed quota of the facility and the proposed bed quota of each unit thereof;

(8) (i) An organizational plan for the facility indicating the number of persons employed or to be employed, the positions and duties of all employees; (ii) the name and address of the individual who is to serve as administrator; and (iii) such evidence of compliance with applicable laws and regulations governing zoning, buildings, safety, fire prevention and sanitation as the director may require;

(9) Such additional information as the director may require; and

(10) Assurances that the nursing home was reviewed and found to be needed by the state health planning and development agency.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section, and inspection of the applicant facility pursuant to section ten of this article, the director shall issue a license if he finds:

(1) That an individual applicant, and every partner, trustee, officer, director and controlling person of an applicant which is not an individual, be a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record
of compliance with lawful orders of the department (if any) and lack of revocation of a license during the previous five years;

(2) That the facility be under the supervision of an administrator who is qualified by training and experience: Provided, That every facility classified as a nursing home shall have an administrator licensed pursuant to the provisions of article twenty-five, chapter thirty of this code; and

(3) That the facility is in substantial compliance with standards established pursuant to section five of this article, and such other requirements for a license as the board of health may establish by regulation under this article.

Any license granted by the director shall state the maximum bed capacity for which it is granted, the date the license was issued, the expiration date, and the rating assigned to the facility pursuant to section five of this article. Such licenses shall be issued for a period of one year: Provided, That during the twelve-month period following the effective date of this article, the director may issue licenses or renewals for periods of less than one year in order to distribute the expiration dates of such licenses throughout the calendar year, and fees for such licenses shall be prorated on the basis of the portion of a year for which they are issued. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable: Provided, however, That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the facility for which it is issued so as to be accessible to and in plain view of all patients and visitors of the facility.

(c) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee,
and contingent upon evidence of compliance with the provisions of this article and regulations promulgated by the board of health hereunder. Any such application for renewal of a license shall include a report by the licensee in such form and containing such information as shall be prescribed by the director, including the following:

1. A balance sheet of the facility as of the end of the licensing term, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation and similar accounts;

2. A statement of operations of the facility for such licensing term, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

3. A statement of any changes in the name, address, management or ownership information on file with the director.

All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such information as is required for initial applicants under the provisions of subsection (a) of this section.

(d) In the case of an application for a renewal license, if all requirements of section five of this article are not met, the director may in his discretion issue a provisional license, provided that care given in the facility is adequate to patient needs and the facility has demonstrated improvement and evidences potential for substantial compliance within the term of said license: Provided, That a provisional renewal may not be issued for a period greater than one year, shall not be renewed, and that no such license shall be issued to any facility with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of one hundred dollars for an original nursing home license or fifty dollars for an original personal care facility license shall be paid at the time application is made for such license. The license fee for renewal of a license shall
be four dollars per bed for nursing homes and two dollars per bed for personal care homes. The bed capacity for the holder of each license shall be determined by the director. All such license fees shall be due and payable to the director, annually, and in such manner as set forth in the rules and regulations promulgated by the board of health. Such fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. Thereafter, upon order of the auditor of the state, all such fees shall be transmitted to the state treasurer to be deposited to the credit of the general revenue fund.

§16-5C-7. Cost disclosure; surety for patient funds.

(a) Each nursing home and personal care home shall disclose in writing to all prospective patients a complete and accurate list of all costs which may be incurred by them; and such facility shall display or cause to be displayed copies of such list in conspicuous places therein. Patients may not be liable for any cost not so disclosed.

(b) If the facility handles any money for patients within the facility, the licensee or his authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director shall approve. Such bond shall be upon condition that the licensee shall hold separately and in trust all patients' funds deposited with the licensee, shall administer the funds on behalf of the patient in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the patient, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the director based upon the magnitude of the operations of the applicant, but which sum may not be less than two thousand five hundred dollars.

Every person injured as a result of any improper or unlawful handling of the money of a patient of a facility may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result there-
of to the extent covered by the bond. Whenever the di-
rector determines that the amount of any bond which is
filed pursuant to this subsection is insufficient to adequately
protect the money of patients which is being handled,
or whenever the amount of any such bond is impaired
by any recovery against the bond, the director may re-
quire the licensee to file an additional bond in such
amount as necessary to adequately protect the money of
patients being handled.

The provisions of this subsection may not apply if the
licensee handles less than twenty-five dollars per patient
and less than five hundred dollars for all patients in any
month.

§16-5C-8. Investigation of complaints.

1 The board of health shall establish by regulation pro-
cedures for prompt investigation of all complaints of
alleged violations by nursing homes or personal care
homes of applicable requirements of state law or regula-
tions, except for such complaints that the director deter-
mines are willfully intended to harass a licensee or are
without any reasonable basis. Such procedures shall in-
clude provisions for ensuring the confidentiality of the
complainant and of any other person so named in the
complaint, and for promptly informing the complainant
and the facility involved of the results of the investigation.

12 If, after its investigation, the director determines that
the complaint has merit, the director shall take appro-
priate disciplinary action and shall advise any injured
party of the possibility of a civil remedy under this
article.

17 No facility may discharge or in any manner discriminate
against any patient or employee for the reason that such
patient or employee has filed a complaint or participated
in any proceeding specified in this article. Violation of
this prohibition by any facility constitutes ground for the
suspension or revocation of the license of the facility as
provided in section eleven of this article. Any type of
discriminatory treatment of a patient by whom, or upon
whose behalf, a complaint has been submitted to the di-
rector, or any proceeding instituted under this article, within one hundred twenty days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the facility in retaliation for such complaint or action.

§16-5C-9. Inspections.

1 The director and any duly designated employee or agent thereof shall have the right to enter upon and into the premises of any facility for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home or personal care home without a license. If such entry is refused by the owner or person in charge of any such facility, the director shall apply to the circuit court of the county in which the facility is located for a warrant authorizing inspection, and such court shall issue an appropriate warrant if it finds good cause for inspection.

The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to section six of this article, and shall conduct at least one unannounced inspection annually thereafter, to determine compliance by the facility with applicable statutes and regulations promulgated thereunder. The state fire marshal, by his employees or authorized agents, shall make all fire, safety and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties for failure to correct violations.

(a) Reports of all inspections made pursuant to section nine of this article shall be in writing and filed with the director, and shall list all deficiencies in the facility's compliance with the provisions of this article and the regulations adopted by the board of health hereunder. The director shall send a copy of such report to the facility and
shall specify a time within which the facility shall submit
a plan for correction of such deficiencies, which plan shall
be approved, rejected or modified by the director.

(b) Upon failure by a facility with deficiencies to submit
a plan of correction which is approved by the director, or
to correct any deficiency within the time specified in
an approved plan of correction, the director may assess
civil penalties as hereinafter provided or may initiate
any other legal or disciplinary action as provided by this
article.

Nothing in this section shall be construed to prohibit
the director from enforcing a regulation, administratively
or in court, without first affording formal opportunity to
make correction under this section, where, in the opinion
of the director, the violation of such regulation jeopardizes
the health or safety of patients or where the violation of
such regulation is the second or subsequent such violation
occurring during a period of twelve full months.

Civil penalties assessed shall be classified according to
the nature of the violation as defined in subsection (c),
section five of this article and regulations promulgated
thereunder by the board of health, as follows: For each
violation of a Class I standard, a civil penalty of not less
than one hundred nor more than one thousand dollars
shall be imposed; for each violation of a Class II standard,
a civil penalty of not less than fifty nor more than one
hundred dollars shall be imposed; for each violation of a
Class III standard, a civil penalty of not less than twenty-
five nor more than fifty dollars shall be imposed. Each day
a violation continues, after the date by which correction
was required under an approved plan of correction or, if
an approved plan of correction is not submitted, the date
on which such plan was due, shall constitute a separate
violation.

The director shall, in a civil judicial proceeding, recover
any unpaid assessment which has not been contested
under section twelve of this article, or which has been
affirmed under the provisions of that section and not ap-
pealed, or which has been affirmed on judicial review, as
provided in section thirteen of this article. All money col-
§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings.

(a) The director shall by order reclassify a facility, or reduce the bed quota of the facility, or both, where he finds upon inspection of the facility that the licensee is not providing adequate care under the facility's existing classification or quota, and that reclassification, reduction in quota or both would place the licensee in a position to render adequate care. Any notice to a licensee of reclassification, reduction in quota or both shall include the terms of such order, the reasons therefor, and the date set for compliance.

(b) The director may suspend or revoke a license issued under this article if he finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or regulations promulgated pursuant hereto.

(c) Whenever a license is limited, suspended or revoked pursuant to this section, the director shall file a complaint stating facts constituting a ground or grounds for such limitation, suspension or revocation. Upon the filing of the complaint, the director shall notify the licensee in writing of the filing of the complaint, enclosing a copy of the complaint, and shall advise the licensee of the availability of a hearing pursuant to section twelve of this article. Such notice and copy of the complaint shall be served on such licensee by certified mail, return receipt requested.

(d) The suspension, expiration, forfeiture or cancellation by operation of law or order of the director of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application.
or suspending or revoking the license or otherwise taking disciplinary action on any such ground.

§16-5C-12. Administrative appeals for facility ratings, civil assessments, license limitation, suspension or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to sections five, six, ten or eleven of this article shall, upon timely written request, have the opportunity for a hearing by the director at which he may contest such order as contrary to law or unwarranted by the facts or both. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with such hearing.

Following such hearing the director shall make and enter a written order either dismissing the complaint or taking such action as is authorized in this article. The written order of the director shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the licensee and his attorney of record, if any, by certified mail, return receipt requested. If the director suspends a facility's license, it shall also specify the conditions giving rise to such suspension, to be corrected by the licensee during the period of suspension in order to entitle the licensee to reinstatement of his license. If the director revokes a license, the director may stay the effective date of revocation by not more than ninety days upon a showing that such delay is necessary to assure appropriate placement of patients. The order of the director shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section thirteen of this article.

(b) In addition to all other powers granted by this chapter, the director may hold the case under advisement and make a recommendation as to requirements to be met by said licensee in order to avoid either sus-
35 pension or revocation. In such a case, the director shall
36 enter an order accordingly and so notify the licensee
37 and his attorney of record, if any, by certified mail, return
38 receipt requested. If the licensee meets the requirements
39 of such order, the director shall enter an order showing
40 satisfactory compliance and dismissing the complaint and
41 shall so notify the licensee and his attorney of record,
42 if any, by certified mail, return receipt requested.


1 Any licensee adversely affected by an order of the di-
2 rector rendered after a hearing held in accordance with
3 the provisions of section twelve of this article is entitled
4 to judicial review thereof. All of the pertinent provisions
5 of section four, article five, chapter twenty-nine-a of this
6 code shall apply to and govern with like effect as if the
7 provisions of said section four were set forth in extenso
8 in this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

§16-SC-14. Legal counsel and services for the director.

1 (a) Legal counsel and services for the director in all
2 administrative hearings and all proceedings in any circuit
3 court and the supreme court of appeals shall be provided
4 by the attorney general or his assistants, in proceedings
5 in any circuit court by the prosecuting attorney of the
6 county as well, all without additional compensation.

7 (b) The governor may appoint counsel for the director,
8 who shall perform such legal services in representing
9 the interests of patients in nursing homes and personal
10 care homes in matters under the jurisdiction of the
11 director as the governor shall direct. It shall be the duty
12 of such counsel to appear for the patients in all cases
13 where they are not represented by counsel. The com-
14 pensation of such counsel shall be fixed by the governor.
§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a nursing home or personal care home without a license granted under section six of this article, or who prevents, interferes with or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than two hundred fifty dollars, with imprisonment in the county jail for a period of not more than ninety days, or by both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The director may in his discretion bring an action to enforce compliance with this article or any rule, regulation or order hereunder, whenever it shall appear to the director that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule, regulation or order hereunder, or whenever it shall appear to the director that any person has aided, abetted, or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring shall have jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director shall have refused to grant or renew a license, or shall have revoked a license required by law to operate or conduct a nursing home or personal care home, or shall have ordered a person to refrain from conduct violating the rules and regulations of the board of health, and the person deeming himself aggrieved by such refusal or revocation or order shall have appealed
the action of the director, the court may, during pendency of such appeal, issue a restraining order or injunction upon proof that the operation of the facility or its failure to comply with the order of the director adversely affects the well-being or safety of the patients of the facility. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or personal care home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules and regulations of the board of health, fail to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting a nursing home or personal care home without a license as required by law, or has continued to violate the rules and regulations of the board of health.

(c) Any facility that deprives a patient of any right or benefit created or established for the well-being of the patient by the terms of any contract, by any state statute or regulation, or by any applicable federal statute or regulation, shall be liable to said patient for injuries suffered as a result of such deprivation. Upon a finding that a patient has been deprived of such a right or benefit, and that the patient has been injured as a result of such deprivation, and unless there is a finding that the facility exercised all care reasonably necessary to prevent and limit the deprivation and injury to the patient, compensatory damages shall be assessed in an amount sufficient to compensate such patient for such injury. In addition, where the deprivation of any such right or benefit is found to have been willful or in reckless disregard of the lawful rights of the patient, punitive damages may be assessed. A patient may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

The amount of damages recovered by a patient, in an
action brought pursuant to this section, shall be exempt
for purposes of determining initial or continuing eligi-
ability for medical assistance under article four, chapter
nine of this code, and shall neither be taken into con-
sideration nor required to be applied toward the pay-
ment or part payment of the cost of medical care or
services available under said article.

Any waiver by a patient or his legal representative of
the right to commence an action under this section,
whether oral or in writing, shall be null and void as
contrary to public policy.

(d) The penalties and remedies provided in this sec-
tion are cumulative and shall be in addition to all other
penalties and remedies provided by law.

§16-5C-16. Availability of reports and records.

1 The director shall make available for public inspection
and at a nominal cost provide copies of all inspections
and other reports of facilities filed with or issued by the
director. Nothing contained in this section may be con-
strued or deemed to allow the public disclosure of con-
fidential medical, social, personal or financial records of
any patient. The board of health shall adopt such reg-
ulations as may be necessary to give effect to the provi-
sions of this section and to preserve the confidentiality of
medical, social, personal or financial records of patients.

§16-5C-17. Licenses and regulations in force on effective date
of article.

1 All licenses for nursing homes and personal care
homes which are in force upon the effective date of this
article shall continue in full force and effect during the
period for which issued unless sooner revoked as pro-
vided in this article.

6 All regulations in effect on the effective date of this
article, which were adopted by the board relating to
licensing nursing homes or personal care homes, shall
remain in full force and effect until altered, amended or
repealed by the board of health.
ARTICLE 6. HOTELS AND RESTAURANTS.

§16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.

§16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.

§16-6-5. Form and content of application for inspection; payment of fee.

§16-6-7. Certificate or permit prerequisite to license.

§16-6-8. Annual inspection of hotels and restaurants; powers and duties of director of health.

§16-6-9. Alterations and changes by owner; penalty for refusal or failure to make.

§16-6-10. Notices by director of health.

§16-6-24. Prosecution.

§16-6-2. Regulations by state board of health; enforcement of orders and laws respecting pure food.

The West Virginia board of health shall make such rules and regulations, not inconsistent with law, as in their judgment are necessary to carry out the provisions of this article. The director of the state department of health shall enforce any orders made by the board of health and any laws of the state respecting pure food, so far as they relate to hotels and restaurants.

§16-6-4. Application for inspection of hotel or restaurant; temporary permit; certificate of inspection; fee.

Every person, firm or corporation proposing to operate a hotel or restaurant shall apply to the director of health for an inspection and certificate thereof, and said inspector shall inspect the premises described in such application as soon thereafter as may be practicable; but if it be impracticable to do so within ten days after receiving such application, said director may issue to such applicant a temporary permit which shall be valid until a regular inspection is made. Only one certificate or permit shall be issued where a hotel and restaurant are combined and operated in the same building and under the same management. Each certificate or permit shall expire on the thirtieth day of June next following its issuance, and no hotel or restaurant shall be maintained and operated in this state without the certificate of inspection thereof as herein prescribed, which certificate shall be posted in the main public room of such hotel or restaurant, and shall show the date of each inspection.
and the notations relating thereto by the director of health. No such certificate shall be transferable. The fee for such inspection and certificate or permit shall be, for a hotel, two dollars, and twenty-five cents additional for each bedroom in excess of seven; and for a restaurant, two dollars, and twenty-five cents additional for each five chairs or stools, or spaces where persons are fed, in excess of ten, but no fee shall exceed ten dollars. Such director shall, on the first of each month, pay into the state treasury all fees collected for inspections during the preceding month. Every certificate of inspection or permit under this article shall be made and issued in duplicate.

§16-6-5. Form and content of application for inspection; payment of fee.

The applicant for inspection of a hotel or restaurant shall file with the department of health a written application, in form to be prescribed by the director of health, which shall set forth the name and address of the owner of the building or property to be occupied, and of the agent of any such owner; the name and address of the lessee and manager, if any, of the hotel or restaurant; the location of such hotel or restaurant and a full description of the building or property to be occupied and such other matters as may be required by the director of health. The fee for inspection shall be paid to the director of health when the application is filed by him.

§16-6-7. Certificate or permit prerequisite to license.

No license to keep a hotel or restaurant, or certificate for such license, shall hereafter be authorized or issued unless there be first filed with the county commission to which application therefor is made, a certificate of inspection or permit, granted by the director of health, as provided in this article. Every such license shall bear on its face a reference to such certificate of inspection or permit.

§16-6-8. Annual inspection of hotels and restaurants; powers and duties of director of health.

The director of health shall inspect or cause to be in-
spected, at least once annually, every hotel and restaurant
in the state. For that purpose he, or any person designated
by him, shall have the right of entry and access at any
reasonable time to inspect kitchens where food is pre-
pared, pantry and storage rooms pertaining thereto,
dining rooms, lunch counters, and every place where
articles pertaining to the serving of the public are kept
or prepared. The said director shall prohibit the use of
any article not in keeping with cleanliness and good
sanitary conditions. He shall also have the right to enter
any and all parts of a hotel at all reasonable hours to
make such inspection, and every person in the manage-
ment or control thereof shall afford free access to every
part of the hotel and render all assistance necessary to
enable the director to make full, thorough and complete
examination thereof, but the privacy of any guest in any
room occupied by him shall not be invaded without his
consent.

§16-6-9. Alterations and changes by owner; penalty for refusal
or failure to make.

Whenever, upon such inspection, it shall be found that
any such hotel or restaurant is not equipped or oper-
ated in the manner and under the conditions re-
quired by the provisions of this article, the director of
health shall notify the owner, manager or agent in charge
of such hotel or restaurant of such changes or alterations
as, in the judgment of the director, may be necessary to
effect a complete compliance with said provisions. Such
owner, manager or agent shall thereupon make such
alterations or changes as may be necessary to put such
buildings and premises in a condition, and operate it in
a manner, that will fully comply with the requirements
of this article: Provided, That due time after receiving
such notice shall be allowed for conforming to the re-
quirements thereof, which time shall be specified in the
notice. Should the changes or alterations directed by
such notice not be made in the time specified therein, the
said director shall proceed against the person or persons
in default in any court having jurisdiction to enforce
the provisions of this article against him or them. Every
person, firm or corporation which shall fail or refuse
to comply with the provisions of this section shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined five dollars for each and every day such
failure or refusal may continue. If such failure or re-
fusal shall continue for thirty days after the time speci-
fied in the notice from the director for conforming to
the requirements thereof, the director may proceed in the
circuit court of the county wherein such hotel or restaur-
an is located, for an order closing it. After such order is
issued, the building or property shall not again be used
as a hotel or restaurant until a certificate or permit
therefor shall have been issued by the director, and any
disobedience of such order may be punished as other
contempts of court. Reasonable notice shall be given of
the application for such order.

§16-6-10. Notices by director of health.

1 All notices given under this article shall be in writing
2 and shall either be delivered in person or sent by regis-
tered mail.

§16-6-24. Prosecution.

1 The prosecuting attorney of each county in this state
2 is hereby authorized and required, upon complaint under
3 oath of the director of health, or other person or persons,
4 to prosecute to termination before any court of competent
5 jurisdiction, in the name of the state, a proper action or
6 proceeding against any person or persons violating the
7 provisions of this article.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-3. Inspection and analysis of foods and drugs; certificate
of result as prima facie evidence in prosecution.

1 Whenever the director of health, the West Virginia
2 board of pharmacy, or any county or municipal health
3 officer has reason to believe that any food or drug manu-
4 factured for sale, offered for sale, or sold within this
5 state, is adulterated, such director or board of pharmacy,
6 by its authorized agents, or such county or municipal
health officer shall have the power, and it shall be his 
duty, to enter, during the usual hours of business, into 
any creamery, factory, store, salesroom, drugstore, labora-
tory or other place where he has reason to believe such 
food or drug is manufactured, prepared, sold or offered 
for sale, within the county or municipality, as the same 
may be, and to open any case, tub, jar, bottle or package 
containing, or supposed to contain, any such food or 
drug, and take a specimen thereof for examination and 
analysis. If less than a whole package is taken, the 
specimen shall be sealed and properly prepared for ship-
ment to the person who shall make the analysis here-
after provided for. No whole or less than a whole 
package taken and prepared for shipment shall be opened 
before it has been received by the analyst aforesaid.

It shall be the duty of a qualified chemist of the state 
health department to test and analyze any such specimen, 
to record the result of his analysis among the records of 
the department, and to certify such findings to the 
director of health, the West Virginia board of pharmacy, 
or to the county or municipal health officers, as the case 
may be. If the analysis indicates that the said food or 
drug is adulterated, a certificate of such result, sworn to 
by the person making the analysis, who shall also state 
in his certificate the reasonable cost and expense of such 
analysis, shall be prima facie evidence of such adulteration 
in any prosecution under this article.

ARTICLE 14. BARBERS AND BEAUTICIANS.

§16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.

(a) There is hereby vested in the state department of 
health, jurisdiction over barbers and beauticians, except 
as otherwise specifically provided in this code.

(b) The director of health or a designee shall be re-
sponsible for the enforcement of all laws, rules and regu-
lations pertaining to sanitary conditions of barbering 
and beauty shops.
(c) The director or a designee shall provide administrative support to the board of barbers and beauticians as may be appropriate and reasonable.

(d) The director of health shall appoint not more than six inspectors, who shall be licensed barbers and beauticians of this state, as herein provided, and it shall be their duty to make frequent inspections of all barber and beauty shops, and all schools of barbering and beauty culture in this state, and to report all violations to the director of health. The salaries and allowances for expenses of such inspectors shall be that fixed and allowed by the director of health.

§16-14-3. Regulations to be promulgated by board of health; enforcement.

The board of health shall promulgate rules and regulations pertaining to the sanitary conditions of barbering and beauty shops, licensure, and qualifications of barbers, beauticians and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture. The enforcement of all rules and regulations promulgated by the board of health shall be under the supervision and direction of the director.

CHAPTER 27. MENTALLY ILL PERSONS.

Article

1. Words and Phrases Defined.
2. Mental Health Facilities.
2A. Mental Health—Mental Retardation Centers.
3. Confidential Patient Information.
4. Voluntary Hospitalization.
5. Involuntary Hospitalization.
6A. Commitment of Persons Charged or Convicted of a Crime.
7. Release, Discharge and Readmission of Patients; Escapees.
8. Maintenance of Mentally Ill or Mentally Retarded Patients.
15. Interstate Compact on the Mentally Disordered Offender.

ARTICLE 1. WORDS AND PHRASES DEFINED.


"State hospital" means any hospital, center or institution, or part thereof, established, maintained and operated by the department of health, or by the department of health in conjunction with a political subdivision of the state, to provide inpatient or outpatient care and treatment for the mentally ill, mentally retarded or addicted.


"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, mentally retarded or addicted, which is operated, or licensed to operate, by the department of health and shall include state hospitals as defined in section six of this article. The term shall also include veterans administration hospitals.

ARTICLE 2. MENTAL HEALTH FACILITIES.

§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.

§27-2-3. Rules as to patients.

§27-2-4. Forms for committing patients; other records.

§27-2-5. Reports by superintendents; records of director of health.

§27-2-6. Moneys received by state hospitals and facilities.

§27-2-1. State hospitals and other facilities; transfer of control and property from department of mental health to department of health; civil service coverage.

1 The state hospitals heretofore established at Weston, Spencer, Huntington, Barboursville, Lakin, Guthrie, Roney’s Point, St. Marys and Lewisburg shall be continued and known respectively as the Weston Hospital, Spencer Hospital, Huntington Hospital, Barboursville Hospital, Lakin Hospital, Guthrie Center, Roney’s Point Center, Colin Anderson Center and the Greenbrier School for Retarded Children. Said state hospitals and centers shall be managed, directed and controlled by the department of health. Any person employed by the department of mental health who on the effective date of this article is a classified civil service employee shall, within the limits contained in
section two, article six of chapter twenty-nine of this code, remain in the civil service system as a covered employee. The director of the department of health is hereby authorized to bring said hospitals into structural compliance with appropriate fire and health standards. All references in this code or elsewhere in law to the “West Virginia training school” shall be taken and construed to mean and refer to the “Colin Anderson Center.”

The control of the property, records, and financial and other affairs of state mental hospitals and other state mental health facilities is hereby transferred from the department of mental health to the department of health. As the chief executive officer, the director of health shall, in respect to the control and management of such state hospitals and other state mental health facilities, perform the same duties and functions as were heretofore exercised or performed by the department of mental health. The title to all property of such state hospitals and other state facilities is hereby transferred to and vested in the department of health.

Notwithstanding any other provisions of this code to the contrary, whenever in this code there is a reference to the department of mental health, it shall be construed to mean and shall be a reference to the director of the department of health.

§27-2-3. Rules as to patients.

The director of health shall implement rules and regulations as promulgated by the board of health in regard to the admission of patients to mental health facilities, the care, maintenance and treatment of inpatients, residents and outpatients of such facilities and the release, trial visit and discharge of patients therefrom.

No patient under eighteen years of age in any state hospital shall be housed in any area also occupied by any patient over eighteen years of age. Any patient adjudged by the chief medical officer to have a likelihood of seriously harming others shall be confined in a secure area of a health facility.
§27-2-4. Forms for committing patients; other records.

1 The director of health shall have authority to prepare, prescribe and have printed forms to be used for commitment to and discharge from the state hospitals.

§27-2-5. Reports by superintendents; records of director of health.

1 The superintendent of each state hospital shall furnish to the director of health such information as he may require concerning admissions, discharges, deaths and other matters. From this and other information available to the director of health, he shall keep such records as are necessary to enable him to have current information concerning the extent of mental illness in the state. The names of individuals shall not be accessible to anyone except by permission of the director of health or by order of a judge of a court of record.

§27-2-6. Moneys received by state hospitals and facilities.

1 All moneys and funds belonging to the state which shall come into the possession or under the control of the superintendent or other officer of a state hospital or facility under the control of the department of health shall be paid to the director or his designee twice a month, on or before the first and fifteenth of every month, but not more than twenty days from the time such moneys or funds were received under such rules and regulations as the director shall prescribe. The director or his designee shall pay such moneys and funds into the state treasury immediately in the manner provided in article two, chapter twelve of this code.

ARTICLE 2A. MENTAL HEALTH—MENTAL RETARDATION CENTERS.

§27-2A-1. Comprehensive community mental health-mental retardation centers; establishment, operation and location; access to treatment.

1 (a) The director of health is authorized and directed to establish, maintain and operate comprehensive community mental health centers and comprehensive mental
retardation facilities, at such locations within the state as may be determined by the director in accordance with the state's comprehensive mental health plan and the state's comprehensive mental retardation plan. Such facilities may be integrated with a general health care or other facility or remain separate as the board of health may by rules and regulations prescribe: Provided, That nothing contained herein shall be construed to allow the department of health to assume the operation of comprehensive regional mental health centers or comprehensive mental retardation facilities which have been heretofore established according to law and which, as of the effective date of this article, are being operated by local nonprofit organizations.

(b) Any new mental health centers and comprehensive mental retardation facilities herein provided for may be operated and controlled by the department of health or operated, maintained and controlled by local nonprofit organizations and licensed according to rules and regulations promulgated by the board of health. All comprehensive regional mental health and mental retardation facilities licensed in the state shall:

(1) Have a written plan for the provision of diagnostic, treatment, supportive and aftercare services, and written policies and procedures for implementing these services;

(2) Have sufficient employees appropriately qualified to provide these services;

(3) Maintain accurate medical and other records for all patients receiving services;

(4) Render outpatient services in the aftercare of any patient discharged from an inpatient hospital, consistent with the needs of the individual. No person who can be treated as an outpatient at a community mental health center shall be admitted involuntarily into a state hospital.

(5) Have a chief administrative officer directly responsible to a legally constituted board of directors of a
42 comprehensive mental health or mental retardation facility operated by a local nonprofit organization, or to the director of the department of health if the comprehensive mental health or mental retardation center or facility is operated by the department of health; and

(6) Have a written plan for the referral of patients for evaluation and treatment for services not provided.

The state's share of costs of operating such facilities may be provided from funds appropriated for this purpose within the budget of the department of health. The director shall administer these funds among all comprehensive mental health and mental retardation facilities as may be required to best provide comprehensive community mental health care and services to the citizens of the state.

After the first day of July, but not later than the first day of August of each year, the chief administrative officer of each comprehensive regional mental health center and mental retardation facility shall submit a report to the director of the department of health and to the legislative auditor containing a listing of:

(1) All funds received by the center or facility;
(2) All funds expended by the center or facility;
(3) All funds obligated by the center or facility;
(4) All services provided by the center or facility;
(5) The number of persons served by the center or facility; and
(6) Other information as the board of health shall by regulation prescribe.

ARTICLE 3. CONFIDENTIAL PATIENT INFORMATION.

§27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient shall be deemed to be "confidential information" and shall include the fact that a person is or has been a client or patient, information transmitted by a patient or client
or family thereof for purposes relating to diagnosis or
treatment, information transmitted by persons participat-
ing in the accomplishment of the objectives of diagnosis
or treatment, all diagnoses or opinions formed regarding
a client's or patient's physical, mental or emotional condi-
tion; any advice, instructions or prescriptions issued in
the course of diagnosis or treatment, and any record or
characterization of the matters hereinbefore described. It
does not include information which does not identify a
client or patient, information from which a person ac-
quainted with a client or patient would not recognize such
client or patient, and uncoded information from which
there is no possible means to identify a client or patient.

(b) Confidential information may be disclosed:

(1) In a proceeding under section four, article five of
this chapter to disclose the results of an involuntary
examination made pursuant to sections two, three or
four, article five of this chapter;

(2) In a proceeding under article six-a of this chapter to
disclose the results of an involuntary examination made
pursuant thereto;

(3) Pursuant to an order of any court based upon a
finding that said information is sufficiently relevant to a
proceeding before the court to outweigh the importance
of maintaining the confidentiality established by this sec-
tion;

(4) To protect against a clear and substantial danger of
imminent injury by a patient or client to himself or an-
other; and

(5) For treatment or internal review purposes, to staff
of the mental health facility where the patient is being
cared for or to other health professionals involved in
treatment of the patient.

ARTICLE 4. VOLUNTARY HOSPITALIZATION.

§27-4-1. Authority to receive voluntary patients.

1 The chief medical officer of a mental health facility,
2 subject to the availability of suitable accommodations
and to the rules and regulations promulgated by the board of health, shall admit for diagnosis, care and treatment any individual:

(a) Over eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and who makes application for hospitalization; or

(b) Under eighteen years of age who is mentally ill, mentally retarded or addicted or who has manifested symptoms of mental illness, mental retardation or addiction and there is application for hospitalization therefor in his behalf (1) by the parents of such person, or (2) if only one parent is living, then by such parent, or (3) if the parents are living separate and apart, by the parent who has the custody of such person, or (4) if there is a guardian who has custody of such person, then by such guardian. Such admission shall be conditioned upon the consent of the prospective patient if he is twelve years of age or over.

(c) No person under eighteen years of age shall be admitted under this section to any state hospital unless said person has first been reviewed and evaluated by a local mental health facility and recommended for admission.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.


1 When any person, health officer, caseworker or law-enforcement officer has reason to believe that an individual is mentally ill, mentally retarded or addicted and because of his mental illness, mental retardation or addiction is likely to cause serious harm to himself or others if allowed to remain at liberty while awaiting an examination and certification by a physician, or physicians, as the case may be, pursuant to section two of this article, such person, health officer, caseworker or law-enforce-
10 ment officer may make application under oath to the
11 circuit court or mental hygiene commissioner of the county
12 of which the individual is a resident or to the circuit
13 court or mental hygiene commissioner of the county
14 where he may be found, giving such information and
15 stating such facts therein as may be required, upon the
16 form provided by the department of health and the
17 circuit court or mental hygiene commissioner shall there-
18 upon enter an order for the individual named in such ap-
19 plication to be taken into custody and detained, but not
20 incarcerated in a jail or penal institution, for the purpose
21 of an examination by at least one physician to take place
22 within fourteen hours after the individual is taken into
23 custody. Not later than fourteen hours after the indi-
24 vidual is taken into custody, the individual shall be re-
25 leased from custody, unless proceedings have been insti-
26 tuted pursuant to section two of this article.


1 If an individual ordered to be hospitalized pursuant to
2 section four of this article is eligible for hospital care
3 or treatment by any agency of the United States, then,
4 upon receipt of a certificate from such agency showing
5 that facilities are available and that the individual is
6 eligible for care or treatment therein, the circuit court
7 or mental hygiene commissioner may order him to be
8 placed in the custody of such agency for hospitalization.
9 When any such individual is admitted pursuant to the
10 order of such circuit court or mental hygiene commissioner
11 to any hospital or institution established, maintained or
12 operated by any agency of the United States within or
13 without the state, he shall be subject to the rules and
14 regulations of such agency. The chief officer of any
15 hospital or institution operated by such agency and in
16 which the individual is so hospitalized shall, with respect
17 to such individual, be vested with the same powers as
18 the chief medical officers of mental health facilities or
19 the director of health within this state with respect to
20 detention, custody, transfer, conditional release or dis-
21 charge of patients. Jurisdiction is retained in the ap-
22 propriate circuit court or mental hygiene commissioner
of this state at any time to inquire into the mental
condition of an individual so hospitalized, and to deter-
mine the necessity for continuance of his hospitalization,
and every order of hospitalization issued pursuant to this
section is so conditioned.


(a) No person shall be deprived of any civil right
solely by reason of his receipt of services for mental ill-
ness, mental retardation or addiction, nor shall the receipt
of such services modify or vary any civil right of such
person, including, but not limited to, civil service status
and appointment, the right to register for and to vote at
elections, the right to acquire and to dispose of property,
the right to execute instruments or rights relating to the
granting, forfeiture or denial of a license, permit, privilege
or benefit pursuant to any law, but a person who has
been adjudged incompetent pursuant to article eleven of
this chapter and who has not been restored to legal com-
petency may be deprived of such rights. Involuntary
commitment pursuant to this article shall not of itself
relieve the patient of legal capacity.

(b) Each patient of a mental health facility receiving
services therefrom shall receive care and treatment that
is suited to his needs and administered in a skillful, safe
and humane manner with full respect for his dignity and
personal integrity.

(c) Every patient shall have the following rights re-
gardless of adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no
less frequently than once every three months;

(3) Periodic physical examination by a physician no
less frequently than once every six months; and

(4) Treatment based on appropriate examination and
diagnosis by a staff member operating within the scope of
his professional license.

(d) The chief medical officer shall cause to be developed
within the clinical record of each patient a written treat-
(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.

A patient's clinical record shall be confidential and shall not be released by the department of health or its facilities or employees to any person or agency outside of the department except as follows:

(1) Pursuant to an order of a court of record.

(2) To the attorney of the patient, whether or not in connection with pending judicial proceedings.

(3) With the written consent of the patient or of someone authorized to act on the patient's behalf and of the director to:

(i) Physicians and providers of health, social or welfare services involved in caring for or rehabilitating the patient, such information to be kept confidential and used solely for the benefit of the patient.

(ii) Agencies requiring information necessary to make payments to or on behalf of the patient pursuant to contract or in accordance with law. Only such information shall be released to third-party payers as is required to certify that covered services have been provided.
(iii) Other persons who have obtained such consent. No patient record, or part thereof, obtained by any agency or individual shall be released in whole or in part to any other individual or agency, unless authorized by the written consent of the patient or his legal representative.

(f) Every patient, upon his admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The board of health shall promulgate rules and regulations to protect the personal rights of patients not inconsistent with this section.

ARTICLE 6A. COMMITMENT OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Determination of competency of defendant to stand trial and of criminal responsibility; examination; commitment.

(a) Whenever a court of record believes that a defendant in a felony case or a defendant in a misdemeanor case in which an indictment has been returned may be incompetent to stand trial or is not criminally responsible by reason of mental illness, mental retardation or addiction, it may at any stage of the proceedings after the return of an indictment or the issuance of a warrant against the defendant, order an examination of such defendant to be conducted by one or more psychiatrists, or a psychiatrist and a psychologist.

(b) After the examination described in subsection (a) of this section, the court of record may order that the person be admitted to a mental health facility designated by the director of health for a period not to exceed twenty days for observation and further examination if the court has reason to believe that such further observation and examination are necessary in order to determine whether mental illness, mental retardation or addiction have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged.
If, before the expiration of such twenty-day period, the examining physician believes that observation for more than twenty days is necessary, he shall make a written request to the court of record for an extension of the twenty-day period specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court of record may by order extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of observation.

(c) At the conclusion of each examination or observation period provided for herein, the examining psychiatrists, or psychiatrist and psychologist, shall forthwith give to the court of record a written signed report of their findings on the issue of competence to stand trial or criminal responsibility. Such report shall contain an opinion, supported by clinical findings, as to whether the defendant is in need of care and treatment.

(d) Within five days after the receipt of the report on the issue of competency to stand trial, or if no observation pursuant to subsection (b) of this section has been ordered, within five days after the report on said issue following an examination under subsection (a) of this section, the court of record shall make a finding on the issue of whether the defendant is competent for trial. A finding of incompetence for trial shall require proof by a preponderance of the evidence. Notice of such findings shall be sent to the prosecuting attorney, the defendant and his counsel. If the court of record orders or if the defendant or his counsel on his behalf within a reasonable time requests a hearing on such findings, a hearing in accordance with section two of this article shall be held by the court of record within ten days of the date such finding or such request has been made.

(e) After a conviction and prior to sentencing, the court of record may order a psychiatric or other clinical examination and, after such examination, may further order a period of observation in a mental health facility designated by the director of health. Such a
period of observation or examination shall not exceed forty days.

If after hearing conducted pursuant to the procedures prescribed in subsection (c), section four, article five of this chapter, the court of record makes the findings specified in section four, article five of this chapter or finds that the convicted individual would benefit from treatment in a mental health facility, the court may enter an order of commitment in accord with section four, article five for treatment in a mental health facility designated by the director of health.

(f) In like manner, in accordance with procedures set forth in subsections (a), (b) and (c) of this section, a juvenile court may order a psychiatric examination or a period of observation for an alleged delinquent or neglected juvenile in a mental health facility to aid the court in its disposition. The period of observation shall not exceed forty days.

ARTICLE 7. RELEASE, DISCHARGE AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-5. Return of escapees; veterans.

If any person confined in a mental health facility, pursuant to article five or six-a of this chapter, escapes therefrom, the chief medical officer thereof may issue a notice, giving the name and description of the person escaping and requesting the patient's apprehension and return to the mental health facility. The chief medical officer may issue an order directed to the sheriff of the county in which the patient is a resident, commanding him to take into custody and transport such escaped person back to the mental health facility, which order the sheriff may execute in any part of the state. If such person goes to another state, the chief medical officer may notify the director of health and the director may take such action as he may deem proper for the return of such person to the mental health facility.

If any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and any person makes com-
plaint, under oath, to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving such information and stating such facts therein as may be required, or if any veteran duly committed to a veterans' hospital or other veterans' institution, either within or without the state, escapes therefrom and the chief medical officer of such hospital or institution issues a notice to the clerk of the circuit court of the county from which such veteran was so committed upon the order of the circuit court, giving the name and description of such veteran and requesting his apprehension and return to such hospital or institution, the circuit court upon receipt of such complaint or of such notice, may issue an order directed to the sheriff of the county from which the veteran was so committed commanding him to take into custody and transport such veteran back to such hospital or institution, which order the sheriff may execute in any part of the state.

The sheriff or other person taking any person into custody under this section shall be paid such compensation as is provided for like services in other cases.

A person who is taken into custody under this section may be detained, but not incarcerated in a jail or penal institution, for a period not in excess of fourteen hours, pending return to the appropriate mental health facility.

ARTICLE 8. MAINTENANCE OF MENTALLY ILL OR MENTALLY RETARDED PATIENTS.

§27-8-1. Maintenance of patients; patient assets; reimbursement procedures.
§27-8-2a. Local mental health programs—Approval; credits to amount due to state under section two, article eight, chapter twenty-seven.
§27-8-3. Care of patients in boarding homes.

§27-8-1. Maintenance of patients; patient assets; reimbursement procedures.

1 The cost of the maintenance of patients admitted to the state hospitals shall be paid out of funds appropriated for the department, but the state hospitals, through the director of health, shall have a right of reimbursement, for all or any part of such maintenance from each patient or from the committee or guardian of the estate of the
patient, or the estate of the patient if deceased, or if
that be insufficient, then from the patient's husband or
wife, or if the patient be an unemancipated child, the
father and mother, or any of them. If such a relative so
liable does not reside in this state and has no estate or
debts due him within the state by means of which the
liability can be enforced against him, the other relatives
shall be liable as provided by this section. In exercising
this right of reimbursement, the director of health may,
whenever it is deemed just and expedient to do so,
exonerate any person chargeable with such maintenance
from the payment thereof in whole or in part, if the di-
rector finds that such person is unable to pay or that pay-
ment would work an undue hardship on him or on those
dependent upon him.

There shall be no discrimination on the part of the state
hospitals as to food, care, protection, treatment or re-
habilitation, between patients who pay for their main-
tenance and those who are unable to do so.

It shall be the responsibility of the director of health
as provided by rules promulgated by the board of health
to determine the ability of the patient or of his relative
to pay for his maintenance: Provided, That any such
determination shall be in writing and shall be considered
an "order" under the provisions of chapter twenty-nine-a
of this code: Provided, however, That any such deter-
mination shall be subject to review upon application of
any such patient, relative or personal representative in
the manner provided in chapter twenty-nine-a of this
code.

§27-8-2a. Local mental health programs—Approval; credits to
amount due to state under section two, article
eight, chapter twenty-seven.

Any county commission which elects to establish a local
mental health program and has a completed comprehen-
sive program ready for implementation, which is approved
in advance by the state director of health, shall be allowed
to deduct from its annual debt for the maintenance of
resident patients in state mental institutions, as set forth
in section two of this article, an amount equal to the sum
annually budgeted by said county commission for the es-
tablishment and maintenance of said approved local men-
tal health program.

Any county commission which desires to establish a
local mental health program may make application for
approval of such program to the director of health on
forms to be provided by the director and in accordance
with procedures and standards which have been estab-
lished by the director.

On or before the fifteenth day of January of each year
the director of the department of health shall certify to
the auditor a statement of the amount budgeted by each
county commission for the establishment, operation and
maintenance of a local mental health program. The audi-
tor shall deduct such certified sums from the amount
determined to be due the state of West Virginia, as pro-
vided in section two: Provided, That on or before the
fifth day of July of each year, each county commission
which has established an approved local mental health
program shall certify to the director a detailed statement
of its expenditures made for such local programs on a
form to be provided by the director and the director
shall have authority to delete or refuse to approve any
expenditures made by any county commission which were
not made in accordance with the approved comprehen-
sive plan for that county: Provided, however, That any
sums budgeted by a county commission and credited by
the auditor as hereinabove provided which are not ac-
tually expended by the county commission for the estab-
ishment of a local mental health program by the end of
the fiscal year for which it was budgeted shall be charged
as a debt against the county due the state for the main-
tenance of its patients. The director, after determining
the amount of such debt, if any, shall immediately certify
the same to the auditor, who shall add said sum to the
amount determined to be due the state, as provided in
section two of this article, for the current year.

§27-8-3. Care of patients in boarding homes.

The director of health may, upon the recommendation
of the superintendent of the state hospital, provide care in a suitable boarding home for any patient in a state hospital, if the condition of the patient is such that his and the public welfare will not be prejudiced thereby. A patient in a boarding home shall be deemed to be a patient of the state hospital from which he was removed and shall, on the approval of the superintendent, be placed under the supervision of a psychiatric social worker employed by the state hospital. All patients in such homes shall be visited at least once every three months and if upon the visitation they are found to be abused, neglected or improperly cared for, they shall be returned to the state hospital or placed in a better boarding home. The cost of the boarding home care shall be paid by the state hospital from which he was removed.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License from director of health; regulations.

No hospital, center or institution, or part thereof, to provide inpatient, outpatient or other service designed to contribute to the care and treatment of the mentally ill or mentally retarded, or prevention of such disorders, shall be established, maintained or operated by any political subdivision or by any person, persons, association or corporation unless a license therefor shall be first obtained from the director of health. The application for such license shall be accompanied by a plan of the premises to be occupied, and such other data and facts as the director may require. He may make such terms and regulations in regard to the conduct of such hospital, center or institution, or part thereof, as he may think proper and necessary. He, or any person authorized by him, shall have authority to investigate and inspect such hospital, center or institution, or part thereof; and the director of health may revoke the license of any such hospital, center or institution, or part thereof, for good cause after reasonable notice to the superintendent or other person in charge thereof.
ARTICLE 14. INTERSTATE COMPACT ON MENTAL HEALTH.

§27-14-2. Compact administrator.

1 The director of health shall be the compact administrator and, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

ARTICLE 15. INTERSTATE COMPACT ON THE MENTALLY DISORDERED OFFENDER.

§27-15-2. Who may enter into contracts under compact.

1 The governor, the state commissioner of public institutions, the state board of education, the state board of vocational education, the division of vocational rehabilitation, the state commission on higher education, the West Virginia board of regents, the state department of welfare, the department of public safety, the state department of health and the West Virginia board of probation and parole may negotiate and enter into contracts on behalf of this state pursuant to Article III of the compact and may perform such contracts: Provided, That no funds, personnel, facilities, equipment, supplies or materials shall be pledged for, committed or used on account of any such contract, unless legally available therefor.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article
1. General Provisions Applicable to All State Boards of Examination or Registration Referred to in Chapter.

3B. Mobile Intensive Care Paramedics.
6. Embalmers and Funeral Directors.
17. Sanitarians.
27. Board of Barbers and Beauticians.
ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-4a. Lay members of health profession boards.
§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

§30-1-4a. Lay members of health profession boards.

1 Notwithstanding any provisions of this code to the contrary, the governor shall appoint at least one lay person to represent the interests of the public on every health professional licensing board, enumerated in section fifteen of this article. If the total number of members on any of such boards after the appointment of one such lay person is an even number, one additional lay person shall be appointed. Said lay members shall serve in addition to any other members otherwise provided for by law or regulation. Such lay members shall be of the age of eighteen years or over, of good moral character, and competent to represent and safeguard the interests of the public. The lay member is empowered to participate in and vote on all transactions and business of the board, committee or group to which he is appointed.

Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an odd number of lay additions to the board, shall serve for a term ending in an odd-numbered year on the date in that year on which terms of the professional members expire; of such members first appointed, each shall serve for a term ending on such date in the year one thousand nine hundred seventy-nine, and the successor to each such person shall serve for a term equal in length to the terms of the other professional members of the board. Any person whose addition to a board as a lay member under the provisions of this section results in the addition of an even number of lay additions to the board, shall serve for a term ending in an even-numbered year on the date in that year on which terms of the professional members expire; of such members first appointed, each shall serve for a term ending on such date in the year one thousand nine hundred
seventy-eight, and the successor to each such person shall serve for a term equal in length to the terms of the other professional members of the board.

§30-1-15. Office of executive secretary of the health profession licensing boards; appointment of executive secretary; duties.

The office of the executive secretary of the health profession licensing boards is hereby created. The health profession licensing boards shall include those boards provided for in articles two-a, four, five, six, seven, seven-a, eight, ten, fourteen, sixteen, seventeen, twenty, twenty-one, twenty-five and twenty-six of chapter thirty of this code. Notwithstanding any other provisions of this code to the contrary, the office space, personnel, records and like business affairs of the health profession licensing boards shall be within the office of the executive secretary of the health profession licensing boards. The secretaries of each of the health profession licensing boards shall coordinate purchasing, record keeping, personnel, use of reporters and like matters under the executive secretary in order to achieve the most efficient and economical fulfillment of their functions. The executive secretary shall be appointed by the director of health and shall report to the director. The executive secretary shall keep the fiscal records and accounts of each of the boards. The executive secretary shall keep the director informed as to the needs of each of the boards. The executive secretary shall coordinate the activities and efforts of the boards with the activities of the health resources advisory council and shall see that the needs for health manpower perceived by the boards are communicated to the health resources advisory council. The executive secretary shall keep any statistics and information on health professions, collected by or for the boards and shall make such statistics and information available to the health resources advisory council to aid it in carrying out its responsibilities.

ARTICLE 3B. MOBILE INTENSIVE CARE PARAMEDICS.

§30-3B-2. Definition of mobile intensive care paramedics.

As used in this article, "mobile intensive care para-
2 medics" means personnel who have been specially trained in emergency care in a training program certified and supervised by the West Virginia state department of health and who are certified by the West Virginia medical licensing board as qualified to render the services enumerated in this article.

ARTICLE 6. EMBALMERS AND FUNERAL DIRECTORS.

§30-6-1. Board of embalmers and funeral directors created; membership.
§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

§30-6-1. Board of embalmers and funeral directors created; membership.

1 There is hereby created a state board to be known and designated as the "West Virginia board of embalmers and funeral directors," which shall consist of seven members, who shall be appointed by the governor, by and with the advice and consent of the Senate, six of whom shall be licensed embalmers and practicing funeral directors with a minimum of five consecutive years' experience in West Virginia immediately preceding their appointment; the seventh member shall be a lay member as provided in section four-a, article one of this chapter.

§30-6-3. Oath of members of board; officers; salary and expenses; bond of treasurer; meetings; powers and duties; notice; rules and regulations; school of instruction; inspection.

1 Members of said board, before entering upon their duties, shall take and subscribe to the oath of office prescribed by the secretary of state.

4 Said board shall select from its own members a president, a secretary and a treasurer. Each member shall be reimbursed for his traveling expenses, incident to his attendance upon the business of the board, and in addition thereto, the sum of fifty dollars per day for each day actually spent by such member upon the business of the board. The secretary shall receive an annual salary of not to exceed one thousand dollars, the amount and payment of which shall be fixed by said board, and
in addition thereto shall receive traveling and other incidental expenses incurred in the performance of his duties.

The board may employ an executive secretary and such clerks, inspectors and assistants as it shall deem necessary to discharge the duties imposed by the provisions of this article and duly promulgated rules and regulations of the board and to effect its purposes, and the board shall determine the duties and fix the compensation of such executive secretary, clerks, inspectors and assistants, subject to the general laws of the state. Any inspector employed by the board shall have either a West Virginia embalmer’s license or a West Virginia funeral director’s license. Any inspection shall be conducted in such a manner so as not to interfere with the conduct of business within the funeral establishment, and the inspector shall be absolutely prohibited from examining any books and records of the funeral establishment.

All such expenses, per diem and compensation shall be paid out of the receipts of the board, but such allowances shall at no time exceed the receipts of the board.

The treasurer of the board shall give bond to the state of West Virginia in such sum as the board shall direct with two or more sureties or a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with approval of the board endorsed thereon, shall be deposited with the treasurer of the state of West Virginia.

The board shall hold not less than two meetings during each calendar year, one during the month of April and one during the month of November, for the purpose of examining applicants for licenses, such meeting or meetings to be held at such time and place as the board shall determine. The time and place of such meeting shall be announced by publication in three daily newspapers of general circulation in different locations in the state, and publication to be once a week for two consecutive weeks immediately preceding each such meeting.
The board may hold such other meetings as it may deem necessary and may transact any business at such meetings. Three or more members shall comprise a quorum authorizing the board to transact such business as is prescribed under this article.

The board shall have the power and it shall be its duty to make and enforce all necessary rules and regulations, not inconsistent with this article, for the examination and licensing of funeral directors, and the general practice of funeral directing; the examination and licensing of embalmers and the general practice of embalming and the registration and regulation of apprentices; the licensing and general operation of funeral establishments, except that no rules and regulations issued by the board shall require that an applicant for a license to operate a funeral establishment shall be required to have either an embalmer's or funeral director's license.

The board shall publish in its rules and regulations the subjects to be covered in the said examinations and the standards to be attained thereon. Changes in the rules and regulations shall be published and shall be given due publicity at least ninety days before becoming effective.

The board shall conduct annually a school of instructions to apprise funeral directors and embalmers of the most recent scientific knowledge and developments affecting their profession. Qualified lecturers and demonstrators may be employed by the board for this purpose. The board shall give notice of the time and place at which such school will be held for all licensed funeral directors and embalmers, and it shall be the duty of every licensed funeral director and embalmer to attend at least one such school in every three years.

The board, any of its members or any duly authorized employee of the board shall have the authority to enter at all reasonable hours for the purpose of inspecting the premises in which the business or profession of funeral directing is conducted or practiced or where embalming is practiced.
ARTICLE 17. SANITARIANS.
§30-17-2. Board of sanitarians.

There is hereby established a state board for the examination and registration of professional sanitarians, to be known as the "West Virginia board of sanitarians." The board shall consist of four professional sanitarians, to be appointed by the governor, by and with the advice and consent of the Senate, at least one of whom shall be employed in the field of industrial sanitation. Each professional member shall have been engaged in active practice as a professional sanitarian in this state for at least five years prior to his appointment, and, except in the case of the original members of the board, shall have been registered in this state as a professional sanitarian as provided in this article. On or before the first day of July, one thousand nine hundred fifty-seven, the governor shall name the four original appointive members for terms of one, two, three and four years, respectively, beginning on that date. Thereafter, each appointment shall be for a term of four years, except that an appointment to fill a vacancy shall be for the unexpired term.

All expenses of the board shall be paid solely from registration fees and renewal fees collected as provided in this article.

ARTICLE 25. NURSING HOME ADMINISTRATORS.

§30-25-1. Definitions.
§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment; qualification; term, etc., of members; vacancies; meetings; quorum; chairman; salaries and expenses.
§30-25-3. Administrator's license required.
§30-25-4. Qualifications for license; exceptions; application; fees.
§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.
§30-25-8. Suspension or revocation of license or emergency permit.
§30-25-10. Judicial review; appeal to supreme court of appeals; legal representation for board.
§30-25-1. Definitions.

1 As used in this article, unless a different meaning appears from the context:

2 (1) The term "nursing home" means a nursing home as that term is defined in subdivision (a), section two, article five-c of chapter sixteen.

3 (2) The term "nursing home administrator" means an individual responsible for planning, organizing, directing and controlling a nursing home, or who in fact performs such functions, whether or not such individual has an ownership interest in the nursing home and whether or not such functions are shared with one or more other persons.

4 (3) The term "board" shall mean the West Virginia nursing home administrators licensing board created by this article.

5 (4) The term "person" or "applicant" shall mean an individual.

§30-25-2. West Virginia nursing home administrators licensing board; creation; appointment, qualification, term, etc., of members; vacancies; meetings, quorum; chairman; salaries and expenses.

1 There is hereby created a state board to be known and designated as the "West Virginia nursing home administrators licensing board" which shall consist of seven members, all of whom except a lay member, as provided for in section four-a, article one, chapter sixteen of this code, shall be appointed by the governor, by and with the advice and consent of the Senate. One of the members shall be a member of the medical profession whose practice involves gerontology, one member shall be a licensed pharmacist, one member shall be a registered nurse with experience in the care of elderly patients, one member shall be a person with experience or education in the field of aging, and two such members shall be persons who have been engaged in the management of an operating nursing home for four years immediately prior to the date of appointment, who shall hereinafter be referred to as nursing home administrators. The seventh member
shall be a lay member. No member of the board, other
than the two nursing home administrators, shall have any
direct or indirect financial or pecuniary interest in any
nursing home in this state. Of the original board members
appointed, the one who is a registered nurse shall serve
for one year, the one who has experience or education in
the field of aging shall serve for two years, the one who
is a member of the medical profession shall serve for
three years, the one who is a licensed pharmacist shall
serve for four years, one of the two nursing home admin-
istrators shall serve for five years, and the other nursing
home administrator shall serve for six years. All sub-
sequent appointments shall be for six years, except, that
in case of a vacancy, the appointee shall be appointed for
the remainder of the unexpired term. Any vacancy shall
be filled by appointment of the governor, by and with the
advice and consent of the Senate, from the same group as
was represented by the outgoing member. All members of
the board, unless sooner removed, shall continue to serve
until their respective terms expire and until their succes-
sors are appointed and have qualified.

§30-25-3. Administrator's license required.

After the effective date of this article, no person shall
be or act as a nursing home administrator, except as
provided in section nine hereof, unless he is a holder
of a currently valid license or provisional license issued
pursuant to this article.

§30-25-4. Qualifications for license; exceptions; application;
fees.

(a) To be eligible for a license as a nursing home
administrator a person must:

(1) Be of good moral character;

(2) Possess such qualifications and meet such reasonable standards as the board may prescribe pursuant to
subsection (a), section seven of this article;

(3) Pass the examination prescribed by the board in
the subject of nursing home administration; and
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(4) Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article may be granted a license without examination if he meets all of the other requirements for licensing in this state.

(c) Any applicant for any such license shall submit an application therefor at such time, in such manner, on such forms and containing such information as the board may, from time to time, by reasonable rules and regulations prescribe and pay to the board a license fee of one hundred dollars, which fee shall be returned to the applicant if he is denied a license.

§30-25-5. Issuance of license; renewal of license; renewal fee; display of license.

Whenever the board finds that an applicant meets all of the requirements of this article for a license as a nursing home administrator, it shall forthwith issue to him such license; otherwise the board shall deny the same. The license shall be valid for a period ending on June thirty next ensuing and may be renewed without examination upon application for renewal on a form prescribed by the board and payment to the board of a renewal fee of fifty dollars: Provided, That the board may deny an application for renewal for any reason which would justify the denial of the original application for a license. The board shall prescribe the form of licenses and each such license shall be conspicuously displayed by the licensee at the nursing home which he administers.


If a licensed nursing home administrator dies or is unable to continue as such from an unexpected cause, the owner, governing body or other appropriate authority
in charge of the nursing home involved may designate an acting administrator to whom the board may immediately issue an emergency permit if it finds such appointment will not endanger the safety of the occupants of such nursing home. Such emergency permit shall be valid for a period determined by the board not to exceed six months and shall not be renewed. The fee for an emergency permit shall be fifty dollars.


(a) The board shall:

1. Examine applicants and determine their eligibility for a license or emergency permit as a nursing home administrator;

2. Prepare, conduct and grade an apt and proper examination of applicants for a license and determine the satisfactory passing score thereon;

3. Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

4. Issue, renew, deny, suspend or revoke licenses and emergency permits in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

5. Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to ensure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

6. Employ, direct, discharge and define the duties of
personnel necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Approve courses of study or training in the field of nursing home administration which sufficiently meet education and training requirements for nursing home administrators established by this article;

(9) Conduct a course of study or training of the type referred to in subdivision (8) of this subsection if such courses are not otherwise reasonably available to residents of this state; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the "West Virginia nursing home administrators licensing board fund." Reimbursement of all reasonable and necessary costs and expenses actually incurred by members, and by the board in the administration of this article shall be paid from such fund.

§30-25-8. Suspension or revocation of license or emergency permit.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation of a license or emergency permit issued under the provisions of this article.

(b) The board shall suspend or revoke any license or emergency permit when it finds the holder thereof has:

(1) Obtained a license or emergency permit by means of fraud or deceit; or
11 (2) Failed or refused to comply with the provisions of this article, article five-c, chapter sixteen, or any reasonable rule and regulation promulgated by the board or any order or final decision of the board.

15 (c) The board shall also suspend or revoke any license or emergency permit if it finds the existence of any ground which would justify the denial of an application for such license or permit if application were then being made for it.


1 (a) Whenever the board shall deny an application for any original or renewal license or deny an application for an emergency permit or shall suspend or revoke any license or emergency permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or emergency permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said order.

12 (b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or emergency permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.

13 (c) Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less
29 than ten and not more than thirty days thereafter. Any
30 scheduled hearing may be continued by the board upon
31 its own motion or for good cause shown by the person
32 demanding the hearing.
33 
34 (d) All of the pertinent provisions of article five,
35 chapter twenty-nine-a of this code shall apply to and
36 govern the hearing and the administrative procedures in
37 connection with and following such hearing, with like
38 effect as if the provisions of said article five were set
39 forth in this subsection.
40 
41 (e) Any such hearing shall be conducted by a quorum
42 of the board. For the purpose of conducting any such
43 hearing any member of the board shall have the power
44 and authority to issue subpoenas and subpoenas duces
45 tecum which shall be issued and served within the time,
46 for the fees and shall be enforced, as specified in section
47 one, article five of said chapter twenty-nine-a.
48 
49 (f) At any such hearing the person who demanded
50 the same may represent himself or be represented by an
51 attorney-at-law admitted to practice before any circuit
52 court of this state. Upon request by the board, it shall be
53 represented at any such hearing by the attorney general
54 or his assistants without additional compensation.
55 
56 (g) After any such hearing and consideration of all
57 of the testimony, evidence and record in the case, the
58 board shall render its decision in writing. The written
59 decision of the board shall be accompanied by findings
60 of fact and conclusions of law as specified in section three,
61 article five, chapter twenty-nine-a of this code, and a
62 copy of such decision and accompanying findings and
63 conclusions shall be served by certified mail, return receipt
64 requested, upon the person demanding such hearing and
65 his attorney of record, if any.
66 
67 (h) The decision of the board shall be final unless
68 reversed, vacated or modified upon judicial review thereof
69 in accordance with the provisions of section ten of this
70 article.
§30-25-10. **Judicial review; appeal to supreme court of appeals; legal representation for board.**

1 Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section nine of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

2 The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

3 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.

§30-25-11. **Severability.**

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

**ARTICLE 26. HEARING-AID DEALERS AND FITTERS.**

§30-26-1. Definitions.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

§30-26-4. Powers and duties of the state department of health.

§30-26-5. Application for licenses; qualifications of applicants; fees; duties of the board with respect thereto.

§30-26-6. Standards, scope and subject of examination.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

§30-26-8. Posting of license required; duplicate copies.
§30-26-9. Renewal of license.
§30-26-10. Notification of change of address of licensee required.
§30-26-11. Reciprocity.
§30-26-12. Temporary trainee permits.
§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.
§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.
§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required.
§30-26-16. Hearing procedures; judicial review.
§30-26-17. Prohibited acts and practices.
§30-26-18. Offenses and penalties.
§30-26-20. Construction and severability.

§30-26-1. Definitions.

1 Unless the context clearly requires otherwise, as used in this article:

2 (1) "Advertise," and any of its variants, means and includes the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio, television announcement or any other means or methods now or hereinafter employed to bring to the attention of the public the practice of fitting or dealing in hearing aids.

3 (2) "Board" means the West Virginia board of hearing-aid dealers.

4 (3) "Department" means the state department of health and when appropriate shall include the state director of health.

5 (4) "Hearing aid" means any wearable device or instrument or any combination thereof, designed for, represented as or offered for sale for the purpose of aiding, improving or compensating for defective or impaired human hearing and shall include earmolds, parts, attachments or other accessories thereto, but excluding batteries and cords.

6 (5) "Hearing-aid dealer" and "hearing-aid fitter" means any person engaged in the practice of dealing in or fitting of hearing aids.
(6) "License" means any license issued under the provisions of this article and shall include a temporary license. "Licensee" means any person holding any such license.

(7) "Person" means and includes any individual, partnership, trust, association, corporation or other like organization, or any combination thereof.

(8) "Practice of dealing in or fitting of hearing aids" means and includes:
   (a) The measurement or other testing of human hearing by means of an audiometer, or by any other means;
   (b) The selection, adaptation, fitting or sale of hearing aids by a person for the use of another person; or
   (c) The making of impressions for earmolds.

(9) "Sell" or "sale" or any variant thereof, means any transfer of title or of the right of use by lease, bailment or any other contract, but shall not include transactions between distributors, dealers or licensees where the item transferred is intended for sale.

(10) "Trainee" means any person training to become a licensed hearing-aid dealer or fitter.

§30-26-2. Engaging in practice of hearing-aid dealer or trainee without license prohibited; exceptions.

(a) Except as provided in subsections (b), (c) and (d) hereof no person shall, on or after the effective date of this article, engage in the practice of dealing in or fitting of hearing aids, either as a hearing-aid dealer, fitter or as a trainee, nor shall any person advertise or assume any such practice, without first being licensed or otherwise qualified under the provisions of this article.

(b) If the applicant is a partnership, trust, association, corporation or other like organization, the application, in addition to such other information as the board may require, shall be accompanied by an application for a license for each person, whether owner or employee, of such applicant who serves in the capacity of a hearing-aid dealer or fitter, or shall contain a statement that such
applications for all such persons are submitted separately. No partnership, trust, association, corporation or other like organization shall permit any unlicensed person to sell hearing aids or to engage in the practice of dealing in or fitting of hearing aids.

(c) This article is not intended to prevent any person who is not licensed under this article from engaging in the practice of measuring human hearing for the purpose of selection of hearing aids, provided such person or organization employing such person does not sell hearing aids or accessories thereto, except in the case of earmolds to be used only for the purpose of audiologic evaluation.

(d) Any person who is licensed to practice medicine in this state or any person holding a degree in audiology may sell hearing aids or accessories thereto without obtaining a license under this article.

§30-26-3. West Virginia board of hearing-aid dealers created; members; qualifications; term; oath; salary and expenses; powers and duties.

There is hereby created the West Virginia board of hearing-aid dealers, which shall be composed of five members to be appointed by the governor, by and with the advice and consent of the Senate. The members of the board shall be residents of this state. One member shall be a person licensed to practice medicine in this state and one member shall hold a degree in audiology from an accredited college or university. The remaining three members shall be persons having no less than five years' experience as hearing-aid dealers or fitters and shall hold a valid license under the provisions of this article, except that the hearing-aid dealers or fitters to be first appointed to the board shall obtain a license under the provisions of this article within six months following their appointment to the board.

The term of office of each member of the board shall be four years, excepting that as to the members first appointed to the board, one shall be appointed for two
years; two shall be appointed for three years; and two shall be appointed for four years. A board member shall serve until his successor has been duly appointed and qualified and any vacancy in the office of a member shall be filled by appointment for the unexpired term of such member. Any member of the board shall be eligible for reappointment.

The board shall, annually at its meeting first succeeding July one, elect from its own members a chairman and vice chairman.

Each member of the board shall receive for each day actually engaged in the duties of his office, a per diem salary of fifty dollars and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of such board. All fees and other moneys collected by the board, pursuant to the provisions of this article, shall be kept in a separate fund and shall be expended solely for the purposes of this article. The compensation for the members of the board and all expenses incurred under this article shall be paid from this special fund and no such compensation or expenses shall be paid from the general revenue fund of this state. All disbursements of funds necessary to carry out the provisions of this article shall be so disbursed only upon the authority of the board.

The board is hereby empowered, with the assistance of the department to generally supervise, regulate and control the practice of dealing in or fitting of hearing aids in this state, and in so doing, shall administer qualifying examinations in accordance with the provisions of this article to test the knowledge and proficiency of all prospective licensees or trainees.

The board may purchase and maintain or rent audiological equipment and other facilities necessary to carry out the examination of applicants as provided in this article and may purchase such other equipment and supplies and employ such persons as it deems appropriate to carry out the provisions of this article.
The board shall promulgate reasonable rules and regulations in accordance with and subject to the provisions of chapter twenty-nine-a of this code:

(a) For the proper performance of its duties;
(b) To define and prescribe the ethical practice of dealing in or fitting of hearing aids for the safety, protection and welfare of the public;
(c) To govern the time, place and manner of conducting the examinations required by this article and the standard, scope and subject of such examinations, which examinations shall, as a minimum, conform with the standards, scope and subjects set forth in section six of this article and manner and form in which applications for such examinations shall be filed;
(d) To establish procedures for determining whether persons holding similar valid licenses from other states or jurisdictions shall be required to take and successfully pass the appropriate qualifying examination as a condition for such licensing in this state.

§30-26-4. Powers and duties of the state department of health.

The administrative work of the board shall be performed by and in the state department of health. The department shall keep full and complete records of all of the proceedings of the board and of its accounts, which said records and accounts shall be open to public inspection at all reasonable times. The department is hereby authorized to assist in the supervision and administration of the qualifying examinations authorized and required by this article, to maintain for the board a register or record of persons who apply for a license or a temporary trainee permit as well as a register or record of the name and last-known business address of all persons to whom a license or trainee permit is issued pursuant to this article.

At the direction and request of the board the department shall conduct periodic inspections of the establishment and facilities of persons who are licensed to engage in the practice of dealing in or fitting of hearing aids and
shall report its findings and the results of such inspec-
tions to the board.

When requested by the board, the department may
assist the board generally in carrying out any of the
powers and duties granted to the board, but none of the
cost incidental to such assistance, powers, functions and
duties given to the department pursuant to this article
shall be borne from any of the appropriations made to
the department, but shall be borne by the board and to
this extent the department shall be entitled to reimburse-
ment from the funds of the board.

§30-26-5. Application for licenses; qualifications of applicants;
fees; duties of the board with respect thereto.

Each person desiring to obtain a license from the board
to engage in the practice of dealing in or fitting of hearing
aids shall make application to the board. The application
shall be made in such manner and form as prescribed
by the board and shall be accompanied by a fee of fifty
dollars. The application shall state under oath that the
applicant:

(1) Intends to maintain a permanent office or place
of business in this state or that the applicant has at the
time of application a permanent office or place of busi-
ness in another state within a reasonable commuting
distance from this state. The board shall determine and
prescribe by regulation the term "reasonable distance"
as used herein;

(2) Is a person of good moral character and that he
has never been convicted of nor is presently under in-
dictment for a crime involving moral turpitude;

(3) Is eighteen years of age or older;

(4) Has an education equivalent to a four-year course
in an accredited high school; and

(5) Is free of chronic infectious or contagious dis-
eases.

Any person who fails to meet any of the standards
set forth in the next preceding paragraph shall not be
eligible or qualified to take the examination nor shall any such person be eligible or qualified to engage in the practice of dealing in or fitting of hearing aids.

The board, after first determining that the applicant is qualified and eligible in every respect to take the examination, shall notify the applicant that he has fulfilled all of the qualifications and eligibility requirements as required by this section and shall advise him of the date, time and place for him to appear to be examined as required by the provisions of this article and the regulations promulgated by the board pursuant to this article.

The board, with the aid and assistance of the department, shall give at least one annual examination of the type required by this article and may give such additional examinations, at such times and places, as the board and the department may deem proper, giving consideration to the number of applications.

§30-26-6. Standards, scope and subject of examination.

1 The board by rules and regulations shall determine and set minimum standards to be met in the qualifying examination provided for in this article, which examination shall be designed to demonstrate the applicant's technical competency and other qualifications by:

(1) A test of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

(a) Basic physics of sound;

(b) The anatomy and physiology of the ear; and

(c) The function of hearing aids.

(2) Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(a) Pure tone audiometry, including air conduction testing;

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing; and
(c) Masking when indicated and effective masking.

(3) Evidence of:

(a) Ability to counsel the person or family who will receive the hearing aid relative to the care and use of the instrument;

(b) Knowledge regarding the medical and rehabilitative facilities for hearing-handicapped children and adults in the area being served;

(c) Knowledge and understanding of the grounds for revocation, suspension, or probation of a license as outlined in this article; and

(d) Knowledge and understanding of criminal offenses as outlined in this article.

§30-26-7. Results of examination disclosed to applicant; issuance of license; fees.

(a) Any person who has taken the examination shall be notified by the board within thirty days following such examination as to whether he has satisfactorily passed the examination. If such person has failed to pass the examination, he shall be notified of the reasons for such failure and the particular portions of the examination which he failed to pass. Such person shall also be advised of his right to take the examination in the future.

If such applicant has satisfactorily passed the examination, he shall be advised of that fact by the board and, upon payment of twenty dollars, the board shall register the applicant as a licensee and shall issue a license to such applicant. Such license shall remain in effect for a period of one year from the date of its issuance.

(b) Within six months following the effective date of this article, any applicant for a license who has been engaged in the practice of dealing in or fitting of hearing aids in this state for a period of three years immediately prior to such effective date, shall be so registered and
issued a license without being required to undergo or take the examination required by this article: Provided, That such person meets all other requirements of this article and the rules and regulations promulgated pursuant thereto. All of the fees which such prospective licensee would be otherwise required to pay shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee had not so engaged in such practice in this state for such three-year period.

(c) The issuance of a license by the board must have the concurrence of a majority of its members.

§30-26-8. Posting of license required; duplicate copies.

Each person who holds a hearing-aid dealer’s or fitter’s license and engages in the practice of dealing in the fitting of hearing aids shall display such license in a conspicuous place in his office or place of business at all times. Each person who maintains more than one office or place of business shall post a duplicate copy of the license at each location. The board shall issue duplicate copies of a license upon receipt of a properly completed application and payment of one dollar for each copy requested.

§30-26-9. Renewal of license.

A person who is engaged in the practice of dealing in or fitting of hearing aids shall annually pay to the board a fee of forty dollars for a renewal of his license. A thirty-day period shall be allowed after expiration of a license during which any such license may be renewed on payment of a fee of forty-five dollars to the board. After the expiration of such thirty-day period, the board may renew such license upon the payment of fifty dollars to the board. No person who applies for renewal, whose license was suspended for failure to renew, shall be required to submit to any examination as a condition of renewal if application is made within two years following the date such license was so suspended.
§30-26-10. Notification of change of address of licensee required.

Every licensee under the provisions of this article shall notify the board in writing of the address of each place where he is, or intends to be, engaged in the practice of dealing in or fitting of hearing aids. The board shall cause to be kept a record of each place of business of every such licensee. Any notice required to be given by the board or the department to any such licensee shall be given by mailing the same to him at the address shown upon such records.

§30-26-11. Reciprocity.

Whenever the board determines that another state or jurisdiction has requirements for the licensing of persons to engage in the practice of dealing in or fitting of hearing aids, which requirements meet the minimum requirements and standards set forth in this article and the rules and regulations promulgated pursuant to this article, the board may, in the manner prescribed by its rules and regulations, issue a license without the examination required by this article, to any person holding a license in such other state or jurisdiction, upon application, providing such prospective licensee meets all of the requirements set forth in this article and the rules and regulations of the board with respect thereto. All of the fees which such prospective licensee would be otherwise required to pay, shall be paid by such prospective licensee in the same manner and to the same extent as if such prospective licensee were not qualified to engage in such other state or jurisdiction.

§30-26-12. Temporary trainee permits.

A person who meets all of the qualifications and requirements set forth in subdivision (2), section five of this article may obtain a temporary trainee permit upon application to the board. All such applications for a temporary trainee permit shall be made in the manner and form prescribed in the rules and regulations of the board.
8 Upon receiving an application for a temporary trainee permit as prescribed in this section, accompanied by a fee of twenty-five dollars, the board shall issue such permit which shall entitle the applicant trainee to engage in the practice of dealing in or fitting of hearing aids for a period of one year under the supervision and control of a licensee, such licensee to be responsible for the supervision, training and control of such trainee.

16 If a person holding a temporary trainee permit under this section has not successfully passed the licensing examination within one year from the date of issuance of such permit, the permit may be renewed or reissued under such conditions as the board may require in its rules and regulations for an additional one-year period upon the payment of a fee of fifty dollars. No such temporary trainee permit shall be reissued, renewed or extended more than once.

§30-26-13. Refusal to issue, suspension or revocation of license or trainee permit; false and deceptive advertising.

1 (a) The board may refuse to issue or renew, or may suspend or revoke any license or trainee permit for any one, or any combination of the following causes: Violation of a rule or regulation governing the ethical practice of dealing in or fitting of hearing aids promulgated by the board under the authority granted by this article; conviction of a felony, as shown by a certified copy of the record of the court wherein such conviction was had after such conviction has become final; the obtaining of or the attempt to obtain a license, money or any other thing of value, by fraudulent misrepresentation; malpractice; continued practice of dealing in or fitting of hearing aids by a person knowingly having a chronic infectious or contagious disease; habitual drunkenness or addiction to the use of a controlled substance as defined in chapter sixty-a of this code; advertising, practicing or attempting to practice under a name other than one's own; advertising by means of or selling by the use of knowingly false or deceptive statements.

20 (b) False and deceptive advertisement shall constitute
unethical practice and the board, by rules and regulations may regulate and proscribe acts considered by it to be false and deceptive advertisement.

The rules and regulations promulgated pursuant to this subsection shall include prohibitions against (1) advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised, (2) representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the words "doctor," "clinic" or similar words, abbreviations or symbols which tend to connote the medical profession when such use is not accurate, and (3) advertising a manufacturer's product or using a manufacturer's name or trademark which implies a relationship with the manufacturer that does not exist or using the words "audiologist," "state licensed clinic," "state registered," "state certified," or "state approved" or any other term, abbreviation or symbol when it would falsely give the impression that service is being provided by persons holding a degree in audiology or trained in clinical audiology, or that licensee's service has been recommended by the state when such is not the case.

(c) The refusal to issue or renew a license or trainee permit or the suspension or revocation of a license or trainee permit by the board must have the concurrence of a majority of the members of the board.

§30-26-14. Matters to be ascertained by licensee prior to the sale or fitting of hearing aids.

(a) Every licensee engaged in the practice of dealing in or fitting of hearing aids shall, prior to the sale or the fitting of a hearing aid intended to be worn or used by any person, first ascertain whether such person has within the next preceding six months been examined for the
defective or impaired hearing condition sought to be relieved by an otolaryngologist or other duly licensed physician. If such person has been so examined, the licensee shall, prior to the sale or fitting of such hearing aid, determine the recommendations and consult with such otolaryngologist or physician. If such person has not been so examined, the licensee shall not proceed to the sale or fitting of a hearing aid until after such person has been so examined.

(b) Prior to the sale of a hearing aid, every licensee shall be required to advise in writing, in the manner and form prescribed by the board, the person to whom he intends to sell or fit with such hearing aid that such person's best interest would be served by consulting an otolaryngologist or other physician specializing in diseases of the ear, or any other physician duly licensed to practice medicine in this state, if any of the following conditions are found upon examination of such person:

(1) Visible congenital or traumatic deformity of the ear;
(2) History of active ear discharge within the previous ninety days;
(3) History of a sudden or rapidly progressive hearing loss within the previous ninety days;
(4) Acute or chronic dizziness;
(5) Unilateral hearing loss of sudden or recent onset within the previous ninety days; or
(6) Significant air-bone gap.

(c) A copy of any writing or form required to be given to a prospective purchaser or other person by the terms of this section shall be retained in the records of the licensee for a period of seven years following the issuance of each writing.

§30-26-15. Receipt required to be furnished to a person supplied with hearing aid; information required.

Any person who practices the fitting and sale of hearing aids shall deliver to each person supplied with a
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3 hearing aid a receipt which shall contain his signature
4 and show his business address and the number of his
5 license, together with specifications as to the make and
6 model of the hearing aid furnished, and shall contain
7 the full terms of the sale. If a hearing aid which has
8 been previously sold at retail is sold, the receipt shall
9 be clearly marked as "used" or "reconditioned" whichever
10 is applicable, with terms of guarantee, if any.

11 Such receipt shall be in the manner and form as prescribed by the board in its rules and regulations. Such
12 rules and regulations shall prescribe the type and size
13 of print to be used in such receipt and the receipt shall
14 set forth such additional information as the board may
15 prescribe. A copy of such receipt shall be retained in
16 the records of the licensee for a period of seven years
17 following the issuance of such receipt.

§30-26-16. Hearing procedures; judicial review.

1 Any person, including a person who brings a complaint
2 against a licensee or trainee before the board, adversely
3 affected by any decision, ruling or order of the board
4 shall be entitled to a hearing before the board. The hear-
5 ing may be held by the board or a majority thereof either
6 in the county wherein the licensee, trainee, prospective
7 licensee or prospective trainee resides or may be held
8 in the county wherein the person adversely affected re-
9 sides or may be so held in some other county as the
10 board may direct. All of the pertinent provisions of
11 article five, chapter twenty-nine-a of this code shall apply
12 to any hearing held by the board and the administrative
13 procedures in connection with and following such hear-
14 ing shall apply with like effect as if the provisions of
15 said article five were set forth in extenso in this section.
16 For the purpose of conducting such hearing the board
17 shall have the power and authority to issue subpoenas
18 and subpoenas duces tecum in accordance with the pro-
19 visions of section one, article five, chapter twenty-nine-a.
20 Any such hearing shall be held within thirty days after
21 the date upon which a request therefor was made. All
22 requests for hearings shall be made in writing to the
board by certified or registered mail, return receipt requested. The board may postpone or continue any hearing on its own motion or upon application for good cause shown.

Any person, including a person who brings a complaint against a licensee or trainee before the board, who may be adversely affected by any ruling or order made or entered by the board following a hearing, shall be entitled to judicial review of such order, in accordance with the provisions of section four, article five, chapter twenty-nine-a of this code and the provisions of said section four shall apply to and govern such appeal with like effect as if the provisions of said section four were set forth in extenso in this section and the provisions of article six of said chapter twenty-nine-a shall apply with respect to appeals to the supreme court of appeals in the same manner.

§30-26-17. Prohibited acts and practices.

Any of the following acts are hereby prohibited and shall be punishable under section eighteen of this article and shall also constitute unethical practice and no person shall:

(1) Sell, barter or offer to sell or barter a license issued pursuant to this article.

(2) Purchase or procure by barter any such license with intent to use it as evidence of the holder's qualifications to engage in the practice of dealing in or fitting of hearing aids.

(3) Alter materially a license issued pursuant to this article.

(4) Use or attempt to use as a valid license any license which has been purchased, fraudulently obtained, counterfeited or materially altered.

(5) Willfully make any false statement in an application for license or for renewal thereof.

(6) Advertise for the mail-order sale of hearing aids
§30-26-18. Offenses and penalties.

Any person who shall engage in the practice of dealing in or fitting of hearing aids without qualifying to do so under the provisions of this article or any person who commits any of the acts prohibited under the provisions of section seventeen of this article shall be guilty of a misdemeanor, and, upon conviction for the first offense, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail for not more than six months, or be subject to both such fine and imprisonment, and for the second or any subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned in the county jail for not less than thirty days nor more than one year or be subject to both such fine and imprisonment. Each sale made in violation of this article shall constitute a separate offense. Magistrates shall have concurrent jurisdiction with circuit courts for the enforcement of this article.


Notwithstanding the existence of any other remedy, the board may, in the manner provided by law, maintain an action for an injunction against any person to restrain or prevent the practice of dealing in or fitting of hearing aids when such person repeatedly refuses to obtain a license therefor and continues such practice without first obtaining a license therefor in the manner hereinbefore provided, and an action for an injunction may be maintained for any continued and repeated violation of any of the provisions of this article and the rules and regulations promulgated pursuant thereto.

§30-26-20. Construction and severability.

The provisions of this article and the regulations promulgated thereunder shall be liberally construed so as to carry into effect its purposes and to protect the health, safety and welfare of the public.
If any provision of this article or the application thereof to any person or circumstance shall be held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

§30-27-2. Revocation of license for violation.

§30-27-3. Qualifications of applicants; fees; examinations; licensure.

§30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.

§30-27-5. Student's permit; qualifications; fee.


§30-27-7. Shop to be managed by licensed barbers and beauticians; number of junior barbers or beauticians permitted; restrictions as to other businesses; sign; advertising of prices prohibited.

§30-27-8. License to own or operate schools of barbering or beauty culture; application for license; qualifications; inspection; license fee; rules and regulations; suspension, etc., of license; qualifications and registration of instructors; registration fee; administrative procedures.


§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

§30-27-11. Grounds for cancellation of or refusal to issue or renew license.

§30-27-12. Violation to constitute misdemeanor; penalty; concurrent jurisdiction; injunction.

§30-27-13. Chapter thirty, article one, applicable to board.

§30-27-14. Collections and expenditures; disposition of funds.


§30-27-16. Separability; conflicting acts repealed.

§30-27-1. Board of barbers and beauticians; appointment, qualifications and terms of board members; compensation and expenses of members; powers and duties of board.

(a) The state committee of barbers and beauticians, heretofore established, is continued as the board of barbers and beauticians, and all members of the committee, serving for a term which has not expired on the effective date of this article, shall continue to serve the terms for which they were appointed. The board shall consist of four professional members to be appointed by the governor, by and with the advice and consent of the Senate,
and one lay member to be appointed in accordance with
the provisions of section four-a, article one of this chap-
ter. Of the four professional members, one shall be an
employing barber, one an employee barber, one an em-
ploying beautician and one an employee beautician. Each
professional member of the board shall have been en-
gaged within this state in the practice of barbering or
beauty culture, as the case may be, for a period of eight
years immediately prior to his appointment, and no
more than two of the four professional members may
belong to the same political party.

(b) On or before the thirtieth day of June of each
year the governor shall appoint one member of the board
to serve for a term of four years, to begin on the first
day of July. No professional member of the board may
serve for more than two complete terms.

(c) The board shall designate one of its members as
chairperson.

(d) Each member of the board shall receive as com-
pensation a per diem of twenty-five dollars for each day
of attendance at board sessions, but such compensation
for each member shall not exceed the sum of five hun-
dred dollars in any calendar year. Each member shall
be reimbursed for actual and necessary expenses incurred
in the performance of duty, upon presentation of an
itemized sworn statement thereof.

(e) The board shall examine all applicants for licen-
sure and shall issue licenses to those entitled thereto and
collect examination and licensure fees, in accordance with
regulations promulgated by the board of health pursuant
to article fourteen, chapter sixteen of this code.

(f) It shall be unlawful for any person to practice or
offer to practice barbering, beauty culture or manicuring
in this state without first obtaining a license for such
purposes from the board of barbers and beauticians.

§30-27-2. Revocation of license for violation.

For violation of any regulation promulgated by the
board of health, the board of barbers and beauticians
may cancel and revoke the license issued such violator, and may refuse to renew or reissue the same.

§30-27-3. Qualifications of applicants; fees; examinations; licensure.

An applicant for licensure as a barber, beautician or manicurist shall present satisfactory evidence that he or she is at least eighteen years of age, of good moral character and temperate habits, has completed at least the eighth grade of school, or the equivalent thereof, and has been graduated from a school of barbering or beauty culture approved by the state board of barbers and beauticians, or in the case of a manicurist has successfully completed an approved course in manicuring in such a school, and shall transmit with his application an examination fee of twenty dollars. The examination shall be of such character as to determine the qualifications and fitness of the applicant to practice barbering, beauty culture or manicuring as defined by this article, and shall cover such subjects germane to the inquiry as the board may deem proper. If an applicant for licensure as a barber or beautician successfully passes such examination and is otherwise duly qualified, as required by this section, the board shall license the applicant as a duly qualified junior barber or beautician, for which license, or renewal thereof, the fee shall be five dollars. Upon proof that the holder of such a license has served as a junior barber or beautician for a period of not less than twelve months from the original date of such license, accompanied by a certificate of health from a duly licensed physician, the board shall issue to the applicant a license authorizing the applicant to practice barbering or beauty culture in this state. Any person who is able to furnish satisfactory proof that he has practiced barbering or beauty culture for at least twelve months prior to examination and any applicant for license as a manicurist, may be licensed as a duly qualified barber, beautician or manicurist immediately after he has passed the examination. The board shall charge ten dollars for the issuance or renewal of a license.
Any person who meets the requirements of this section as to age, character and health, who is a graduate of a recognized school of barbering or beauty culture in another state, or has successfully completed an approved course in manicuring in such a school, and who holds a current license as a registered barber, beautician or manicurist in another state, may file with the board an application for licensure without examination, together with a fee of twenty dollars. If in the opinion of the board such applicant has had a prescribed course of instruction in barbering, beauty culture or manicuring equivalent to that required in this state at the time such course was completed, or is otherwise properly qualified, the board may without examination issue to such applicant a license as a duly qualified barber, beautician or manicurist.

§30-27-4. Renewal of license; fee; penalty for late renewal; withdrawal from active practice.

Every licensed barber, beautician or manicurist who desires to continue in active practice or service shall, annually upon or before the first day of January, renew his license and pay an annual renewal fee of ten dollars. For any renewal which is more than thirty days late, a penalty of two dollars shall be added to the regular renewal fee. Every licensed barber, beautician or manicurist who does not desire to continue in active practice, shall notify the board in writing, and shall during such period, be listed by the board as being inactive, and shall not be required to renew his license until such time as he shall again become active, and during such inactive period he or she shall not be liable for any renewal fees.

§30-27-5. Student's permit; qualifications; fee.

All students, before entering upon their studies in approved schools of barbering or beauty culture in this state, shall apply for and receive a student's permit from the board. The application shall be upon forms provided by the board and shall include a health certificate from a duly licensed physician. An applicant for licensure as a student shall present satisfactory evidence that he or she is at least seventeen years of age, of good moral character
and temperate habits, and has completed at least the
eighth grade of school or the equivalent thereof. Upon
receipt of a fee of five dollars, the board shall license each
qualified applicant as a student barber, beautician or
manicurist and shall issue the appropriate student's per-
mit, which shall be good during the prescribed period of
study for such student. A student may perform any or all
acts constituting barbering, beauty culture or manicuring
in a school of barbering or beauty culture under the
immediate supervision of a registered instructor, but not
otherwise.


Every person practicing barbering, beauty culture or
manicuring and every student and junior barber and
beautician shall display his license or renewal thereof in
a conspicuous place in the shop wherein he practices or is
employed and whenever required shall exhibit such
license to the state board of barbers and beauticians or its
authorized representative.

§30-27-7. Shop to be managed by licensed barbers and beauti-
cians; number of junior barbers or beauticians
permitted; restrictions as to other businesses;
sign; advertising of prices prohibited.

Every barber or beauty shop in this state shall be
operated under the supervision and management of a
barber or beautician who is licensed as such in this state.
Each barbershop in this state may employ at least one
junior barber therein. However, in shops regularly em-
ploying more than three licensed barbers only one such
junior barber may be employed for every three such
licensed barbers, but in no event can more than three
such junior barbers be employed in any one barbershop,
and each beauty shop shall have the right to employ one
junior beautician for each licensed beautician therein. No
business or trade other than that of barbering shall be
conducted in a barbershop and no business or trade
other than beauty culture shall be conducted in a beauty
shop, except the display or sale, or both, of commodities or
other articles used in connection with barbering or beau-
ty culture, and no such barber or beauty shop shall be
operated in a store, dwelling house, or other building or
space used for any purpose other than barbering or beau-
ty culture unless such barber or beauty shop is separated
by stationary partitions extended from floor to ceiling:
Provided, That nothing in this article shall be construed
as prohibiting a barbershop from carrying on the business
of shoe shining or manicuring or both shoe shining and
manicuring. A suitable sign shall be displayed at the
main entrance of all barber and beauty shops, plainly
indicating the business conducted therein: Provided, how-
ever, That no sign shall be displayed outside any barber
or beauty shop or inside the same, so as to be clearly
visible from the outside and for the ostensible purpose
of attracting trade, which in any way advertises the
prices to be charged in such barber or beauty shop for
services to be therein performed.

§30-27-8. License to own or operate schools of barbering or
beauty culture; application for license; qualifications;
inspection; license fee; rules and regulations; suspension, etc., of license; qualifications
and registration of instructors; registration fee; administrative procedures.

No person, firm or corporation, whether public or pri-
ivate, and whether organized for profit or not, shall own
or operate a school of barbering or beauty culture in this
state without first obtaining a license so to do from the
board. The application for such license shall be made in
writing on forms prescribed and furnished by the board
and shall be signed and verified by the applicant. The
applicant shall, in addition to such other information as
may be reasonably required by the board, furnish evi-
dence that (a) the applicant is professionally competent
and financially responsible, (b) adequate physical facili-
ties will be available for the school, and (c) persons
teaching or instructing therein are registered by the
board as duly qualified instructors. If an applicant desires
to own or operate more than one school of barbering or
beauty culture, a separate application shall be made and
a separate license shall be issued for each.
All applicants for a license to own or operate a school of barbering or beauty culture shall permit an inspection of such proposed school by the inspectors appointed pursuant to subsection (d), section one, article fourteen, chapter sixteen of this code to determine whether it is properly fitted and equipped for instruction in barbering or beauty culture. The board of health shall promulgate reasonable rules and regulations to implement and make effective the powers, duties and responsibilities vested in such board in connection with the licensing of schools of barbering and beauty culture. If the applicant has met all of the standards and qualifications prescribed herein by the board of health and has complied with the rules and regulations pertaining to the issuance of the license applied for, the board shall issue such license to the applicant. Thereafter, the board may suspend, revoke or refuse to renew the license of a school whenever it fails to meet the minimum standards and qualifications required for the issuance of an original license. The director of health or his designees shall administer and enforce such actions of the board.

The license fee for each school of barbering and for each school of beauty culture shall be twenty-five dollars annually, to be paid in such manner as the board may prescribe, on or before January first of each year. The license shall be permanently displayed in the school, and a suitable sign shall be kept on the front of the school which shall plainly indicate that a school of barbering or beauty culture is operated therein.

The board of health shall make reasonable rules and regulations prescribing the standards and requirements to be met by applicants for registration as duly qualified instructors in schools of barbering or beauty culture. Such rules and regulations may provide for the issuance of certificates for instructors, including temporary certificates, and shall prescribe minimum qualifications as to age, education and training for applicants for such certificates. Each registered instructor in barbering and beauty culture shall pay an initial registration fee of five dollars, and shall renew his certificate annually and pay
a renewal fee of five dollars on or before the first day of January of each year. An expired certificate may be reinstated only upon the payment of all lapsed renewal fees, unless such instructor shall have notified the board that he or she desires to be placed on an inactive status during which time he or she shall not be liable for any renewal fees. The applicant for reinstatement shall also be required to meet the qualifications for registration in effect at the time application for reinstatement is made.

Recognizing that all of the provisions of chapter twenty-nine-a of this code are fully applicable to any and all administrative procedures, and the right of judicial review, in connection with the provisions of this article, but also recognizing that the question has been raised as to whether rules and regulations adopted under the provisions of this section must be promulgated in accordance with the provisions of said chapter twenty-nine-a, it is hereby expressly provided that all such rules and regulations shall be promulgated in compliance with the provisions of said chapter twenty-nine-a.


No person shall practice barbering, beauty culture or manicuring, or serve as a student or junior barber or beautician in this state while having an infectious, contagious or communicable disease. No person shall be licensed as a barber, beautician, manicurist or student until he or she shall have obtained a certificate of health from a licensed physician under article three of this chapter certifying such person to be free of all infectious, contagious and communicable diseases. Such certificate shall be filed with the state board of barbers and beauticians within ten days after the examination of the person is made by the physician and a photograph of the applicant must accompany the application with such certificate. The certificate shall be in such form as the board may prescribe. The board shall be empowered to compel any registered barber, beautician, manicurist, student, or junior barber or beautician, to submit to a physical examination and file a certificate of health at any reasonable time.
§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

It shall be unlawful for any person, firm or corporation to own or operate a beauty shop or barbershop, or a school of beauty culture or barbering, or to act as a barber, beautician or manicurist, unless:

(a) Such beauty shop, barbershop, or school of beauty culture or barbering shall before opening its place of business to the public, have been approved by the board as having met all the requirements and qualifications for such places of business as are required by this article and for this purpose. It shall be the duty of the owner or operator of each such beauty shop, barbershop, or school of beauty culture or barbering to notify the board, in writing, at least ten days before the proposed opening date of such shop or school, whereupon it shall become the duty of the board, through the inspectors herein provided for, to inspect such shop or school. Upon given notice of the opening of any such shop or school, the owner or operator thereof shall pay to the board an inspection fee of twenty-five dollars. In the event the shop or school fails to meet the requirements of this article, and is not approved, the inspection fee shall be returned to the person paying same. Any shop or school meeting the prescribed requirements shall be granted a license permitting it to do business as such. If, however, after the lapse of ten days after the giving of such notice of opening to the board, an inspection is not made or such certificate of opening has not been granted or refused, the owner or operator of such shop or school may open provisionally subject to later inspection and to all other provisions, rules and regulations provided for in this article;

(b) All such shops and schools, and bathrooms, toilets and adjoining rooms used in connection therewith, are kept clean, sanitary, well-lighted and ventilated at all times. The use of chunk alum, powder puffs and styptic pencils in any such shop is prohibited;

(c) Each barber, beautician, manicurist, instructor, junior barber and beautician, and student, shall thor-
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(39) Thoroughly cleanse his or her hands with soap and water immediately before serving any patron;

(d) Each patron is served with clean, freshly laundered linen which is kept in a closed cabinet used for that purpose alone. All linens, immediately after being used, shall be placed in a receptacle used for that purpose alone.

The board of health shall prescribe such other rules and regulations in regard to sanitation and cleanliness in such shops and schools as it may deem proper and necessary. The director of health or inspectors designated pursuant to subsection (d) of section one of article fourteen of chapter sixteen of the code shall have the power to enforce compliance therewith. Such rules and regulations shall be kept posted in a conspicuous place in each shop or school.

§30-27-11. Grounds for cancellation of or refusal to issue or renew license.

The board may refuse to issue a license of registration to any applicant, or may refuse to renew, or may suspend or revoke the same for any holder thereof, for any of the following causes: (1) Conviction of the commission of a felony, as shown by a certified copy of the record of the court of conviction; (2) obtaining or attempting to obtain a license to practice barbering or beauty culture in this state by false pretenses, fraudulent misrepresentation, or bribery by the use of money or other consideration; (3) gross incompetency; (4) the continued practice of barbering or beauty culture by a person knowing himself or herself to be afflicted with a contagious or infectious disease; (5) the use knowingly of any false or deceptive statements in advertising; (6) habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs; (7) conviction for the illegal sale of any intoxicating beverage, as shown by a certified copy of the record of the court of conviction; (8) violation of any of the sanitary rules and regulations prescribed by the Board of health.
§30-27-12. Violation to constitute misdemeanor; penalty; concurrent jurisdiction; injunction.

1 Any violation of the provisions of this article or of the
2 rules and regulations of the board of health when promul-
3 gated by it as set out in section three, article fourteen,
4 chapter sixteen of this code, shall constitute a mis-
5 demeanor, punishable, upon conviction, by a fine of not
6 less than ten dollars, nor more than one hundred dollars,
7 or by imprisonment in the county jail for not more than
8 sixty days, or by both such fine and imprisonment. Magis-
9 trates shall have concurrent jurisdiction with circuit
10 courts for the enforcement of the provisions of this article
11 and the rules and regulations of the board of health.
12
13 Notwithstanding the existence or pursuit of any other
14 remedy, the director of health or board of barbers and
15 beauticians may, in the manner provided by law, maintain
16 an action in the name of the state for an injunction against
17 any person, partnership, association or corporation to
18 restrain or prevent the establishment, conduct, manage-
19 ment or operation of any barbershop, beauty shop, school
20 of barbering or beauty culture, or related agency, when
21 such person, partnership, association or corporation re-
22 peatedly refuses to obtain registration or license therefor
23 and continues the practice or teaching of barbering or
24 beauty culture without first obtaining registration or a
25 license therefor in the manner hereinbefore provided.

§30-27-13. Chapter thirty, article one, applicable to board.

1 Unless otherwise specifically provided herein, the provi-
2 sions of article one, chapter thirty of the code of West
3 Virginia shall apply to the state board of barbers and
4 beauticians.

§30-27-14. Collections and expenditures; disposition of funds.

1 All money collected under the provisions of this article
2 shall be deposited in the state treasury as provided by
3 law, and shall be credited to the board of barbers and
4 beauticians in a special fund to be known as the "barbers
5 and beauticians special fund." All money in such fund
6 shall be expended only for the administration and en-
7 forcement of the provisions of this article, except that at
the end of each fiscal year there shall be transferred from
this fund to the general revenue fund of the state ten
percent of all money collected by the board during the
year.

§30-27-15. Validity of certificates of registration and rules is-
issued by board of barbers and beauticians.

Any certificate of registration issued prior to the effec-
tive date of this article by the committee of barbers and
beauticians shall be valid as a license under the provisions
of this article, except as modified by the board of barbers
and beauticians; and all rules and regulations issued by
the committee of barbers and beauticians prior to the
effective date of this article shall remain in effect unless
modified in accordance with the provisions of article four-
ten, chapter sixteen of this code.

§30-27-16. Separability; conflicting acts repealed.

The various provisions of this article shall be considered
as separable and several, and should any of the provisions
or parts thereof be construed or held to be unconstitu-
tional, or for any other reason invalid the remaining
provisions of this article shall not be thereby affected. All
acts and parts of acts in conflict with the provisions of
this article, or any part thereof, are hereby repealed. Any
ordinances of any municipalities in this state now in effect
and having for their purposes the regulation of the prac-
tice of barbering or beauty culture, which are in conflict
with the provisions of this article, or any part thereof,
shall be null and void and of no effect on and after the
date this article goes into effect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-3. Office of medical examinations established; appointment, duties, 
etc., of chief medical examiner; assistants and employees.

§61-12-4. Central office and laboratory.

§61-12-5. Certain salaries and expenses paid by state.

§61-12-6. Chief medical examiner may obtain additional services and 
facilities.

§61-12-7. Medical examiners.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.
§61-12-3. Office of medical examinations established; appointment, duties, etc., of chief medical examiner; assistants and employees.

1 The office of medical examinations is hereby established, to be operated under the control and supervision of the director of the department of health. Such office shall be directed by a chief medical examiner, who shall be appointed by the director. The chief medical examiner may employ assistants, pathologists, toxicologists, laboratory technicians, regional medical examiners and other staff members as the director may specify.

9 All persons employed by the chief medical examiner shall be responsible to him and may be discharged by him for any reasonable cause. The chief medical examiner shall specify the qualifications required for each position in the office of medical examinations, and each position shall be subject to such rules and regulations as the chief medical examiner may prescribe.

16 The chief medical examiner shall be a physician licensed to practice medicine in West Virginia, who is a diplomate or eligible for certification by the American board of pathology or the American osteopathic board of pathology. The salary of the chief medical examiner and the salaries of all assistants and employees of the office of medical examinations shall be fixed by the Legislature from funds appropriated for that purpose. The chief medical examiner shall take such oath and provide such bond as may be required by law. Within the discretion of the department, the chief medical examiner and his assistants shall lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall University School of Medicine, the department of public safety, other law-enforcement agencies, and other interested groups.

§61-12-4. Central office and laboratory.

1 The office of medical examinations shall establish and maintain a central office and a laboratory having adequate professional and technical personnel and medical and scientific facilities for the performance of the duties...
imposed by this article. The central laboratory and office shall be maintained in connection with the facilities of the West Virginia University school of medicine, and the director is hereby empowered to contract for the use of such facilities.

§61-12-5. Certain salaries and expenses paid by state.

The salaries of the chief medical examiner, and the technical and clerical personnel in the central office and laboratory, the expenses of maintaining the central office and laboratory, the cost of pathological, bacteriological and toxicological services rendered by others than the chief medical examiner and his assistants, and of the personnel of the central office and laboratory, shall be paid by the state out of funds appropriated for that purpose.

§61-12-6. Chief medical examiner may obtain additional services and facilities.

Subject to the approval of the director, the chief medical examiner may, in order to provide facilities for investigating the cause of death as authorized in this article, employ and pay qualified pathologists and toxicologists to make autopsies and such pathological and chemical studies and investigations as he may deem necessary, and he may arrange for the use of existing laboratory facilities for such purposes whenever these are available. The director may prepare a list of approved pathologists available for this work in the several counties or sections of the state, and in such case the chief medical examiner may call upon such pathologists where they are available for services in case of need.

§61-12-7. Medical examiners.

The chief medical examiner shall appoint for each county in the state a medical examiner to serve for a term of three years. A medical examiner shall turn over and deliver to his successor in office all of the papers, reports and records of his said office. Medical examiners shall be qualified physicians, licensed to practice medicine in West Virginia.
Any vacancy in the office of medical examiner shall be filled by the chief medical examiner. One person may be appointed to serve as medical examiner for more than one county, and the medical examiner need not be a resident of the county which he serves. When it becomes necessary, because of illness, absence, need or personal interest, the chief medical examiner shall have the power to appoint any other qualified physician in the county in which a death is to be investigated, to act as assistant medical examiner for such county.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

1 It shall be the duty of the county commission of every county, from time to time, to appoint a coroner for such county, who shall hold his office during the pleasure of such commission and shall take the oath of office prescribed for other county officers. The county coroners shall hereafter perform such duties as may be assigned to them under the rules and regulations promulgated by the board of health, and shall be paid such fees or amounts for such services as may be fixed by the chief medical examiner.

CHAPTER 103
(H. B. 1693—By Mrs. Withrow and Mr. Dodd)

[Passed April 7, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expansion of the authority of the state department of health to provide surveillance of public drinking water throughout the state; defining water system; authorizing the board of health to prescribe by regulation maximum contaminant levels of water to prevent adverse effects on the health of individuals and to prescribe minimum sampling and testing requirements; system operation;
public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements; record keeping; laboratory certification; procedures for granting variances and exemptions; permitting the board of health to establish standards covering taste, odor, and appearance of drinking water; granting right of entry to authorized representatives; providing misdeameanor penalties for violation of sections or regulations promulgated thereunder; providing civil penalties for willful violations.

Be it enacted by the Legislature of West Virginia:

That section nine-a, 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.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; penalties.

A public water system is any water supply or system which regularly supplies or offers to supply, piped water to the public for human consumption, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include: (1) Any collection, treatment, storage, and distribution facilities under the control of the owner or operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system shall not include a system which meets all of the following conditions: (1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities); (2) which obtains all of its water from, but is not owned or operated by, a public water system which otherwise meets the definition; (3) which does not sell water to any person; and (4) which is not a carrier conveying passengers in interstate commerce.

The state board of health shall prescribe by regulation the maximum contaminant levels to which all public water systems
shall conform in order to prevent adverse effects on the health of individuals, and, if it deems appropriate, treatment techniques that reduce the contaminant or contaminants to a level which will not adversely affect the health of the consumer.

It shall further prescribe by regulation minimum requirements for: Sampling and testing; system operation; public notification by a public water system on being granted a variance or exemption or upon failure to comply with specific requirements of this section and regulations promulgated under this section; record keeping; laboratory certification; as well as procedures and conditions for granting variances and exemptions to public water systems from state public water systems regulations.

In addition, the state board of health shall establish regulations covering the production and distribution of bottled drinking water and may establish regulations covering the taste, odor, appearance, and other consumer acceptability parameters of drinking water.

Authorized representatives of the state board of health shall have right of entry to any part of a public water system, whether or not the system is in violation of a legal requirement, for the purpose of inspection, sampling or testing, and shall be furnished records or information reasonably required for a complete inspection.

Any individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or any entity recognized by law who shall violate any provision of this section, or any of the regulations or orders issued pursuant thereto, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, and each day's violation shall constitute a separate offense. In addition thereto, the state board of health or the state director of health, or his authorized representative may seek injunctive relief in the circuit court of the county in which all or part of the public water system is situated for threatened or continuing viola-
tions. For a willful violation of this section, or of any of the regulations or orders issued thereunder, an individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency, or entity recognized by law, upon a finding thereof by the circuit court of the county in which the violation occurs, shall be subject to a civil penalty of not more than five thousand dollars, and each day's violation shall be grounds for a separate penalty.

All regulations permitted under this section shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 104

(H. B. 918—By Mrs. Neal and Mrs. Spears)

[Passed April 6, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public health; home health services; and requiring the state department of health to provide home health services and to employ personnel necessary to maintain effective home health service programs.

Be it enacted by the Legislature of West Virginia:

That section two, article two-c, 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 2C. HOME HEALTH SERVICES.

§16-2C-2. Department to provide services; charges for services; authority to employ personnel; purchase of supplies and equipment; assistance to nonprofit agencies.

The department shall provide home health services to those persons living in areas of the state in which adequate home
health services are not available otherwise. For such services the department shall, and is hereby authorized to, charge fees to individuals to whom it renders such services or to any governmental agency purchasing such services for individuals, except for demonstration and public health program activities.

In order that it may effectively render home health services, the department shall employ the necessary personnel including nursing and supervisory personnel and shall have the further authority to purchase equipment and materials necessary to maintain an effective program of home health services.

The department shall, wherever possible, assist and advise nonprofit agencies or associations in the development of a home health services program to be carried out by such agencies or associations and, for that purpose, may enter into agreements with these agencies or associations specifying the type of assistance and advice it will render them.

CHAPTER 105

(Com. Sub. for S.B. 277—By Mr. Hatfield and Mr. Huffman)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-d, relating to requiring certificate of need prior to the offering or development of all new institutional health services within this state; declaring legislative findings; defining terms; institutional health services subject to review; providing for exemptions; granting the state health planning and development agency the authority to administer the certificate of need program; criteria to be used in conducting a certificate of need program; procedure to be used in conducting a certificate of need review; rules and regulations to be used in administering the certificate of need program; granting authority to promulgate additional rules and regulations; giving power to render a
final decision; authorizing power to issue a certificate of need where appropriate; providing for appeals of certificate of need decisions; providing for the length of time a certificate of need is valid; providing for denial of license; and providing for injunctions.

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 two-d, to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-1. Legislative findings.
§16-2D-2. Definitions.
§16-2D-3. Certificate of need.
§16-2D-4. Exemptions from certificate of need program.
§16-2D-5. Authority of state health planning and development agency; assistance of health systems agencies.
§16-2D-6. Minimum criteria for certificate of need reviews; promulgation of regulations regarding review criteria.
§16-2D-7. Procedures for certificate of need reviews; rules and regulations for emergency applications.
§16-2D-8. Agency to promulgate additional rules and regulations; procedure for adoption and distribution of rules and regulations.
§16-2D-9. State agency to render final decision; issue certificate of need.
§16-2D-10. Appeal of certificate of need decisions.
§16-2D-11. Time period of certificate of need; extension of time; revocation of certificate; appeal from revocation.
§16-2D-12. Prohibited acts; penalty.
§16-2D-13. Injunctive relief.

§16-2D-1. Legislative findings.

1 It is declared to be the public policy of this state:
2 (1) That the offering or development of all new institutional health services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the institutional health services of the people of this state and to avoid unnecessary duplication of institutional health services, and to contain or reduce increases in the cost of delivering institutional health services.
3 (2) That the general welfare and protection of the
lives, health and property of the people of this state require that the type, level and quality of care, the feasibility of providing such care and other criteria as provided for in this article or by the state health planning and development agency pursuant to provisions of this article, needed in new institutional health services within this state be subject to review and evaluation before any new institutional health services are offered or developed in order that appropriate and needed institutional health services are made available for persons in the area to be served.

§16-2D-2. Definitions.

As used in this article, unless otherwise indicated by the context:

“Ambulatory health care facility” means a facility, which is freestanding and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private offices of any health care providers.

“Ambulatory surgical facility” means a facility which is freestanding and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the legally authorized practice of surgery by any one or more persons in the private offices of any health care providers.

“Annual implementation plan” means a plan which describes objectives which will achieve the goals of the health systems plan and priorities among the objectives and which shall be established, annually reviewed and amended as necessary by the health systems agency.

“Community mental health and mental retardation facility” means a public or private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient...
and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

"Health care facility" is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including freestanding hemodialysis units, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies and community mental health and mental retardation facilities; whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state.

"Health care provider" means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

"Health maintenance organization" means a public or private organization, organized under the laws of this state or the federal government which:

(a) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: Usual physician services, hospitalization, laboratory, X ray, emergency and preventive services, and out-of-area coverage; and

(b) Is compensated except for copayments for the provision of the basic health care services to enrolled participants on a predetermined periodic rate basis; and

(c) Provides physicians' services primarily (1) directly through physicians who are either employees or partners of such organization, or (2) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis, or (3) a combination of (1) and (2) as provided herein.

"Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services, including alcohol, drug abuse and mental health services.
“Health systems agency” means an entity which is designated and operated in the manner described in P.L. 93-641, known as the “National Health Planning and Resources Development Act of 1974.”

“Health systems plan” means a detailed statement of goals describing a healthful environment and health systems of an area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of that area; which are responsive to the unique needs and resources of that area; and which take into account and are consistent with the national guidelines for health planning policy issued by the secretary of the department of health, education and welfare with respect to supply, distribution and organization of health resources and services.

“Home health agency” is an organization primarily engaged in providing directly or through contract arrangements, professional nursing services, home health aide services, and other therapeutic and related services including but not limited to physical, speech and occupational therapy and nutritional and medical social services, to persons in their place of residence on a part-time or intermittent basis.

“Hospital” means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

“Institutional health services”, except as used in section three of this article, means health services provided in or through health care facilities or health maintenance organizations and, except as otherwise specified in this article, the term shall include the entities in or through which such services are provided.

“Intermediate care facility” means an institution which provides, on a regular basis, health-related care and
services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board which can be made available to them only through institutional facilities.

“Offer” when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

“Person” means an individual, trust, estate, partnership, committee, corporation, association, and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof.

“Skilled nursing facility” means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for injured, disabled or sick persons.

“State Health Planning and Development Agency” shall be that agency designated by the governor and hereinafter referred to as the “state agency”, which shall be operated in the manner described in P.L. 93-641, known as the “National Health Planning and Resources Development Act of 1974.”

“To develop”, when used in connection with health services, means to undertake those activities which upon their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

§16-2D-3. Certificate of need.

Any new institutional health service shall not be offered or developed within this state except upon application for and receipt of a certificate of need as provided
by this article. For purposes of this section, "new institutional health service" shall include:

(a) The construction, development, or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure or relocation of a health care facility or health maintenance organization;

(c) Any expenditure by or on behalf of a health care facility, health care provider except as exempted in section four or health maintenance organization in excess of one hundred fifty thousand dollars which, under generally accepted accounting principles consistently applied, is a capital expenditure; where a person makes an acquisition by or on behalf of a health care facility, health care provider except as exempted in section four or health maintenance organization under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been by purchase such acquisition shall be deemed an expenditure subject to review;

(d) A change in the existing bed complement of a health care facility or health maintenance organization through the addition or conversion of ten or more beds or more than ten percent of the total bed capacity of such facility or organization, whichever is less, or the relocation of ten or more beds or more than ten percent of the total bed capacity of such facility or organization, whichever is less, from one physical facility or site to another;

(e) Health services which are offered in or through a health care facility or health maintenance organization and which were not offered on a regular basis in or through such health care facility or health maintenance organization within the twelve-month period prior to the time such services would be offered;

(f) The deletion of one or more health services, previously offered on a regular basis by a health care facility or health maintenance organization or the relocation of
one or more health services from one physical facility or site to another; and

(g) Expenditures in excess of one hundred fifty thousand dollars in preparation for the offering or development of a new institutional health service and any arrangement or commitment for financing the offering or development of the new institutional health service. Expenditures in preparation for the offering or development of a proposal for a new institutional health service shall include but not be limited to expenditures for surveys, studies, designs, plans, working drawings, specifications and site acquisition or commitment, which are related to the offering or development of the new institutional health service.

§16-2D-4. Exemptions from certificate of need program.

1 Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation or control in any manner of: (1) Private offices of physicians, private clinics of physicians, dentists or other practitioners of the healing arts; (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boarding houses which provide medical, nursing personnel and health related services; and (4) the remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination.

Unless exempt as hereinafter provided and only to the extent so exempt, any new institutional health service which, on or after the effective date of this article, is offered or developed within this state shall be subject to all the provisions of this article. However, in the case of new health care facilities or health maintenance
organizations, or health care facilities or health maintenance organizations providing institutional health services as of the effective date of this article, which on such date are committed to a formal plan of development or expansion of new institutional health services, where preliminary expenditures toward a formal plan of development or of new institutional health services, including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition or commitment, essential to the development or expansion of the new institutional health services of the health care facility or health maintenance organization of one hundred fifty thousand dollars or more, had been made during a three-year period ending as of the effective date of this article, the provisions of this article shall not apply to such development or expansion of new institutional health services, or where a formal plan of development or expansion of new institutional health services has been submitted to and approved by the state comprehensive health planning agency (heretofore created by the executive order of the governor of West Virginia), the provisions of this article shall not apply to such development or expansion: Provided, That upon the completion of such proposed development or expansion, all the provisions of this article shall apply to such health care facilities or health maintenance organizations not herein specifically excluded.

A new or existing health care facility or health maintenance organization may apply to the state agency for an exemption. The new or existing health care facility or health maintenance organization shall supply such information as the state agency shall require. The state agency shall make the determination as to whether the new or existing health care facility or health maintenance organization is entitled to an exemption under the provisions of this section.

§16-2D-5. Authority of state health planning and development agency; assistance of health systems agencies.

1 The state agency is hereby empowered to administer
the certificate of need program as provided by this article.

The state agency shall seek the advice of the designated health systems agencies in developing rules and regulations for the certificate of need program. The designated health systems agencies shall assist the state agency in carrying out its certificate of need program.

§16-2D-6. Minimum criteria for certificate of need reviews; promulgation of regulations regarding review criteria.

In making its determination as to whether a certificate of need shall be issued, the state agency shall, at a minimum, consider the following:

(a) The recommendation of the designated health systems agency for the health service area in which the proposed new institutional health service is to be located;

(b) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted by the designated health systems agency for the health service area in which the proposed new institutional health service is to be located;

(c) The relationship of services reviewed to the long-range development plan of the person providing or proposing such services;

(d) The need that the population served or to be served by such services has for such services;

(e) The availability of less costly or more effective alternative methods of providing such services;

(f) The immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the new institutional health service;

(g) The relationship of the services proposed to the existing health care system of the area in which such services are proposed to be provided;

(h) The availability of resources, including health care providers, management personnel, and funds for capital and operating needs, for the provision of the services
proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(i) The appropriate and nondiscriminatory utilization of existing and available health care providers;

(j) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(k) Special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professional schools, multidisciplinary clinics and specialty centers;

(l) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of P. L. 93-222 known as the Health Maintenance Organizations Act of 1973. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services. The consideration of a new institutional health service proposed by a health maintenance organization shall also address the availability and cost of obtaining the proposed new institutional health service from the existing providers in the area that are not health maintenance organizations. The criteria established by the state agency pursuant to this subparagraph shall be consistent with standards and procedures established under section 1306 (c) of P. L. 93-222, known as the Health Maintenance Organizations Act of 1973;

(m) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;
(n) In the case of the deletion or relocation of beds or services or the partial or total closure or relocation of a health care facility or health maintenance organization, the state agency shall consider the impact on the person proposing such new institutional health service, on other health care facilities or health maintenance organizations and on the needs of the population to be served or previously served;

(o) In the case of a construction project: (1) The cost and methods of the proposed construction, including the costs and methods of energy provision and (2) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

In the case of any proposed new institutional health service, the state agency shall not grant a certificate of need under its certificate of need program, unless after consideration of the appropriateness of the use of existing facilities providing services similar to those being proposed the state agency makes each of the following findings in writing: (1) That superior alternatives to such services in terms of cost, efficiency and appropriateness do not exist and the development of such alternatives is not practicable; (2) that existing facilities providing services similar to those proposed are being used in an appropriate and efficient manner; (3) that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; (4) that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service; and (5) that in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care services, the addition will be consistent with the plans of other agencies of the state responsible for the provision and financing of long-term care facilities or services including home health services.

In the case of any new institutional health service proposed to be provided by or through a health main-
tenance organization the state agency shall not deny a certificate of need with respect to such service (or otherwise make a finding under this section that such service is not needed) in those cases (1) when the state agency has granted a certificate of need which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed) and (2) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application.

Criteria adopted for review in accordance with this section shall be in the form of rules and regulations, and shall be adopted pursuant to section eight of this article.

§16-2D-7. Procedures for certificate of need reviews; rules and regulations for emergency applications.

Prior to submission of an application for a certificate of need, the state agency shall require the submission at least biennially of long-range plans by providers of health services and other persons subject to state agency review with respect to the development of proposals subject to review under this article. The plans shall be in such form and contain such information as the state agency shall require.

An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. In the case of construction projects persons proposing such projects shall submit letters of intent prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

The application shall be in such form and contain such information as the state agency shall establish by rule or regulation. Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency shall seek the advice of the designated health systems agency for the area in which the proposed new institutional health service will
be located to determine if the application is complete and the state agency may request additional information from the applicant. The state agency shall notify the applicant that the review has begun on the day that the application has been determined to be complete. The state agency shall provide written notice to all affected persons of the beginning of the review, the proposed schedule for review, the period within which a public hearing may be requested by persons directly affected by the review, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For purposes of this section, "affected person" includes the person whose proposal is being reviewed, the health systems agency for the health service area in which the proposed new institutional health service is to be offered or developed and when deemed appropriate by the state agency, contiguous health systems agencies in adjacent states: Provided, That for the purposes of this section "affected persons" shall also include health care facilities and health maintenance organizations located in the health service area which provide institutional health services, any agency which establishes rates for health care facilities or health maintenance organizations in the state, those members of the public who are to be served by the proposed new institutional health services, and all hospital service corporations and medical service corporations as defined in article twenty-four, chapter thirty-three of this code.

Written notification to members of the public may be provided through newspapers of general circulation in the appropriate area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

The state agency shall seek the recommendation of the designated health systems agency for the health service area in which the proposed new institutional health
service is to be located as to whether a certificate of
need should be issued. The state agency shall assist the
designated health systems agency in the review of appli-
cations by supplying information and data on those pro-
posed new institutional services which have statewide
implications.

The state agency shall adopt schedules for reviews
which provide that no review shall, to the extent prac-
ticable, take longer than ninety days from the date that
notification is sent to the applicant, to the date of the final
decision of the state agency.

The state agency shall adopt criteria for determining
when it would not be practicable to complete a review
within ninety days. Where a proposed new institutional
health service is to be provided in a health service area
for which a health systems agency has been designated,
such schedule shall set forth the period within which
the health systems agency must complete its review and
provide its recommendation with respect to such new
institutional health service to the state agency: Provided,
That the period allotted by the state agency to a health
systems agency for completion of its review and sub-
mission of its recommendations may not be less than
sixty days, except with the written consent of the health
systems agency.

The state agency shall provide in its review procedures
for a public hearing in the course of agency review if
requested by one or more persons directly affected by
the review. For purposes of this section, “person directly
affected by the review” includes, the person whose pro-
posal is being reviewed, members of the public who are
to be served by the proposed new institutional health
services; health care facilities and health maintenance
organizations located in the health service area in which
the service is proposed to be offered or developed which
provide services similar to the proposed services under
review; any agency which establishes rates for health
care facilities or health maintenance organizations in the
state; and health care facilities and health maintenance
organizations which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide such similar services in the future, either through the filing of a letter of intent or by adoption of a plan. Where such a hearing is requested, the state agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to this section. The procedure for the hearing must provide an opportunity for any person to present testimony. The procedures may, at the option of the state agency, provide that the requirement of this section shall be deemed satisfied if an opportunity for a public hearing with respect to the new institutional health service under review has been provided to all persons directly affected by the review as defined by the state agency pursuant to this article by the appropriate health systems agency. Neither the state agency nor the health systems agency may impose fees for such a public hearing.

The state agency shall issue written findings which state the basis for any final decision or recommendation it may make. Such findings shall be sent to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed, and shall be available to others upon request. The state agency shall notify, upon request, providers of health services and other persons subject to review under this article of the status of the state agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

The state agency shall prepare and publish, at least annually, reports of reviews completed and being conducted, with general statements about the status of each review still in progress and the findings and rationale for each completed review.

The state agency shall provide for access by the general public to all applications reviewed by the state agency
and to all other written materials pertinent to agency review.

The state agency shall provide in its review procedures a provision that any person directly affected by the review, as defined in this section, may, for good cause shown, request in writing within thirty days of a final decision of the state agency, a public hearing for purposes of reconsideration of that decision, and the procedures for such a hearing. No fees may be imposed by the state agency for the hearing. For purposes of this section, a request for a public hearing for purposes of reconsideration shall be deemed to have shown good cause if it:

(a) Presents significant, relevant information not previously considered by the state agency;
(b) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;
(c) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or
(d) Provides such other bases for a public hearing as the state agency determines constitutes good cause.

To be effective a request for such a hearing shall be received within thirty days of the state agency decision, and the hearing shall commence within thirty days of receipt of the request. Notification of such a public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and the health systems agency for the health service area in which the new institutional health service is proposed to be offered or developed, and shall be sent to others upon request. The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.

Notwithstanding other provisions of this article, the state agency shall adopt rules and regulations for de-
termining when there is an emergency application which
requires immediate review and shall adopt regular proce-
dures in accordance with the provisions of this article
for handling such emergency applications as expedi-
tiously as possible.

§16-2D-8. Agency to promulgate additional rules and
regulations; procedure for adoption and distribu-
tion of rules and regulations.

The state agency is hereby empowered to promulgate
additional rules and regulations for review of certificate
of need applications beyond those required by sections
six and seven of this article. All rules and regulations
shall be promulgated pursuant to chapter twenty-nine-a
of this code and as described herein. In addition, before
adopting proposed rules and regulations the state agency
shall give interested persons an opportunity to offer
written comments on the rules and regulations, or any
revisions thereof, which it proposes to adopt, as follows:

(a) The state agency shall distribute copies of its
proposed review rules and regulations, and proposed
revisions thereof, to statewide health agencies and or-
ganizations, the statewide health coordinating council,
and each health systems agency for a health service area
located in whole or in part within the state;

(b) The state agency shall publish, in at least one
newspaper in each planning and development region in
this state, a notice stating that rules and regulations for
review of certificate of need applications or any revisions
thereof, have been proposed for adoption and are avail-
able at specified addresses for inspection and copying by
interested persons. Such notice shall appear in other than
the legal notices of such newspapers; in addition, notice
may be given through other public information channels;

(c) The state agency shall distribute copies of its
adopted review rules and regulations, and any revisions
thereof, to the agencies and organizations specified in
this section and to the secretary of health, education and
welfare, and shall provide such copies to other persons
upon request.
§16-2D-9. State agency to render final decision; issue certificate of need.

The state agency shall render a final decision on every application for a certificate of need in the form of an approval, a denial, an approval with conditions or a deferral. Approval with conditions does not give the state agency authority to mandate new institutional health services not proposed by the health care facility or health maintenance organization. As part of a deferral, the state agency may return the application to the person proposing the new institutional health service or to the health systems agency for reconsideration of its recommendations. The state agency shall send its decision along with written findings to the person proposing the new institutional health service and to the health systems agency for the health service area in which the new service is proposed to be offered or developed and shall make it available to others upon request. In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service. If the state agency fails to make a decision within the time period specified for the review, the proposed new institutional health service shall be deemed to have been found to be not needed.

§16-2D-10. Appeal of certificate of need decisions.

If the state agency makes a final decision regarding a proposed new institutional health service which is inconsistent with a recommendation made with respect thereto by a designated health systems agency, the state agency shall submit to such health systems agency a written, detailed statement of the reasons for the inconsistency. Such decisions and the record upon which it was made shall, upon request of the health systems agency, made within thirty days of the issuing of the decision, be subject to review by an agency of the state (other than the state agency) designated by the governor. To be effective, the health systems agency’s request must be received within thirty days of the state agency decl-
sion, and the hearing shall commence within thirty days of receipt of the request. The decision of the reviewing agency shall be made in writing within forty-five days after the conclusion of such hearing.

A final decision of the state agency, and the record upon which it was made, shall, upon request of the person proposing the new institutional health service or other "persons directly affected by the review", as defined in section seven of this article, made within thirty days of the issuing of the decision, be reviewed by an agency of the state (other than the state agency) designated by the governor. To be effective, such request must be received within thirty days of the state agency decision, and the hearing shall commence within thirty days of receipt of the request. The decision of the reviewing agency shall be made in writing within forty-five days after the conclusion of such hearing. The written findings of the review agency shall be sent to the person who requested the review, to the person proposing the new institutional health service, to the health systems agency requesting a review and to the state agency, and shall be made available by the state agency to others upon request. The decision of the reviewing agency shall be considered the final decision of the state agency; however, the reviewing agency may remand the matter to the state agency for further action or consideration.

If the state agency or the reviewing agency makes a decision regarding a proposed new institutional health service which is not consistent with the goals of the health systems plan of a designated health systems agency or the priorities of the annual implementation plan of a designated health systems agency, the state agency or the reviewing agency shall submit to the health systems agency a written, detailed statement of the reasons for the inconsistency. Upon the entry of a final decision by the reviewing agency the designated health systems agency, the person proposing the new institutional health service and any other "person directly affected by the review" as defined in section seven of this article shall have standing in and may take an appeal to the circuit court of Kanawha County from any deci-
§16-2D-11. Time period of certificate of need; extension of time; revocation of certificate; appeal from revocation.

A certificate of need shall be valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate or during the certification period the person proposing the new institutional health service shall provide the state agency such information on the development of the project as the state agency may request. The state agency shall determine at the end of the certification period whether sufficient progress is being made on the development of the project and whether there has been compliance with the conditions of certification. The state agency shall seek the advice of the health systems agency in making its determination. The certificate of need may be extended by the state agency for additional periods of time as are reasonably necessary to expeditiously complete the project. The certificate of need may be revoked by the state agency for insufficient progress in developing the project or noncompliance with any conditions of certification at the end of the first certification period or at the end of any subsequent certification periods. Appeals of revocation shall be made pursuant to section ten of this article.

§16-D-12. Prohibited acts; penalty.

Any person offering or developing any new institutional health service within the meaning of this article without first obtaining a certificate of need therefor as herein provided, or who shall violate any of the provisions of this article shall be subject to denial or revocation of a license to operate such institutional health service or facility. Upon a showing to the state agency that any person is offering or developing any new institutional health service within the meaning of this article without having first obtained a certificate of need therefor as provided herein or that such person is otherwise in violation of the provisions of this article, the state agency shall provide such person with written notice
which notice shall state the nature of the violation and
the time and place at which such person shall appear
to show good cause why its license should not be revoked
or denied, at which time and place such person shall be
afforded a reasonable opportunity to present testimony
and other evidence in support of its position. If, there-
after, the state agency determines that such person's
license to operate such institutional health service or fa-
cility should be revoked or denied, the state agency shall
issue an order, in writing, to the appropriate responsible
licensing agency of the state, requiring that such person's
license to operate such institutional health service or
facility be revoked or denied, which order shall be binding
upon such licensing agency.

§16-2D-13. Injunctive relief.

In addition to all other remedies, and aside from various
penalties provided by law, if any person offers or develops
any new institutional health service without first having
a certificate of need therefor as herein provided, or viol-
lates any other provision of this article or any lawful
rule or regulation promulgated thereunder, the state
agency, and/or the health systems agency, may main-
tain a civil action in the circuit court of the county where-
in such violation has occurred, or wherein such person
may be found, to enjoin, restrain or prevent such viola-
tion. This remedy shall also be available to "persons
directly affected by the review" as defined in this article.
No injunction bond shall be required to be filed in any
such proceeding.
hundred thirty-one, as amended, relating to the authorized limit on borrowing of the West Virginia housing development fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


1 The aggregate principal amount of bonds and notes issued by the housing development fund shall not exceed three hundred million dollars outstanding at any one time: Provided, however,
2 That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the housing development fund or by exchange for any such refunding bonds or notes, shall be excluded.

CHAPTER 107

(H. B. 848—By Mr. Sonis)

[Passed March 23, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, eight and nine, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the prohibition of discrimination because of sex in the sale, rental or leasing of housing accommodations or real property, or in granting financial assistance therefor; and allowing certain exemptions.

Be it enacted by the Legislature of West Virginia:

That sections two, four, eight and nine, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

§5-11-2. Declaration of policy.

§5-11-4. Human rights commission continued; status, powers and objects.

§5-11-8. Commission powers; functions; services.


§5-11-2. Declaration of policy.

1. It is the public policy of the state of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age or blindness. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex or blindness.

2. The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age or blindness is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§5-11-4. Human rights commission continued; status, powers and objects.

1. The West Virginia human rights commission, heretofore created, is hereby continued. The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age or blindness and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex or blindness.
§5-11-8. Commission powers; functions; services.

1 The commission is hereby authorized and empowered:

2 (a) To cooperate and work with federal, state and local
government officers, units, activities and agencies in the pro-
motion and attainment of more harmonious understanding
and greater equality of rights between and among all racial,
religious and ethnic groups in this state;

7 (b) To enlist the cooperation of racial, religious and ethnic
units, community and civic organizations, industrial and labor
organizations and other identifiable groups of the state in
programs and campaigns devoted to the advancement of toler-
ance, understanding and the equal protection of the laws of
all groups and peoples;

13 (c) To receive, investigate and pass upon complaints al-
leging discrimination in employment or places of public accom-
modations, because of race, religion, color, national origin,
ancestry, sex, age or blindness, and complaints alleging dis-
 crimination in the sale, purchase, lease, rental and financing
of housing accommodations or real property because of race,
religion, color, national origin, ancestry, sex or blindness
and to initiate its own consideration of any situations,
circumstances or problems, including therein any racial, re-
ligious or ethnic group tensions, prejudice, disorder or dis-
 crimination reported or existing within the state relating to
employment, places of public accommodations, housing accom-
modations and real property;

24 (d) To hold and conduct public and private hearings at
such times and places around the state as may be practical on
complaints, matters and questions before the commission and,
in connection therewith, relating to discrimination in em-
ployment, or places of public accommodations, housing ac-
 commodations or real property and during the investigation
of any formal complaint before the commission relating to
employment, places of public accommodations, housing ac-
 commodations or real property to:

32 (1) Issue subpoenas and subpoenas duces tecum upon the
concurrence of at least five members of the commission, ad-
minister oaths, take the testimony of any person under oath,
and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to a panel of one commission member appointed by the chairman and a hearing examiner who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct the hearings, as herein provided, but all decisions and actions growing out of or upon any such hearings shall be reserved for determination by the commission;

(4) To enter into conciliation agreements and consent orders;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules and regulations of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article;

(g) To prepare a written report on its work, functions and services for each year ending on the thirtieth day of June and to deliver copies thereof to the governor on or before the first day of December next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions
and services contemplated by the provisions of this article, including the promulgation of rules and regulations in accordance with the provisions of article three, chapter twenty-nine-a of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age or blindness; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: Provided, That the identity of the parties involved shall not be disclosed.


It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established
(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind: Provided, That it shall not be unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance, or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision;

(b) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to (1) elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (2) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex or age; or (3) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age or blindness;

(c) For any labor organization because of race, religion, color, national origin, ancestry, sex, age or blindness of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(d) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(1) Select individuals for an apprentice training program registered with the state of West Virginia on any basis other
than their qualifications as determined by objective criteria which permit review;

(2) Discriminate against any individual with respect to his right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program, or other occupational training or retraining program;

(3) Discriminate against any individual in his pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(4) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for such programs or to make any inquiry in connection with such program which expresses, directly or indirectly, discrimination or any intent to discriminate, unless based upon a bona fide occupational qualification;

(e) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, religion, color, national origin, ancestry, sex, age or blindness;

(f) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(1) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age or blindness, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age or blindness, or that the patronage or custom thereof of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age or who is blind, is unwelcome, objectionable, not acceptable, undesired or not solicited;
(g) For the owner, lessee, sublessee, assignee or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, lease, assign or sublease any housing accommodations or real property or part or portion thereof, or any agent, or employee of any of them; or for any real estate broker, real estate salesman, or employee or agent thereof:

(1) To refuse to sell, rent, lease, assign or sublease or otherwise to deny to or withhold from any person or group of persons any housing accommodations or real property, or part or portion thereof, because of race, religion, color, national origin, ancestry, sex or blindness of such person or group of persons: Provided, That this provision shall not require any person named herein to rent, lease, assign or sublease any housing accommodations or real property, or any portion thereof to both sexes where the facilities of such housing accommodations or real property, or any portion thereof, are suitable for only one sex;

(2) To discriminate against any person or group of persons because of the race, religion, color, national origin, ancestry, sex or blindness of such person or group of persons in the terms, conditions, or privileges of the sale, rental, or lease of any housing accommodations or real property, or part or portion thereof, or in the furnishing of facilities or services in connection therewith;

(3) To print, publish, circulate, issue, display, post or mail, or cause to be printed, published, circulated, issued, displayed, posted or mailed any statement, advertisement, publication, or sign or to use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodations or real property, or part or portion thereof, or to make any record or inquiry in connection with the prospective purchase, rental, lease, assignment or sublease of any housing accommodations or real property or part or portion thereof, which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex or blindness or any intent to make any such discrimination and the production of any statement, advertisement, publicity, sign, form of application, record or inquiry
purporting to be made by any such person shall be prima facie evidence in any action that the same was authorized by such person: Provided, That with respect to sex discrimination, this provision shall not apply to any person named herein whose housing accommodations or real property, or any portion thereof, have facilities which are suitable for only one sex;

(h) For any person or financial institution or lender to whom application is made for financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodations or real property, or part or portion thereof, or any agent or employee thereof to:

(1) Discriminate against any person or group of persons because of race, religion, color, national origin, ancestry, sex or blindness, of such person or group of persons or of the prospective occupants or tenants of such housing accommodations or real property, or part or portion thereof, in the granting, withholding, extending, modifying or renewing, or in the fixing of the rates, terms, conditions or provisions of any such financial assistance or in the extension of services in connection therewith;

(2) Use any form of application for such financial assistance or to make any record of inquiry in connection with applications for such financial assistance which expresses, directly or indirectly, any discrimination as to race, religion, color, national origin, ancestry, sex or blindness or any intent to make any such discrimination;

(i) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(1) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass, or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;
156 (2) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of duty under this article;

161 (3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article;

166 (4) Induce or attempt to induce for profit any person to sell or rent or to not sell or rent any housing accommodations or real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons who are blind or who are of a particular race, religion, color, national origin, ancestry or sex.

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CHAPTER 108

(S. B. 582—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the industrial development and commercial development bond act; relating to the issuance of refunding bonds under such act; providing purposes for and limitations with respect thereto; and providing for the payment and security of such refunding bonds.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two-c, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.


1 Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by a county or municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to make any improvements or alterations in the industrial project or commercial project; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby:

Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from revenues derived from the lease, sale, financing, refinancing, or other disposition of or realization from or upon the industrial project or the commercial project which was acquired, purchased, constructed, built or improved, or financed with the proceeds of the bonds to be refunded, or from other moneys or the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in section seven of this article and shall be secured in accordance with the provisions of section eight of this article.
AN ACT to amend and reenact sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, changing the name of the West Virginia industrial development authority to the West Virginia economic development authority; increasing the powers thereof; setting forth certain legislative findings; defining certain terms; relating to membership on the economic development authority; relating to the appointment of and terms of its members; relating to vacancies on the authority; authorizing the delegation of authority by certain members; relating to voting, compensation, expenses and general powers of the authority; deleting reference to fifty year existence of the authority; relating to loans to industrial development agencies for industrial development projects and industrial subdivision project acquisitions and improvements; relating to certain conditions in connection with such loans; relating to liens; relating to certain loan application requirements; providing for certain hearings; changing the name of the industrial development fund to the economic development fund; relating to the requisitions from the economic development fund; relating to certain excess moneys in such fund; relating to the governing body of the authority; relating to the organization, officers, meetings, quorum, voting and powers of such governing body; relating to the money of the authority; relating to a certain conflict of interest; making certain contracts void; providing an agreement with federal agencies not to alter or limit certain rights and powers of the authority; giving the legislative auditor the authority to audit the accounts and books of such authority; and providing a certain rule of construction.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, seven-a,
eight, nine, ten, eleven, twelve, thirteen, fourteen and fifteen, article fifteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-2. Legislative findings.
§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.
§31-15-7. Loans to industrial development agencies for industrial development projects.
§31-15-7a. Loans to industrial development agencies for industrial subdivision project acquisitions and improvements.
§31-15-8. Loan application requirements; hearings.
§31-15-10. Governing body; organization and meetings; quorum; powers.
§31-15-12. Conflict of interest; when contracts void.
§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.


1 This article shall be known and may be cited as "The West Virginia Economic Development Authority Act."

§31-15-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding: (a) That unemployment exists in many areas of the state and may well come about, from time to time, in other areas of the state; (b) that in some areas of the state, unemployment is a serious problem and has been for so long a period of time that, without remedial measures, it may become so in other areas of the state; (c) that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of the people of the entire state; (d) that widespread industry unemployment produces indigency which falls with crushing force upon all un-
employed workers and ultimately upon the state in the form of welfare and unemployment compensation; (e) that the absence of employment and business opportunities for youth is a serious threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; (f) that lack of employment and business opportunities has resulted in thousands of workers and their families leaving the state to find such opportunities elsewhere, and that this exodus has adversely affected the tax base of counties and municipalities resulting in an impairment of their financial ability to support education and other local government services; (g) that security against unemployment and the spread of indigency and economic stagnation can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, tourism, industry and manufacturing; (h) that the present and future health, safety, morals, right to gainful employment and general welfare of the people of the state require as a public purpose the promotion and development of new and expanded industrial, commercial, tourist and manufacturing enterprises within this state; (i) that the device under which private community industrial development organizations in the state acquire or build industrial buildings or sites with funds raised through popular subscription, loans or otherwise for lease and sale to new or expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise, and requires and deserves encouragement and support from the state, as a means toward alleviation of unemployment and economic distress; (j) that community industrial development corporations in the state have invested substantial funds in successful industrial development projects and are experiencing difficulty in undertaking additional projects by reason of the partial inadequacy of their own funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first deed of
trust or mortgage loans; (k) that an urgent need exists
to stimulate a larger flow of private investment funds from
banks, investment houses, insurance companies and other
financial institutions into community industrial build-
ing programs; and (l) that by increasing the number of
community industrial building projects presenting at-	ractive opportunities for private investment, a larger
portion of the private capital available in this state for
investment can be put to use for the general economic
development of the state.


1 The purposes of this article shall be to provide for the
formation of a public economic development authority
to promote, assist, encourage and, in conjunction with
such banking corporations or institutions, trust companies,
savings banks, building and loan associations, insurance
companies, or related corporations, partnerships, founda-
tions or other institutions to develop and advance the
business prosperity and economic welfare of the state of
West Virginia; to encourage and assist in the location of
new business and industry; to stimulate and assist in the
expansion of all kinds of business activity which will
tend to promote the business development and maintain
the economic stability of this state, provide maximum
opportunities for employment, encourage thrift and im-
prove the standard of living of the citizens of this state;
to cooperate and act in conjunction with other organiza-
tions, public or private, the objects of which are the
promotion and advancement of industrial, commercial,
tourist or manufacturing developments in this state; to
furnish money and credit to approved industrial develop-
ment agencies in this state, thereby establishing a source
of credit not otherwise available therefor. Such purposes
are hereby declared to be public purposes for which
public money may be spent and are purposes which will
promote the health, safety, morals, right to gainful em-
ployment, business opportunities and general welfare of
the inhabitants of the state.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Authority" means the West Virginia economic development authority.

(b) "Board" means the governing body of the authority.

(c) "Cost of establishing an industrial development project" means cost of construction, cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction, cost of engineering and legal services, plans, specifications and surveys, estimates of costs and any other expenses necessary or incident to determining the feasibility or practicability of any industrial development project, together with such other expenses as may be necessary or incidental to the financing and the construction of the industrial development project and the placing of the same in operation.

(d) "Cost of industrial subdivision project improvements" means construction cost of site preparation, cost of grading and planting, construction cost of utilities, sewage disposal facilities, storm drains, access roads and dock facilities, construction cost of internal streets and roads, curbs, walks, parking areas, lighting, shell buildings and rail spurs, cost of acquiring easements and property rights in other lands and, in connection therewith, financing charges, interest prior to and during the construction of such improvements, cost of engineering and legal services, preparation of plans, specifications, surveys and estimates of costs, together with such other expenses as may be necessary or incidental to the financing and construction of industrial subdivision project improvements.

(e) "County" means any county of this state.

(f) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America.
(g) "Fund" means the economic development fund provided for in section nine of this article.

(h) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise.

(i) "Industrial development agency" means any incorporated organization, foundation, association or agency to whose members or shareholders no profit inures, which has as its primary function the promotion, encouragement and development of industrial, commercial, manufacturing and tourist facility enterprises in this state.

(j) "Industrial development project" means any land or water site, structure, facility or undertaking comprising or being connected with or a part of an industrial, commercial, manufacturing or tourist facility enterprise established, to be established or proposed to be acquired by an industrial development agency in this state.

(k) "Industrial subdivision project" means any tract of land or area of water and includes, where appropriate, related utilities, services and access roads, the clear and marketable legal title to which is held or is proposed to be acquired by an industrial development agency for sale or lease for an industrial development project.

(l) "Industrial subdivision project improvements" means site preparation, grading, planting and the installation of utilities, sewage disposal facilities, storm drains, dock facilities, internal streets and roads, curbs, walks, parking areas, lighting, shell buildings and rail spurs upon an industrial subdivision project.

(m) "Municipality" means any city or town in this state.

(n) "Responsible buyer" means government and any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to as-
sume all obligations prescribed by it in the acquisition of an industrial development project from an industrial development agency and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.

(o) "Responsible tenant" means government and any person, partnership, firm, company or corporation organized for profit deemed by the authority, after proper investigation, to be financially responsible to assume all rental and other obligations prescribed by it in the leasing of an industrial development project and in the operation of an industrial, commercial, manufacturing or tourist facility enterprise thereon.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by certain members; voting; compensation and expenses.

The West Virginia industrial development authority heretofore created is hereby continued as a body corporate and politic, constituting a public corporation and government instrumentality, but shall hereafter be known as the West Virginia economic development authority.

The authority shall be composed of a board of members consisting of a chairman, who shall be the governor or his designated representative, the state treasurer, the tax commissioner, the commissioner of banking and five appointed members who shall be broadly representative of the geographic regions of the state.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint five members of the commission for staggered terms of four years. Of the members of the commission first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred seventy-eight, and one each for terms ending one, two, three and four years thereafter: Provided, That each person serving as a member of the West Virginia industrial development authority, for a term which has not expired on the effective date of this
article, shall be appointed by the governor without Senate
confirmation to the West Virginia economic development
authority as one of the five appointed members, for the
term ending the thirtieth day of June in the year in
which his term would expire as a member of the West
Virginia industrial development authority. As these origi-
nal appointments expire, each subsequent appointment
shall be for a full four-year term. Any member whose
term has expired shall serve until his successor has been
duly appointed and qualified. Any person appointed to fill
a vacancy shall serve only for the unexpired term. Any
member shall be eligible for reappointment.

The governor, state treasurer, tax commissioner and
commissioner of banking may, by written notice filed
with the secretary of the authority, from time to time,
delegate to any subordinate the power to represent them
at any meeting of the authority. In such case, the sub-
dordinate shall have the same power and privileges as the
official he represents and may vote on any question.

Members of the authority shall not be entitled to com-
pen sation for services performed as members, but shall
be entitled to reimbursement for all reasonable and
necessary expenses actually incurred in the performance
of their duties.


1 The authority, as a public corporation and govern-
mental instrumentality exercising public powers of the
state, shall have and may exercise all powers necessary
or appropriate to carry out the purposes of this article,
including the power:

6 (a) To cooperate with industrial development agencies
in efforts to promote the expansion of industrial, com-
mercial, manufacturing and tourist activity in this
state.

6 (b) To determine, upon the proper application of an
industrial development agency, whether the declared
public purposes of this article have been or will be ac-
complished by the establishment by such agency of an
industrial development project in this state.
(c) To conduct examinations and investigations and
to hear testimony and take proof, under oath or affirma-
tion, at public or private hearings, on any matter relevant
to this article and necessary for information on the
establishment of any industrial development project.

(d) To issue subpoenas requiring the attendance of
witnesses and the production of books and papers rele-
vant to any hearing before such authority or one or more
members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such
offense to have punished for contempt any witness who
refuses to obey a subpoena, to be sworn or affirmed or
to testify or who commits any contempt after being
summoned to appear.

(f) To authorize any member of the authority to con-
duct hearings, administer oaths, take affidavits and issue
subpoenas.

(g) To make, upon proper application of any indus-
trial development agency, loans to such agency for in-
dustrial development projects, industrial subdivision
projects and industrial subdivision project improvements
and to provide for the repayment and redeposit of such
loans in the manner provided in this article.

(h) To sue and be sued, implead and be impleaded,
and complain and defend in any court.

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

(j) To make bylaws for the management and regula-
tion of its affairs.

(k) To appoint officers, agents, employees and ser-
vants.

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

(m) Without in any way limiting any other subdivi-
sion of this section, to accept grants from and enter into
contracts and other transactions with any federal
agency.
(n) To take title by foreclosure to any industrial development project or any industrial subdivision project where acquisition is necessary to protect any loan previously made by the authority and to sell, transfer and convey such project to any responsible buyer. In the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the authority may, in order to minimize financial losses and sustain employment, lease the project to a responsible tenant. The authority shall not lease an industrial development project or industrial subdivision project, except under the conditions and for the purposes cited in this section.

The authority shall have no power at any time to borrow money or in any manner pledge the credit or taxing power of the state or any municipality or other political subdivision thereof, and none of its obligations shall be deemed to be an obligation of the state or any municipality or other political subdivision thereof.

(o) To participate in any reorganization proceeding pending pursuant to Title II of the United States Code (being the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

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

1 When it has determined upon application of an in-
Industrial development agency and upon hearing in the manner hereinafter provided that the establishment or acquisition of a particular industrial development project has accomplished or will accomplish the public purposes of this article, the authority may contract to loan such agency an amount not in excess of fifty percent of the cost or estimated cost of such project, as established, to be established or proposed to be acquired, subject to the following conditions:

(a) Industrial development projects to be established or acquired.

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

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

(b) Industrial development projects established or acquired with initial authority loan participation.

(1) The authority shall have first determined that the industrial development agency has expended funds in an amount equal to, or has applied property of a value equal to, not less than ten percent of the cost of establishing or acquiring the industrial development project.

(2) The authority shall have also determined that the industrial development agency obtained from other in-
dependent and responsible sources, such as banks and
insurance companies, other funds necessary for payment
of all the cost of establishing or acquiring the industrial
development project and that the industrial development
agency participation and these funds have been adequate
to ensure completion and operation or acquisition of the
industrial development project. The proceeds of any loan
made by the authority to the industrial development
agency pursuant to this subdivision (b) shall be used
only for the establishment or acquisition of industrial
development projects in furtherance of the public pur-
poses of this article.

The loan of the authority shall be for such period of
time and shall bear interest at such rate as the authority
determines and it shall be secured by the negotiable
promissory note of the industrial development agency
and by deed of trust on the industrial development
project for which the loan was made or by assignment
of any deed of trust and negotiable promissory note and
other security taken by the industrial development
agency on the industrial development project, such deed
of trust and note, assignment of deed of trust, and note
and other security to be second and subordinate only to
the deed of trust securing the first lien obligation issued
to secure the commitment of funds from the independent
and responsible sources and used in the financing of the
industrial development project.

Money loaned by the authority to an industrial devel-
opment agency shall be withdrawn from the fund and
paid over to the agency in such manner as is provided by
rules and regulations of the authority.

The authority shall deposit all payments of interest on
loans and the principal thereof in the fund. When any
federal agency participates, the authority may adjust the
required ratios of financial participation by the industrial
development agency, the source of independent funds
and the authority in such manner as to ensure the maxi-
mum benefit available to the industrial development
agency, the authority, or both, by the participation of
the federal agency. When ratios are adjusted as aforesaid,
no such adjustment shall be made which shall cause the
authority to grant a loan to the industrial development
agency in excess of fifty percent of the cost or estimated
cost of the industrial development project.

Where any federal agency participating in the financing
of an industrial development project is not permitted to
take as security for such participation a deed of trust
or assignment of deed of trust and other security the lien
of which is junior to the deed of trust or assignment of
deed of trust and other security of the authority, the
authority may take as security for its loan to the indus-
trial development agency a deed of trust or assignment
of deed of trust and other security junior in lien to that
of the federal agency.

§31-15-7a. Loans to industrial development agencies for indus-
trial subdivision project acquisitions and improve-
ments.

When it has been determined upon application of an in-
dustrial development agency and upon hearing in the
manner hereinafter provided that the acquisition or im-
provement of a particular industrial subdivision project
by such agency will accomplish the public purposes of
this article, the authority may contract to loan such indu-
trial development agency an amount not in excess of
fifty percent of the cost or estimated cost of such indus-
trial subdivision project acquisition or improvement,
except as to shell buildings, in which case the agency
may contract to loan an amount not in excess of ninety per-
cent of the cost of such shell building, subject to the
following conditions:

(1) The authority shall have determined that the in-
dustrial development agency has obtained from other
independent and responsible sources, such as banks and
insurance companies, a firm commitment for all other
funds, over and above the loan of the authority, necessary
for payment of all the estimated cost of the industrial sub-
division project acquisition or improvement and that the
sum of all these funds is adequate to ensure completion of
the project acquisition or improvement.
(2) The authority shall have also determined that the industrial development agency has or proposes to acquire clear and marketable legal title to the industrial subdivision project to be improved or acquired.

(3) The industrial development agency shall covenant in writing with the authority that, as long as any loan made by the authority to the agency for the acquisition or improvement of any industrial subdivision project remains unpaid, no portion of such industrial subdivision project shall be sold, leased or otherwise encumbered except for the purpose of establishing an industrial development project on such land by the agency.

(4) In the case of a contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, the industrial development agency shall furnish to the authority evidence that such industrial development agency has entered into a contract whereby a responsible buyer or responsible tenant is legally obligated to acquire or lease such shell building. The Legislature finds and declares that it does not believe it would be in the best interest of the state for the authority to contract to loan more than fifty percent of the cost of a shell building, subject to the maximum limitation of ninety percent as aforesaid, unless it is clear that the use to be made of such shell building will result in the employment of a reasonably substantial work force.

The loan of the authority shall be for such period of time and shall bear interest at such rate as the authority determines and it shall be secured by the negotiable promissory note of the industrial development agency and by deed of trust on the industrial subdivision project for which the loan was made, such deed of trust to be second and subordinate only to the deed of trust securing the first lien obligation issued to secure the commitment of funds from the independent and responsible sources and used in the financing of the industrial subdivision project acquisition or improvement.

The authority may, in its discretion, defer the payment of principal and interest, or principal only, or interest
only, upon any loan made to an industrial development agency for any industrial subdivision project acquisition or improvement, such deferment to be for such period as the authority determines, not to exceed five years from the date of the deed of trust securing the loan. If any portion of such industrial subdivision project is sold or leased by the agency prior to the expiration of the five-year period, all deferred installments of the principal of the loan accrued on the date of such sale or lease, or the proportionate part of such deferred principal which the sold or leased portion of the project bears to its total acreage, together with all unpaid interest accrued on the date of such sale or lease, shall, at the option of the authority, become due and payable immediately or subject to renegotiation by either increasing or decreasing the number and amount of each installment of principal and interest, without effecting any change in the amount of principal of the original loan or the rate of interest as originally fixed by the authority in the deed of trust and note.

Money loaned by the authority to an industrial development agency shall be withdrawn from the fund and paid over to the agency in such manner as is provided by rules and regulations of the authority.

The authority shall deposit all payments of interest on any loans and the principal thereof in the fund.

Where any federal agency participating in the financing of industrial subdivision project acquisition or improvement is not permitted to take as security for such participation a deed of trust or assignment of deed of trust and other security the lien of which is junior to the deed of trust or assignment of deed of trust and other security of the authority, the authority may take as security for its loan to the industrial development agency a deed of trust or assignment of deed of trust and other security junior in lien to that of the federal agency.

§31-15-8. Loan application requirements; hearings.

1 Prior to the loaning of any funds to an industrial development agency for an industrial development project or for an industrial subdivision project acquisition or
4 improvement, the authority shall receive from such agency
5 a loan application in such form as adopted by the author-
6 ity.

7 (1) If the loan application is for an industrial develop-
8 ment project, the form shall contain at least the follow-
9 ing:

10 (a) A general description of the project and a general
11 description of the industrial, commercial, manufacturing
12 or tourist enterprise for which the project has been or
13 will be established.

14 (b) A legally sufficient description of all real estate
15 necessary for the project.

16 (c) Such plans and other documents as may be
17 required to show the type, structure and general character
18 of the project.

19 (d) A general description of the type, classes and
20 number of employees employed or to be employed in the
21 operation of the project.

22 (e) Cost or estimates of cost of establishing the project.

23 (f) A general description and statement of value of any
24 property, real or personal, of the industrial development
25 agency applied or to be applied to the establishment of
26 the project.

27 (g) A statement of cash funds previously applied, or held
28 by the industrial development agency, which are available
29 for and are to be applied to the establishment of the project.

30 (h) Evidence of the arrangement made by the industrial
31 development agency for the financing of all cost of the
32 project over and above its own participation.

33 (i) A general description of the responsible tenant to
34 which the industrial development agency has leased or
35 will lease the project or of the responsible buyer to which
36 the agency has sold or will sell the project.

37 (j) A general description of the form of lease or sales
38 agreement entered into or to be entered into between the
39 industrial development agency and its responsible tenant
40 or responsible buyer.
(k) Evidence that the establishment of the project will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.

(2) If the loan application is for an industrial subdivision project acquisition or improvement, the form shall contain at least the following:

(a) A general description of the industrial subdivision project and a general description of its adaptability to industrial, commercial, manufacturing or tourist purposes, including the type of industrial development project which may be established thereon upon completion of the acquisition or improvement for which the loan is requested.

(b) A legally sufficient description of the industrial subdivision project.

(c) Such plans and other documents as may be required to show the type, structure and general character of the proposed industrial subdivision project acquisition or improvement.

(d) Cost or estimates of cost of the proposed industrial subdivision project acquisition or improvement.

(e) Evidence of the arrangement made by the industrial development agency for the financing of all cost of the industrial subdivision project acquisition or improvement over and above its own participation.

(f) Evidence that the establishment of the project to be acquired or improved will not cause the removal of an industrial, commercial, manufacturing or tourist facility from one area of the state to another area of the state.

The board of the authority shall hold such hearings and examinations on each loan application as shall be necessary to determine whether the public purposes of this article will be accomplished by the granting of such loan.

When the board determines that a loan will accomplish the public purposes of this article, it shall grant such loan in accordance with the provisions of this article.

1 The industrial development fund, to which shall be credited any appropriation made by the Legislature to the authority and such other deposits as are provided for in this section, is hereby continued in the state treasury as a special account, but shall hereafter be known as the economic development fund.

2 The authority shall requisition from the fund such amounts as are necessary to provide for the payment of the administrative expenses of this article. Whenever the authority determines it to be necessary to purchase at a foreclosure sale any industrial development project or industrial subdivision project pursuant to subdivision (o), section six of this article, it may requisition from the fund such amount as is necessary to pay the purchase price thereof, notwithstanding that the purchase price in the foreclosure sale of any industrial development project may exceed fifty percent of the original cost of the project, or that in the foreclosure sale of any industrial subdivision project the purchase price may exceed fifty percent of the original cost of the project or improvement thereon.

3 The authority shall requisition from the fund such amounts as are allocated and appropriated for loans to industrial development agencies for industrial development projects, industrial subdivision projects and industrial subdivision project acquisitions or improvements. As loans to industrial development agencies are repaid to the authority pursuant to the terms of mortgages and other agreements, the authority shall pay such amounts into the fund, consistent with the intent of this article that the fund shall operate as a revolving fund whereby all appropriations and payments made thereto may be applied and reapplied for the purposes of this article.

4 Whenever the authority determines that the balance in the fund is in excess of the immediate requirements for loans, it may request that such excess be invested until needed for loan purposes, in which case such excess shall be invested in a manner consistent with the investment of other temporary state funds. Interest earned
on any money invested pursuant to this section shall be credited to the fund.

If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.

§31-15-10. Governing body; organization and meetings; quorum; powers.

1 The governing body of the authority shall consist of the members of the authority acting as a board, which shall exercise all the powers given to the authority in this article. The governor or his designated representative shall be chairman of the board and its chief executive officer. On the second Monday of July of each year, the board shall meet to elect a secretary and a treasurer from among its own members.

A majority of the members shall constitute a quorum for the purpose of conducting business. Except in the case of a loan application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan application shall be made by majority vote of the full membership of the board.

The board shall manage the property and business of the authority and prescribe, amend and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

The governor shall provide staff services to the authority for administration of this article, including liaison between the authority and industrial development agencies and related organizations and between the authority and other state agencies whose facilities and services may be useful to the authority in its work. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.
29 The authority shall employ an executive director and any other personnel it determines necessary, and may appoint its own counsel and legal staff, and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article.


1 All money accruing to the authority from whatever source derived, except legislative appropriations, shall be collected and received by the treasurer of the authority, who shall pay it into the state treasury in the manner required by section two, article two, chapter twelve of this code, which shall be credited to the fund.

§31-15-12. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority shall either directly or indirectly be a party to or interested in any manner in any contract or agreement with the authority whereby liability or indebtedness against the authority is in any manner created. Any contract or agreement made in violation of the provisions of this section shall be void and no action thereon shall be maintained against the authority.

§31-15-13. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each federal agency that, if such agency constructs or loans or contributes any funds for the acquisition, construction, extension, improvement or enlargement of any industrial development project or industrial subdivision project or for industrial subdivision project improvements, the state will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreement between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary.

1. The accounts and books of the authority, including receipts, disbursements, contracts, mortgages, deeds of trust, investments and all other matters relating to its operation, finances and affairs, shall be examined and audited from time to time by the legislative auditor in accordance with the provisions of article two, chapter four of this code.


1. The provisions of this article are remedial and shall be liberally construed and applied so as to promote the purposes set out in section three of this article.

CHAPTER 110

(5. B. 418—By Mr. Brotherton, Mr. President, and Mr. Neeley)

[Passed April 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty, article thirteen of said chapter; and to further amend said article thirteen by adding thereto a new section, designated section thirty-a, all relating to a standard valuation law for life insurance policies, a standard nonforfeiture law for life insurance and enacting a new nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section thirty, article thirteen of said chapter be amended and reenacted; and that said article thirteen be further amended by adding thereto a new section, designated section thirty-a, all to read as follows:
ARTICLE 7. ASSETS AND LIABILITIES.


(1) The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting insurance in this state, except that in the case of an alien insurer such valuation shall be limited to its United States business, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves.

All valuations made by him or by his authority shall be made upon the net premium basis.

In every case the standard of valuation employed shall be stated in his annual report.

In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien insurer, he may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate
reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided.

(2) This subsection shall apply to only those policies and contracts issued prior to the original operative date of the Standard Nonforfeiture Law (now section thirty, article thirteen of this chapter). All valuations shall be according to the standard of valuations adopted by the insurer for the obligations to be valued. Any insurer may adopt different standards for obligations of different dates or classes, but if the total value determined by any such standard for the obligation for which it has been adopted shall be less than that determined by the legal minimum standard hereinafter prescribed, or if the insurer adopts no standard, said legal minimum standard shall be used.

Except as otherwise provided in subdivision (a) (B) of subsection (3), the legal minimum standard for contracts issued before the first day of January, in the year one thousand nine hundred one, shall be actuaries’ or combined experience table of mortality with interest at four percent per annum, and for contracts issued on or after said date shall be the “American Experience Table” of mortality with interest at three and one-half percent per annum, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts shall be that provided by this subsection but replacing the interest rates specified in this subsection by an interest rate of five percent per annum. Policies issued by insurers doing business in this state may provide for not more than one-year preliminary term insurance: Provided, That if the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereof in less than twenty years from the date of the policy, or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment life preliminary term policies of the same
74 insurer, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on a twenty payment life preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium payment period, equal to the difference between the value at the end of such period of such a twenty payment life preliminary term policy and a full reserve at such time of such a limited payment life or endowment policy.

85 The commissioner may vary the standards of interest and mortality in the case of alien insurers and in particular cases of invalid lives and other extra hazards.

88 Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.

(3) Except as otherwise provided in subdivision (a) (B) of this subsection, this subsection shall apply to only those policies and contracts issued on or after the original operative date of the Standard Nonforfeiture Law (now section thirty, article thirteen of this chapter).

(a) (A) Except as otherwise provided in paragraph (B) of this subdivision, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation methods defined in subdivisions (b), (c) and (f), five percent interest for group annuity and pure endowment contracts and three and one-half percent interest for all other such policies and contracts, or in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after the third day of June, one thousand nine hundred seventy-four, four percent interest for such policies issued prior to the effective date of the amendment to this section of one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life in-
insurance policies and four and one-half percent interest for all other such policies issued on or after the effective date of the amendment to this section of one thousand nine hundred seventy-seven, and the following tables:

(i) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date: Provided, That for any category of such policies issued on female risks all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured.

(ii) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies,—the 1941 Standard Industrial Mortality Table for such policies issued prior to the operative date of subsection (4b), section thirty, article thirteen of this chapter, and the Commissioners 1961 Standard Industrial Mortality Table for such policies issued on or after such operative date.

(iii) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the 1937 Standard Annuity Mortality Table or, at the option of the company, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.

(iv) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies,—the Group Annuity Mortality Table for 1951, any modification of such table approved
by the commissioner, or, at the option of the company,
any of the tables or modification of tables specified for
individual annuity and pure endowment contracts.

(v) For total permanent disability benefits in or
supplementary to ordinary policies or contracts,—for
policies or contracts issued on or after the first day of
January, one thousand nine hundred sixty-six, the tables
of period two disablement rates and the one thousand
nine hundred thirty to one thousand nine hundred
fifty termination rates of the one thousand nine hundred
fifty-two disability study of the society of actuaries,
with due regard to the type of benefit; for policies or
contracts issued on or after the first day of January,
one thousand nine hundred sixty-one and prior
to the first day of January, one thousand nine hundred
sixty-six, either such tables or, at the option of the
company, the Class (3) Disability Table (1926); and
for policies issued prior to the first day of January, one
thousand nine hundred sixty-one, the Class (3) Dis-
ability Table (1926). Any such table shall, for active
lives, be combined with a mortality table permitted for
calculating the reserves for life insurance policies.

(vi) For accidental death benefits in or supplementary
to policies,—for policies issued on or after the first
day of January, one thousand nine hundred sixty-six,
the 1959 Accidental Death Benefits Table; for policies
issued on or after the first day of January, one thousand
nine hundred sixty-one and prior to the first day of
January, one thousand nine hundred sixty-six, either
such table or, at the option of the company, the Inter-
Company Double Indemnity Mortality Table; and for
policies issued prior to the first day of January, one
thousand nine hundred sixty-one, the Inter-Company
Double Indemnity Mortality Table. Either table shall
be combined with a mortality table permitted for cal-
culating the reserves for life insurance policies.

(vii) For group life insurance, life insurance issued
on the substandard basis and other special benefits,—
such tables as may be approved by the commissioner.
(B) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph (B), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, shall be the commissioner’s reserve valuation methods defined in subdivisions (b) and (c) and the following tables and interest rates:

(i) For individual annuity and pure endowment contracts issued prior to the effective date of the amendment to this section of one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts,—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest for single premium immediate annuity contracts, and four percent interest for all other individual annuity and pure endowment contracts.

(ii) For individual single premium immediate annuity contracts issued on or after the effective date of the amendment to this section of one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts,—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and seven and one-half percent interest.

(iii) For individual annuity and pure endowment contracts issued on or after the effective date of the amendment to this section of one thousand nine hundred seventy-seven, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts,—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other such individual annuity and pure endowment contracts.
(iv) For all annuities and pure endowments purchased prior to the amendment to this section of one thousand nine hundred seventy-seven under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and six percent interest.

(v) For all annuities and pure endowments purchased on or after the effective date of the amendment of this section of one thousand nine hundred seventy-seven under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the commissioner, and seven and one-half percent interest.

After the third day of June, one thousand nine hundred seventy-four, any company may file with the commissioner a written notice of its election to comply with the provisions of this paragraph (B) after a specified date before the first day of January, nineteen hundred and seventy-nine, which shall be the operative date of this paragraph (B) for such company, provided that a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this paragraph (B) for such company shall be the first day of January, nineteen hundred and seventy-nine.

(b) Except as otherwise provided in subdivisions (c) and (f), reserves according to the commissioner's reserve valuation method, for the life insurance and endowment benefits of policies 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 policies, over the then present value of any future modified net premium therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for
such benefits that the present value, at the date of issue of
the policy of all such modified net premiums shall be
equal to the sum of the then present value of such bene-
fits provided for by the policy and the excess of (A) over
(B), as follows:

(A) A net level annual premium equal to the present
value, at the date of issue, of such benefits provided for
after the first policy year, divided by the present value,
at the date of issue, of an annuity of one percent per
annum payable on the first and each subsequent anniver-
sary of such policy on which the premium falls due:
Provided, 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
policy.

(B) A net one-year term premium for such benefits
provided for in the first policy year.

Reserves according to the commissioners reserve
valuation method for (i) life insurance policies providing
for a varying amount of insurance or requiring the pay-
ment of varying premiums, (ii) group annuity and pure
endowment contracts purchased under a retirement plan
or plan of deferred compensation, established or main-
tained by an employer (including a partnership or sole
proprietorship) or by an employee organization, or by
both, other than a plan providing individual retirement
accounts or individual retirement annuities under section
408 of the Internal Revenue Code, as now or hereafter
amended, (iii) disability and accidental death benefits in
all policies and contracts, and (iv) all other benefits,
except life insurance and endowment benefits in life
insurance policies and benefits provided by all other
annuity and pure endowment contracts, shall be calcu-
lated by a method consistent with the principles of this
subdivision (b), except that any extra premiums charged
because of impairments or special hazards shall be dis-
regarded in the determination of modified net premiums.

(c) This subdivision shall apply to all annuity and
pure endowment contracts other than group annuity and
pure endowment contracts purchased under a retirement
plan or plan of deferred compensation, established or
maintained by an employer (including a partnership or
sole proprietorship) or by an employee organization, or by
both, other than a plan providing individual retirement
accounts or individual retirement annuities under section
408 of the Internal Revenue Code, as now or hereafter
amended.

Reserves according to the commissioners annuity
reserve method for benefits under annuity or pure endow-
ment contracts, excluding any disability and accidental
death benefits in such contracts, shall be the greatest of
the respective excesses of the present values, at the date of
valuation, of the future guaranteed benefits, including
guaranteed nonforfeiture benefits, provided for by such
contracts at the end of each respective contract year,
over the present value, at the date of valuation, of any
future valuation considerations derived from future gross
considerations, required by the terms of such contract,
that become payable prior to the end of such respective
contract year. The future guaranteed benefits shall be
determined by using the mortality table, if any, and the
interest rate, or rates, specified in such contracts for deter-
mining guaranteed benefits. The valuation considerations
are the portions of the respective gross considerations
applied under the terms of such contracts to determine
nonforfeiture values.

(d) In no event shall an insurer's aggregate reserves
for all life insurance policies, excluding disability and
accidental death benefits, be less than the aggregate
reserves calculated in accordance with the methods set
forth in subdivisions (b), (c) and (f) and the mortality
table or tables and rate or rates of interest used in cal-
culating nonforfeiture benefits for such policies.

(e) Reserves for any category of policies, contracts or
benefits as established by the commissioner may be cal-
culated, at the option of the insurer, according to any
standards which produce greater aggregate reserves for
such category than those calculated according to the
minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.

(f) If in any contract year the gross premium charged by any life insurer on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon, but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

ARTICLE 13. LIFE INSURANCE.


(1) In the case of policies issued on or after the original operative date of this provision, no policy of life insurance, except as stated in subsection six, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the defaulting or surrendering policyholder:

(a) That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such value as may be hereinafter specified;
(b) That, upon surrender of the policy within sixty days after the due date of any premium payment in default after premiums have been paid for at least three full years, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified;

(c) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;

(d) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary the insurer will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified;

(e) A statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy;

(f) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the company on the policy; if a
detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.

Any of the foregoing provisions or portions thereof, not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.

(2) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection one, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of (i) the then present value of the adjusted premiums as defined in subsections (4), (4a) and (4b), corresponding to premiums which would have fallen due on and after such anniversary, and (ii) the amount of any indebtedness to the insurer on the policy. Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection one, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions decreased by any indebtedness to the insurer on the policy.
(3) Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specific period.

(4) Except as provided in the third paragraph of this subsection, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding extra premiums on a substandard policy, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty percent of the adjusted premium for the first policy year; (iv) twenty-five percent of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less: Provided, That in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this subsection shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, con-
taining the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy: Provided, however, That in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this subsection except that, for the purposes of (ii), (iii) and (iv) of the first such paragraph, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).

Except as otherwise provided in subsections (4a) and (4b), all adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the
basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits: Provided, That in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rate of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table: Provided further, That for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(4a) In the case of ordinary policies issued on or after the operative date of this subsection (4a) as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed three and one-half percent per annum except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after the third day of June, one thousand nine hundred seventy-four and prior to the effective date of the amendment to this section of one thousand nine hundred seventy-seven and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after the effective date of the amendment to this section of one thousand nine hundred seventy-seven, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent per annum may be used: Provided, That for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured: Provided, however, That in calculating the present value
of any paid-up term insurance with accompanying pure
endowment, if any, offered as a nonforfeiture benefit,
the rates of mortality assumed may be not more than
those shown in the Commissioners 1958 Extended Term
Insurance Table: Provided further, That for insurance
issued on a substandard basis, the calculation of any such
adjusted premiums and present values may be based on
such other table of mortality as may be specified by the
company and approved by the commissioner.

After the third day of June, one thousand nine hundred
fifty-nine, any company may file with the commissioner
a written notice of its election to comply with the pro-
visions of this subsection after a specified date before
the first day of January, one thousand nine hundred
sixty-six. After the filing of such notice, then upon such
specified date (which shall be the operative date of this
subsection for such company), this subsection shall be-
come operative with respect to the ordinary policies
thereafter issued by such company. If a company makes
no such election, the operative date of this subsection
for such company shall be the first day of January, one
thousand nine hundred sixty-six.

(4b) In the case of industrial policies issued on or
after the operative date of this subsection (4b) as
defined herein, all adjusted premiums and present values
referred to in this section shall be calculated on the
basis of the Commissioners 1961 Standard Industrial
Mortality Table and the rate of interest specified in the
policy for calculating cash surrender values and paid-up
nonforfeiture benefits provided that such rate of interest
shall not exceed three and one-half percent per annum
except that a rate of interest not exceeding four percent
per annum may be used for policies issued on or after
the third day of June, one thousand nine hundred sev-
enty-four and prior to the effective date of the amend-
ment to this section of one thousand nine hundred
seventy-seven and a rate of interest not exceeding five
and one-half percent per annum may be used for policies
issued on or after the effective date of the amendment
to this section of one thousand nine hundred seventy-
seven, except that for any single premium whole life
or endowment insurance policy a rate of interest not
exceeding six and one-half percent per annum may be
used: Provided, That in calculating the present value of
any paid-up term insurance with accompanying pure
endowment, if any, offered as a nonforfeiture benefit,
the rates of mortality assumed may be not more than
those shown in the Commissioners 1961 Industrial Ex-
tended Term Insurance Table: Provided, however, That
for insurance issued on a substandard basis, the calcula-
tion of any such adjusted premiums and present values
may be based on such other table of mortality as may
be specified by the company and approved by the com-
missioner.

After the thirty-first day of May, one thousand
nine hundred sixty-five, any company may file with
the commissioner a written notice of its election to
comply with the provisions of this subsection after
a specified date before the first day of January, one
thousand nine hundred sixty-eight. After the filing
of such notice, then upon such specified date (which
shall be the operative date of this subsection for such
company), this subsection shall become operative with
respect to the industrial policies thereafter issued by
such company. If a company makes no such election,
the operative date of this subsection for such company
shall be the first day of January, one thousand nine hun-
dred sixty-eight.

Any cash surrender value and any paid-up non-
forfeiture benefit, available under the policy in the event
of default in a premium payment due at any time other
than on the policy anniversary, shall be calculated with
allowance for the lapse of time and the payment of frac-
tional premiums beyond the last preceding policy anni-
versary. All values referred to in subsections (2), (3),
(4), (4a) and (4b) may be calculated upon the as-
sumption that any death benefit is payable at the end
of the policy year of death. The net value of any paid-up
additions, other than paid-up term additions, shall be
not less than the dividends paid to provide such addi-
tions. Notwithstanding the provisions of subsection two, additional benefits payable (a) in the event of death or dismemberment by accident or accidental means, (b) in the event of total and permanent disability, (c) as reversionary or deferred reversionary annuity benefits, (d) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this subsection would not apply, (e) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (f) as other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

(6) This section shall not apply to any reinsurance, group insurance, pure endowment, annuity or reversionary annuity contract, nor to any term policy of uniform amount, or renewal thereof, of fifteen years or less expiring before age sixty-six, for which uniform premiums are payable during the entire term of the policy, nor to any term policy of decreasing amount on which each adjusted premium, calculated as specified in subsections (4), (4a) and (4b), is less than the adjusted premium so calculated on a policy issued at the same age and for the same initial amount of insurance for a term defined as follows—for ages at issue fifty and under, the term shall be fifteen years, thereafter, the terms shall decrease one year for each year of age beyond fifty, nor to any policy which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy.


1 (1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."
(2) This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(3) In the case of contracts issued on or after the operative date of this section as defined in subsection (12), no contract of annuity, except as stated in subsection (2), shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(a) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (5), (6), (7), (8) and (10);

(b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (5), (6), (8) and (10). The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up
annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

(4) The minimum values as specified in subsections (5), (6), (7), (8) and (10) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section:

(a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:
(i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.

(b) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.

(2) The annual contract charge shall be the lesser of
(i) thirty dollars or (ii) ten percent of the gross annual consideration.

(c) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars.

(5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

(6) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from consideration paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(7) For contracts which do not provide cash surrender
benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on a basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

(8) For the purpose of determining the benefits calculated under subsections (6) and (7), in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(9) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

(10) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled
considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

(11) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (5), (6), (7), (8) and (10), additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

(12) After the effective date of this section, any company may file with the commissioner a written notice of its election to comply with the provisions of this section after a specified date before the second anniversary of the effective date of this section. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be the second anniversary of the effective date of this section.
AN ACT to amend and reenact section eight, article thirteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to policy loan interest rates on life insurance.

Be it enacted by the Legislature of West Virginia:

That section eight, article thirteen, 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 13. LIFE INSURANCE.

§33-13-8. Loans on policies.

1 (a) There shall be a provision that after the policy has
2 a cash surrender value and while no premium is in de-
3 fault beyond the grace period for payment, the insurer
4 will advance, on proper assignment of pledge of the policy
5 and on the sole security thereof, at a specified rate of
6 interest not exceeding eight percent per annum, or
7 seven and four-tenths percent per annum if payable an-
8 nually in advance, an amount equal to or, at the option
9 of the party entitled thereto, less than the loan value of
10 the policy. The loan value of the policy shall be at least
11 equal to the cash surrender value at the end of the then
12 current policy year: Provided, That the insurer may
13 deduct, either from such loan value or from the proceeds
14 of the loan, any existing indebtedness not already deducted
15 in determining such cash surrender value including any
16 interest then accrued but not due, any unpaid balance of
17 premium for the current policy year, and interest on the
18 loan to the end of the current policy year. The policy
19 may also provide that if interest on any indebtedness is
20 not paid when due it shall then be added to the existing
21 indebtedness and shall bear interest at the same rate,
22 and that if and when the total indebtedness on the policy,
23 including interest due or accrued, equals or exceeds the
amount of the loan value thereof, then the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of any premium to the insurer, for six months after application therefor. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect. In any policy issued by conversion of a term insurance policy in force prior to the effective date of this act, the policyholder shall be entitled to a loan at an interest rate in effect on the date of original purchase.

(b) This section shall not apply to term policies nor to term insurance benefits provided by rider or supplemented policy provision.

(c) This section shall not impair the terms and conditions of any policy of life insurance in force prior to the effective date thereof.

(d) As a condition for approval of a policy loan interest rate in excess of six percent per annum, but not in excess of the rate provided in this section, the insurance commissioner shall require the insurer to furnish such assurances as he deems necessary that the holders of such policies will benefit through higher dividends or lower premiums or both.

CHAPTER 112

(S. B. 369—By Mr. Brotherson, Mr President, and Mr. Neeley)

[Passed April 6, 1977; In effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-a, relating to variable life insurance policies and variable annuity contracts; the establishment of separate accounts by domestic life insurers to provide life insurance or annuity benefits payable in fixed or variable dollar
amounts, or both; features and benefits of variable contracts; qualification of companies, subsidiaries and affiliates to deliver or issue for delivery within this state variable contracts; supervisory powers of the insurance commissioner; application of other insurance laws and valuation of reserves.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. VARIABLE CONTRACTS.
§33-13A-1. Establishment of separate accounts.
§33-13A-2. Features and benefits.
§33-13A-3. Qualification of companies, subsidiaries and affiliates.
§33-13A-4. Supervisory powers of insurance commissioner.
§33-13A-5. Application of other insurance laws, valuation of reserves.

§33-13A-1. Establishment of separate accounts.
1 A domestic life insurer may establish one or more separate accounts, and may allocate thereto amounts, including without limitation proceeds applied under optional modes of settlement or under dividend options, to provide for life insurance or annuities and benefits incidental thereto, payable in fixed or variable amounts or both, subject to the following:

(a) The income, gains and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account, without regard to other income, gains or losses of the company.

(b) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subdivision (c) of this section, (i) amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies and (ii) the investments in such separate account or accounts shall not be taken into account in applying the investment limi-
tions otherwise applicable to the investments of the company.

(c) Except with the approval of the commissioner and under such conditions as to investments and other matters as he may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for (i) benefits guaranteed as to dollar amount and duration and (ii) funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account: Provided, That unless otherwise approved by the commissioner, the portion if any of the assets of such separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subdivision (c) of this section shall be valued in accordance with the rules otherwise applicable to the company's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this article shall be owned by the company, and the company shall not be, nor hold itself out to be, a trustee with respect to such amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(f) No sale, exchange or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one or more of its separate accounts unless, in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer,
whether into or from a separate account, is made (i) by a transfer of cash, or (ii) by a transfer of securities having a readily determinable market value, provided that such transfer of securities is approved by the commissioner. The commissioner may approve other transfers among such accounts if, in his opinion, such transfers would not be inequitable.

\(g\) To the extent such company deems it necessary to comply with any applicable federal or state laws, such company, with respect to any separate account, including without limitation any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of such account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with such company, to manage the business of such account.

§33-13A-2. Features and benefits.

Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of such variable benefits. Any such contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that such dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

§33-13A-3. Qualification of companies, subsidiaries and affiliates.

No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state, and the commissioner is satisfied that its condition
or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state. In this connection, the commissioner shall consider among other things:

(a) The history and financial condition of the company;
(b) The character, responsibility and fitness of the officers and directors of the company; and
(c) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.

If the company is a subsidiary of an admitted life insurance company, or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements hereof.

§33-13A-4. Supervisory powers of insurance commissioner.

Notwithstanding any other provision of law, the commissioner shall have sole authority to regulate the issuance and sale of variable contracts, and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this article.

§33-13A-5. Application of other insurance laws, valuation of reserves.

Except for sections eighteen, twenty-three, twenty-four and thirty-a, article thirteen of this chapter, and section twenty-three, article fourteen of this chapter in the case of a variable annuity contract, and sections three, eight to twelve, inclusive, and thirty, article thirteen of this chapter and section nine, article fourteen of this chapter in the case of a variable life insurance policy and except as otherwise provided in this article, all pertinent provisions of this chapter shall apply to separate accounts and contracts relating thereto. Any individual variable life insurance or annuity contract, delivered or issued for
delivery in this state shall contain grace, reinstatement and nonforfeiture provisions appropriate to such a contract. Any individual variable annuity contract delivered or issued for delivery in this state shall contain grace and reinstatement provisions appropriate to such a contract.

Any group variable life insurance or annuity contract, delivered or issued for delivery in this state shall contain a grace provision appropriate to such a contract.

The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

CHAPTER 113
(H. B. 1111—By Mr. Farley and Mr. Morasco)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, 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 four-a; and to amend article sixteen of said chapter by adding thereto a new section, designated section three-a, all relating to accident and sickness insurance; providing for the inclusion of protection against mental illness costs in individual and group accident and sickness insurance contracts.

Be it enacted by the Legislature of West Virginia:

That article fifteen, 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 four-a; and that article sixteen of said chapter be amended by adding thereto a new section, designated section three-a, all to read as follows:

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


Any policy of insurance described in this article which provides hospital expense and surgical expense insurance and which is issued or subsequently renewed by agreement between the insurer and the policyholder, within this state, or any policy of accident and sickness insurance which provides hospital expense and surgical expense insurance and which is delivered or issued for delivery or subsequently renewed by agreement between the insurer and the policyholder in this state, shall provide, unless specifically refused by the policyholder, benefits for expense of residents of the state covered under any such policy or plan, arising from mental or nervous conditions as described in the standard nomenclature of the American psychiatric association which are at least equal to the following minimum requirements:

(a) In the case of benefits based upon confinement as an inpatient in a mental hospital under the direction and supervision of the department of mental health, or in a private hospital or private mental hospital licensed by the department of mental health or any other duly authorized state agency, the period of confinement for which benefits shall be payable shall be at least forty-five consecutive days in any calendar year.

(b) In the case of benefits based upon confinement as an inpatient in a licensed or accredited general hospital, such benefits shall be no different than for any other illness.

(c) In the case of outpatient benefits, these shall cover fifty percent of eligible expenses up to five hundred dollars over a twelve-month period, services furnished (1) by a comprehensive health service organization, (2) by a licensed or accredited hospital, or (3) subject to the approval of the department of mental health, services furnished by a community mental health center or other mental health clinic or day care center which furnishes mental health services, or (4) consultations or diagnostic or treatment sessions, provided that such services are rendered by a psychotherapist or by a psychologist and do not exceed fifty such sessions over a twelve-month
period. For purposes of this article "psychotherapist" means any person employed by the mental health center to provide direct services to clients, such person to serve under the authority and direction of a licensed psychologist, physician, psychiatrist or director of a duly licensed mental health facility.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Required policy provisions—mental illness.

Any policy described in this article which shall be delivered or issued or renewed in this state shall make available as benefits to all individual subscribers and members and to all group members if so elected by the subscriber or group, for expenses arising from mental or nervous conditions as hereinafter set forth. Such benefits shall be as described in the standard nomenclature of the American psychiatric association which are at least equal to the following minimum requirements:

(a) In the case of benefits based upon confinement as an inpatient in a mental hospital under the direction and supervision of the department of mental health, or in a private mental hospital licensed by the department of mental health, the period of confinement for which benefits shall be payable shall be at least forty-five days in any calendar year.

(b) In the case of benefits based upon confinement as an inpatient in a licensed or accredited general hospital, such benefits shall be no different than for any other illness.

(c) In the case of outpatient benefits, these shall cover fifty percent of eligible expenses up to five hundred dollars over a twelve-month period, services furnished (1) by a comprehensive health service organization, (2) by a licensed or accredited hospital, or (3) subject to the approval of the department of mental health, services furnished by a community mental health center or other mental health clinic or day care center which furnishes mental health services, or (4) consultations or diagnostic or treatment sessions, provided that such services are rendered by a psychotherapist or by a psychologist and do not exceed fifty such sessions over a twelve-month period.
CHAPTER 114
(Com. Sub. for S. B. 211—By Miss Herndon)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring group insurance policies provided by an employee's group plan to include a provision allowing members to continue the policies for not more than eighteen months after an involuntary layoff.

Be it enacted by the Legislature of West Virginia:

That section three, article sixteen, 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 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3. Required policy provisions.

1 Each such policy hereafter delivered or issued for delivery in this state shall contain in substance the following provisions:

4 (a) A provision that the policy, the application of the policyholder, a copy of which shall be attached to such policy, and the individual applications, if any, submitted in connection with such policy by the employees or members, shall constitute the entire contract between the parties, and that all statements made by any applicant or applicants shall be deemed representations and not warranties, and that no such statement shall void the insurance or reduce benefits thereunder unless contained in a written application.

14 (b) A provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in substance the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included
in the coverage, only one certificate need be issued for each family unit.

(c) A provision that all new employees or members, as the case may be, in the groups or classes eligible for insurance, shall from time to time be added to such groups or classes eligible to obtain such insurance in accordance with the terms of the policy.

(d) No provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy shall be less favorable to the insured than would be permitted in the case of an individual policy by the provisions set forth in article fifteen of this chapter.

(e) A provision that all members in groups or classes eligible for insurance provided through an employee's group plan shall be permitted to pay the premiums at the same group rate and receive the same coverages for a period not to exceed eighteen months when they are involuntarily laid off from work.

CHAPTER 115

[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article nineteen, 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 one, relating to surety insurance; and requiring persons to be licensed in West Virginia in order to transact surety insurance where required for persons in courts or by governmental bodies of West Virginia.

Be it enacted by the Legislature of West Virginia:

That article nineteen, 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 one, to read as follows:
ARTICLE 19. SURETY INSURANCE.

§33-19-1. Surety required in courts or by governmental bodies to be provided by persons licensed in West Virginia.

When surety insurance, as defined in section ten, article one of this chapter, is required of any person by a court or governmental body of the state of West Virginia, such insurance shall be provided only by persons licensed in West Virginia to transact surety insurance.

CHAPTER 116
(S. B. 592—By Mr. Brotherston, Mr. President)

[Passed April 4, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article twenty-six of said chapter, all relating to providing that farmers' mutual fire insurance companies be governed by the West Virginia insurance guaranty association act.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article twenty-six of said chapter be amended and reenacted, all to read as follows:

Article
22. Farmers' Mutual Fire Insurance Companies.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Other provisions of chapter applicable.

Each such company to the same extent such provisions are applicable to domestic mutual insurers shall be governed by and be subject to the following articles of this
chapter: Article one (definitions), article two (insurance commissioner), article four (general provisions) except that section sixteen of article four shall not be applicable thereto, article ten (rehabilitation and liquidation) except that under the provisions of section thirty-two of said article ten no assessment shall be levied against any former member of a farmers' mutual fire insurance company who was no longer a member of such company at the time the order to show cause was issued, article eleven (unfair practices and frauds), and article twelve (agents, brokers and solicitors) except that the agents' license fee shall be one dollar and article twenty-six (West Virginia Insurance Guaranty Association Act); but only to the extent such provisions are not inconsistent with the provisions of this article.

ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSOCIATION ACT.

§33-26-5. Definitions.

As used in this article:

(1) "Account" means any one of the two accounts created by section six of this article.

(2) "Association" means the West Virginia insurance guaranty association created under section six of this article.

(3) "Commissioner" means the insurance commissioner of West Virginia.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy to which this article applies and which policy is in force at the time of the occurrence giving rise to such unpaid claims if (a) the insurer issuing the policy becomes an insolvent insurer after the effective date of this article and (b) the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state. "Covered claim" shall not include (i) any amount in excess of the applicable limits of coverage provided by an insurance policy to which this article applies; nor
(ii) any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.

(5) "Insolvent insurer" means an insurer (a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) determined to be insolvent by a court of competent jurisdiction.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this article applies under section three of this article, including farmers' mutual fire insurance companies and the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" includes an individual, company, insurer, association, organization, society, reciprocal, partnership, syndicate, business trust, corporation, or any other legal entity.

(9) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.

CHAPTER 117
(S. B. 389—By Mr. Hatfield)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-a, relating to establishing health maintenance organizations; issuance of certificate of authority;
powers of health maintenance organizations; fiduciary responsibilities; approval of contracts; evidence of coverage and charges for health care services; annual report; information to enrollees; enrollment; complaint system; investments; prohibited practices; regulation of marketing; examinations; suspension or revocation of certificate of authority; rehabilitation, liquidation or conservation of health maintenance organizations; regulations; administrative procedures; fees; penalties and enforcement; filings and reports as public documents; confidentiality of medical information; authority to contract with health maintenance organizations under medicaid; and required health maintenance organization option.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-3. Establishment of health maintenance organizations; certificate required; notice of modification of operation or documents.
§33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.
§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.
§33-25A-10. Information to enrollees.
§33-25A-11. Open enrollment period; limitation on medicare and medicaid beneficiaries.
§33-25A-17. Examinations.
§33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.
§33-25A-23. Penalties and enforcement.
§33-25A-25. Filings and reports as public documents.
§33-25A-27. Authority to contract with health maintenance organizations under medicaid.


1 (a) This article may be cited as the "Health Maintenance Organization Act of 1977."

3 (b) Faced with the continuation of mounting costs of health care coupled with its inaccessibility to large segments of the population, the Legislature has determined that there is a need to encourage alternative methods for the delivery of health care services, with a view toward achieving greater efficiency, availability, distribution and economy in providing these services.

In carrying out this intention, it is the policy of the state to eliminate legal barriers to the establishment of prepaid health care plans accountable to consumers for the health care services they provide; to provide for the financial and administrative soundness of these health care plans as it relates to their ability to provide such services, and to exempt prepaid health care plans from regulation as an insurer, the operation of insurance laws of the state and all other laws inconsistent with the purposes of this article.


1 (1) "Basic health care services" means physician, hospital, out-of-area, podiatric, laboratory, X ray, emergency, short-term mental health services not exceeding twenty outpatient visits in any twelve-month period, and cost-effective preventive services including immunizations, well-child care, periodic health evaluations for adults, voluntary family planning services, infertility services and children's eye and ear examinations conducted to determine the need for vision and hearing corrections.

10 (2) "Commissioner" means the commissioner of insurance.
(3) "Consumer" means any person who is not a provider of care or an employee, officer, director or stockholder of any provider of care.

(4) "Copayment" means a nominal payment required of enrollees as a condition of the receipt of specific health services.

(5) "Employee" means a person in some official employment or position working for a salary or wage continuously for no less than one calendar quarter and who is in such a relation to another person that the latter may control the work of the former and direct the manner in which the work shall be done.

(6) "Employer" means any individual, corporation, partnership, other private association, or state or local government that employs the equivalent of at least twenty-five full-time employees during any four consecutive calendar quarters.

(7) "Enrollee" means an individual who has been voluntarily enrolled in a health maintenance organization, including individuals on whose behalf a contractual arrangement has been entered into with a health maintenance organization to receive health care services.

(8) "Evidence of coverage" means any certificate, agreement or contract issued to an enrollee setting out the coverage and other rights to which the enrollee is entitled.

(9) "Health care services" means any services or goods included in the furnishing to any individual of medical, mental or dental care, or hospitalization or incident to the furnishing of such care of hospitalization, osteopathic services, home health, health education, rehabilitation, as well as the furnishing to any person of any and all other services or goods for the purpose of preventing, alleviating, curing or healing human illness or injury.

(10) "Health maintenance organization" means a public or private organization which provides, or otherwise makes available to enrollees, health care services, including at a minimum basic health care services:
(a) Is compensated except for copayments for the provision of basic health care services to enrollees solely on a predetermined periodic rate basis;

(b) Provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis, or (iii) through some combination of (i) and (ii) above;

(c) Assures the availability, accessibility and quality including effective utilization of the health care services which it provides or makes available through clearly identifiable focal points of legal and administrative responsibility.

(11) “Individual practice basis” means any agreement or arrangement to provide medical services on behalf of a health maintenance organization among or between physicians or between a health maintenance organization and individual physicians or groups of physicians, where the physicians are not employees or partners of such health maintenance organization and are not members of or affiliated with a medical group.

(12) “Medical group” means (a) a professional corporation, partnership, association, or other organization which is composed solely of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals, including podiatrists, dentists and optometrists, as are necessary for the provision of health services for which the group is responsible; (b) a majority of the members of which are licensed to practice medicine or osteopathy; (c) as their principal professional activity engage in the coordinated practice of their profession; (d) pool their income for practice as members of the group and distribute it among themselves according to a prearranged salary, drawing account or other plan; and (e) share medical and other records and substantial portions of major equipment and professional, technical and administrative staff.
(13) "Premium" means a predetermined periodic rate unrelated to the actual or potential utilization of services of any particular person which is charged by the health maintenance organization for health services provided to an enrollee.

(14) "Provider" means any physician, hospital or other person or organization which is licensed or otherwise authorized in this state to furnish health care services.

(15) "Service area" means the area identified by a health maintenance organization as the area within which health care services will be provided by the health maintenance organization.

§33-25A-3. Establishment of health maintenance organizations; certificate required; notice of modification of operation or documents.

(1) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish or operate a health maintenance organization in compliance with this article. No person shall sell health maintenance organization enrollee contracts, nor shall any health maintenance organization commence services, prior to receipt of a certificate of authority. Any person may, however, establish the feasibility of a health maintenance organization prior to receipt of authority through funding drives and by receiving loans, grants and preliminary payments. The commissioner shall promulgate regulations in accordance herewith establishing methods of determining the feasibility of operating prospective health maintenance organizations.

(2) Every health maintenance organization in operation as of the effective date of this article shall submit an application for a certificate of authority under this section within thirty days of the effective date of this article. Each such applicant may continue to operate until the commissioner acts upon the application. In the event that an application is denied pursuant to section four of this article, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.
The commissioner may require any organization providing or arranging for health care services on a pre-determined periodic rate to apply for a certificate of authority under this article. Any organization directed to apply for a certificate of authority shall be subject to the provisions of subsection (2) of this section.

Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the commissioner, and shall set forth or be accompanied by any and all information required by the commissioner, including (a) the basic organizational document; (b) the bylaws or rules and regulations; (c) a list of the names, addresses and official positions of each member of the governing body, which shall contain a full disclosure in the application of any financial interest by such officer or member of the governing body or any provider or any organization or corporation owned or controlled by such person and the health maintenance organization and the extent and nature of any contract or financial arrangements between such persons and the health maintenance organization; (d) description of the health maintenance organization; (e) a copy of each evidence of coverage form and of each enrollee contract form; (f) financial statements which include the assets, liabilities and sources of financial support of the applicant and any corporation or organization owned or controlled by the applicant; (g) (i) a description of the proposed method of marketing the plan, (ii) a schedule of proposed charges, and (iii) a financial plan which includes a three-year projection of the expenses and income and other sources of future capital; (h) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served; (i) a statement reasonably describing the geographic area or areas to be
served and the type or types of enrollees to be served; (j) a description of the complaint procedures to be utilized as required under section twelve of this article; (k) a description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation under section six of this article; and (l) such other information as the commissioner may require to be provided.

(5) A health maintenance organization shall, unless otherwise provided for by regulations promulgated by the commissioner, file notice prior to any modification of the operations or documents filed pursuant to this section or as the commissioner may require by regulation. If the commissioner does not disapprove of the filing within thirty days of filing, it shall be deemed approved and may be implemented by the health maintenance organization.


(1) Upon receipt of an application for a certificate of authority, the commissioner shall determine whether the application for a certificate of authority, with respect to health care services to be furnished has demonstrated:

(a) The willingness and potential ability to assure that basic health services will be provided in such a manner as to enhance and assure both the availability and accessibility of adequate personnel and facilities;

(b) Arrangements for an ongoing evaluation of the quality of health care;

(c) A procedure to develop, compile, evaluate and report statistics relating to the cost of its operations, the pattern of utilization of its services, the quality, availability and accessibility of its services, and such other matters as may be reasonably required by regulation.

(2) The commissioner shall issue or deny a certificate of authority to any person filing an application within sixty days after receipt of the application. Issuance of a certificate of authority shall be granted upon payment of
the application fee prescribed, if the commissioner is satisfied that the following conditions are met:

(a) The health maintenance organization's proposed plan of operation meets the requirements of subsection (1) of this section;

(b) The health maintenance organization will effectively provide or arrange for the provision of at least basic health care services on a prepaid basis except for copayments: Provided, That nothing herein shall be construed to relieve a health maintenance organization from the obligations to provide health care services because of the nonpayment of copayments unless the enrollee fails to make payment in at least three instances over any twelve-month period: Provided, however, That nothing herein shall permit a health maintenance organization to charge copayments to medicare beneficiaries or medicaid recipients in excess of the copayments permitted under those programs, nor shall a health maintenance organization be required to provide services to such medicare beneficiaries or medicaid recipients in excess of the benefits compensated under such programs;

(c) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) The financial soundness of the health maintenance organization's arrangements for health care services and proposed schedule of charges used in connection therewith;

(ii) The adequacy of working capital;

(iii) Any arrangements which will guarantee for a reasonable period of time the continued availability or payment of the cost of health care services in the event of discontinuance of the plan;

(iv) Any agreement with providers for the provision of health care services; and

(d) Reasonable provisions have been made for emergency and out-of-area health care services;
(e) The enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to section six of this article;

(f) The health maintenance organization has demonstrated that it will assume full financial risk on a prospective basis for the provision of health care services, including hospital care: Provided, That the requirement of this subdivision shall not prohibit a health maintenance organization from obtaining insurance or making other arrangements (i) for the cost of providing to any enrollee comprehensive health maintenance services, the aggregate value of which exceeds four thousand dollars in any year, (ii) for the cost of providing comprehensive health care services to its members on a nonelective emergency basis, or while they are outside the area served by the organization, or (iii) for not more than ninety-five percent of the amount by which the health maintenance organization's costs for any of its fiscal years exceed one hundred five percent of its income for such fiscal years.

(3) A certificate of authority shall be denied only after compliance with the requirements of section twenty-one of this article.

(4) Except as provided in subsection (2), section three of this article, no person who has not been issued a certificate of authority shall use the words "health maintenance organization" or the initials "HMO" in its name, contracts or literature: Provided, That persons who are operating under a contract with, operating in association with, enrolling enrollees for, or otherwise authorized by a health maintenance organization licensed under this article to act on its behalf may use the terms "health maintenance organization" or "HMO" for the limited purpose of denoting or explaining their association or relationship with the authorized health maintenance organization. No health maintenance organization which has a minority of board members who are consumers shall use the words "consumer controlled" in its name or in any way represent to the public that it is controlled by consumers.

Upon obtaining a certificate of authority as required under this article, a health maintenance organization may enter into health maintenance contracts in this state and engage in any activities, consistent with the purposes and provisions of this article, which are necessary to the performance of its obligations under such contracts, subject to the limitations provided for in this article. The commissioner may promulgate rules and regulations limiting or regulating the powers of health maintenance organizations which he finds to be in the public interest.


The governing body of any health maintenance organization may include enrollees, providers, or other individuals. Such governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms as may be prescribed by the commissioner.

§33-25A-7. Fiduciary responsibilities of officers; approval of contracts by commissioner.

(a) Any director, officer or partner of a health maintenance organization who receives, collects, disburses or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

(b) Any contracts made with hospitals and practitioners of medical, dental and related services enabling a health maintenance organization to provide health care services authorized under this article shall be filed with the commissioner. The commissioner shall have power to require immediate renegotiation of such contracts whenever he determines that they provide for excessive payments, or that they fail to include reasonable incentives for cost control, or that they otherwise substantially and unreasonably contribute to escalation of the costs of providing health care services to enrollees.
§33-25A-8. Evidence of coverage; charges for health care services; cancellation of contract by enrollee.

1 (1) (a) Every enrollee is entitled to evidence of coverage in accordance with this section. The health maintenance organization or its designated representative shall issue the evidence of coverage.

2 (b) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

3 (c) An evidence of coverage shall contain a clear, concise and complete statement of (i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled; (ii) any exclusions or limitations on the services, kind of services, benefits, or kind of benefits, to be provided, including any copayments; (iii) where and in what manner information is available as to how services, including emergency and out-of-area services, may be obtained; (iv) the total amount of payment and copayment, if any, for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates; and (v) a description of the health maintenance organization’s method for resolving enrollee complaints.

4 (d) Any subsequent approved change in an evidence of coverage shall be issued to each enrollee.

5 (e) A copy of the form of the evidence of coverage to be used in this state, and any amendment thereto, shall be subject to the filing and approval requirements of subdivision (b), subsection (1) of this section, unless the commissioner promulgates a regulation dispensing with this requirement or unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or, hospital or medical service corporations, in which event the filing and approval provisions of such laws shall apply. To the extent, however, that such pro-
visions do not apply the requirements in subdivision (c), subsection (1) of this section, shall be applicable.

(2) Such charges may be established in accordance with actuarial principles: Provided, That premiums shall not be excessive, inadequate, or unfairly discriminatory. A certification by a qualified actuary, to the appropriateness of the charges based on reasonable assumptions shall accompany the filing along with adequate supporting information. In determining whether such charges are reasonable, the commissioner shall consider whether such health maintenance organization has (a) made a vigorous, good faith effort to control rates paid to health care providers; and (b) established a premium schedule, including copayments, if any, which encourages enrollees to seek out preventive health care services.

(3) The commissioner shall within a reasonable period approve any form if the requirements of subsection (1) are met and any schedule of charges if the requirements of subsection (2) are met. It shall be unlawful to issue such form or to use such schedule of charges until approved. If the commissioner disapproves of such filing, he shall notify the filer promptly. In the notice, the commissioner shall specify the reasons for his disapproval and the findings of fact and conclusions which support his reasons. A hearing will be granted by the commissioner within fifteen days after a request in writing, by the person filing, has been received by the commission. If the commissioner does not disapprove any form or schedule of charges within sixty days of the filing of such forms or charges, they shall be deemed approved.

(4) The commissioner may require the submission of whatever relevant information in addition to the schedule of charges which he deems necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(5) An enrollee shall be allowed to cancel a contract with a health maintenance organization at any time for any reason provided that a health maintenance organization may require that he or she give thirty days' notice of disenrollment to such organization.

1 (1) Every health maintenance organization shall annually, on or before the first day of March, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year.

2 (2) Such report shall be on forms prescribed by the commissioner and shall include:

3 (a) A financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year certified by an independent certified public accountant, reflecting at least (i) all prepayment and other payments received for health care services rendered, (ii) expenditures to all providers, by classes or groups of providers, and insurance companies or nonprofit health service plan corporations engaged to fulfill obligations arising out of the health maintenance contract, and (iii) expenditures for capital improvements, or additions thereto, including, but not limited to, construction, renovation or purchase of facilities and capital equipment;

4 (b) The number of new enrollees enrolled during the year, the number of enrollees as of the end of the year and the number of enrollees terminated during the year;

5 (c) A summary of information compiled pursuant to subdivision (c), subsection (1), section four of this article in such form as may be required by the department of health;

6 (d) A report of the names and residence addresses of all persons set forth in subdivision (c), subsection (4), section three of this article who were associated with the health maintenance organization during the preceding year, and the amount of wages, expense reimbursements, or other payments to such individuals for services to the health maintenance organization, including a full disclosure of all financial arrangements during the preceding year required to be disclosed pursuant to subdivision (c), subsection (4), section three of this article; and

7 (e) Such other information relating to the performance of the health maintenance organization as is reasonably
necessary to enable the commissioner to carry out his duties under this article.

§33-25A-10. Information to enrollees.

1 Every health maintenance organization or its representative shall annually, before the first day of April, provide to its enrollees a summary of: Its most recent annual financial statement, including a balance sheet and statement of receipts and disbursements; a description of the health maintenance organization, its basic health care services, its facilities and personnel, any material changes therein since the last report, the current evidence of coverage, and a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints: Provided, That with respect to enrollees who have been enrolled through contracts between a health maintenance organization and an employer, the health maintenance organization shall be deemed to have satisfied the requirement of this section by providing the requisite summary to each enrolled employee.

§33-25A-11. Open enrollment period; limitation on medicare and medicaid beneficiaries.

1 (1) Once a health maintenance organization has been in operation at least five years, or has enrollment of not less than fifty thousand persons, such health maintenance organization shall, in any year following a year in which the health maintenance organization has achieved an operating surplus, maintain an open enrollment period of at least thirty days during which time the health maintenance organization shall, within the limits of its capacity, accept individuals in the order in which they apply without regard to preexisting illness, medical conditions, or degree of disability except for individuals who are confined to an institution because of chronic illness or permanent injury: Provided, That no health maintenance organization shall be required to continue an open enrollment period after such time as enrollment pursuant to such open enrollment period is equal to three percent of the health maintenance organization's net increase in enrollment during the previous year.
(2) Where a health maintenance organization demonstrates to the satisfaction of the commissioner that it has a disproportionate share of high-risk enrollees and that, by maintaining open enrollment, it would be required to enroll so disproportionate a share of high-risk enrollees as to jeopardize its economic viability, the commissioner may:

(a) Waive such requirement for open enrollment for a period of not more than three years; or

(b) Authorize such organization to impose such underwriting restrictions upon open enrollment as are necessary (i) to preserve its financial stability; (ii) to prevent excessive adverse selection by prospective enrollees; or (iii) to avoid unreasonably high or unmarketable charges for enrollee coverage of health services. A health maintenance organization may receive more than one such waiver or authorization.

(3) The enrollment by a health maintenance organization of medicare beneficiaries who are at least sixty-five years of age and medicaid beneficiaries shall not exceed fifty percent of its total enrollee population. The commissioner may waive this requirement with respect to any health maintenance organization intending to enroll at least forty percent of its enrollees from medically underserved areas, as defined by the commissioner, if he is satisfied that such organization is making substantial progress toward achieving compliance.


(1) A health maintenance organization shall establish and maintain a complaint system, which has been approved by the commissioner, to provide adequate and reasonable procedures for the expeditious resolution of written complaints initiated by enrollees concerning any matter relating to any provisions of such organization’s health maintenance contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations, or nonrenewals of enrollee coverage; observance of an enrollee’s rights as a patient; and the quality of the health care services rendered.
12 (2) A health maintenance organization shall give a timely and reasoned response, in writing, to each written complaint it receives. Copies of such complaints and the responses thereto shall be available to the commissioner, and the public for inspection for three years.

17 (3) Each health maintenance organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which describes such complaint system and contains a compilation and analysis of the complaints filed, their disposition, and their underlying causes.


1 With the exception of investments otherwise made in accordance with this article, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies or such other securities or investments as the commissioner may permit.


1 (1) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For purposes of this article:

7 (a) A statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health maintenance organization;

12 (b) A statement or item of information shall be deemed to be misleading, whether or not it may be literally untrue, if, in the total context in which such statement is made or such item of information is communicated, such statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding health care coverage, as indicating
any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health maintenance organization, if such benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

(c) An evidence of coverage shall be deemed to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health maintenance organizations, and evidences of coverage therefor, to expect benefits, services, or other advantages which the evidence of coverage does not provide or which the health maintenance organization issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage; and

(d) The commissioner may further define practices which are untrue, misleading or deceptive.

(2) No health maintenance organization may cancel or fail to renew the coverage of an enrollee except for (a) failure to pay the charge for health care coverage; (b) termination of the health maintenance organization; (c) termination of the group plan; (d) enrollee moving out of the area served; (e) enrollee moving out of an eligible group; or (f) other reasons established in regulations promulgated by the commissioner. No health maintenance organization shall use any technique of rating or grouping to cancel or fail to renew the coverage of an enrollee. An enrollee shall be given thirty days' notice of any cancellation or nonrenewal, including therein the reason therefor: Provided, That each enrollee moving out of an eligible group shall be granted the opportunity to enroll in the health maintenance organization on an individual basis.

A health maintenance organization may not disenroll an enrollee for nonpayment of copayments unless the enrollee has failed to make payment in at least three instances over any twelve-month period; however, the en-
58 rollee may not be disenrolled if the disenrollment would
59 constitute abandonment of a patient. Any enrollee wrong-
60 fully disenrolled shall be reenrolled.

61 (3) No health maintenance organization may use in its
62 name, contracts or literature any of the words “insur-
63 ance,” “casualty,” “surety,” “mutual,” or any other words
64 which are descriptive of the insurance, casualty or surety
65 business or deceptively similar to the name or description
66 of any insurance or surety corporation doing business
67 in this state: Provided, That when a health maintenance
68 organization has contracted with an insurance company
69 for any coverage permitted by this article, it may so
70 state.

71 (4) The providers under agreement with a health
72 maintenance organization to provide health care services
73 and the health maintenance organization shall not have
74 recourse against enrollees for amounts above those speci-
75 fied in the evidence of coverage as the periodic prepay-
76 ment, or copayment, for health care services.

77 (5) No health maintenance organization shall enroll
78 more than three hundred thousand persons in this state.

79 (6) No health maintenance organization shall dis-
80 criminate in enrollment policies or quality of services
81 against any person on the basis of race, sex, age, religion,
82 place of residence, health status, or source of payment:
83 Provided, That differences in rates based on valid actuarial
84 distinctions, including, distinctions relating to age and
85 sex, shall not be considered discrimination in enrollment
86 policies.

87 (7) No agent of a health maintenance organization or
88 person selling enrollments in a health maintenance orga-
89 nization shall sell an enrollment in a heath maintenance
90 organization unless such agent or person shall first dis-
91 close in writing to the prospective purchaser the follow-
92 ing information using the following exact terms in bold
93 print: (a) “Services offered,” including any exclusions or
94 limitations; (b) “full cost,” including copayments; (c)
95 “facilities available and hours of services”; (d) “trans-
96 portation services”; (e) “disenrollment rate”; and (f)
“staff,” including the names of all full-time staff physicians, consulting specialists, hospitals and pharmacies associated with the health maintenance organization. In any home solicitation, any three-day cooling-off period applicable to consumer transactions generally shall apply in the same manner as consumer transactions.

The form disclosure statement shall not be used in sales until it has been approved by the commissioner or submitted to the commissioner for ten days without disapproval. Any person who fails to disclose the requisite information prior to the sale of an enrollment may be held liable in an amount equivalent to one year’s subscription rate to the health maintenance organization, plus costs and a reasonable attorney’s fee.

(8) No contract with an enrollee shall prohibit an enrollee from canceling his or her enrollment at any time for any reason except that such contract may require thirty days’ notice to the health maintenance organization.

(9) Any person who in connection with an enrollment violates any subsection of this section may be held liable for an amount equivalent to one year’s subscription rate, plus costs and a reasonable attorney’s fee.


The commissioner may, in his discretion, after notice and hearing, promulgate rules and regulations as are necessary to regulate marketing of health maintenance organizations by persons compensated directly or indirectly by such health maintenance organizations. When necessary such rules and regulations may prohibit door-to-door solicitations, may prohibit commission sales, and may provide for such other proscriptions and other regulations as are required to effectuate the purposes of this article.


(1) An insurance company licensed in this state, or a hospital or medical service corporation authorized to do
business in this state, may either directly or through a
subsidiary or affiliate organize and operate a health main-
tenance organization under the provisions of this article.
Notwithstanding any other law which may be inconsistent
herewith, any two or more such insurance companies,
hospital or medical service corporations, or subsidiaries
or affiliates thereof, may jointly organize and operate a
health maintenance organization. The business of insur-
ance is deemed to include the providing of health care
by a health maintenance organization owned or operated
by an insurer or a subsidiary thereof.

(2) Notwithstanding any provision of insurance and
hospital or medical service corporation laws, an insurer or
a hospital or medical service corporation may contract
with a health maintenance organization to provide insur-
ance or similar protection against the cost of care provided
through health maintenance organizations and to provide
coverage in the event of the failure of the health main-
tenance organization to meet its obligations. The enrollees
of a health maintenance organization constitute a permis-
sible group under such laws. Among other things, under
such contracts, the insurer or hospital or medical service
corporation may make benefit payments to health main-
tenance organizations for health care services rendered by
providers.

§33-25A-17. Examinations.

(1) The commissioner may make an examination of the
affairs of any health maintenance organization and pro-
viders with whom such organization has contracts, agree-
ments or other arrangements as often as he deems it
necessary for the protection of the interests of the people
of this state but not less frequently than once every three
years.

(2) The commissioner shall contract with the depart-
ment of health to make examinations concerning the
quality of health care services of any health maintenance
organization and providers with whom such organization
has contracts, agreements or other arrangements as often
as it deems necessary for the protection of the interests
of the people of this state but not less frequently than
once every three years: Provided, That in making the
foregoing examination, the department of health shall
utilize the services of persons or organizations with
demonstrable expertise in assessing quality of health
care.

(3) Every health maintenance organization and affili-
ated provider shall submit its books and records to
such examinations and in every way facilitate them. For
the purpose of examinations, the commissioner and the
department of health shall have all powers necessary to
conduct such examinations, including, but not limited to,
the power to issue subpoenas, the power to administer
oaths to, and examine the officers and agents of the health
maintenance organization and the principles of such
providers concerning their business.

(4) The expenses of examinations under this section
shall be assessed against the organization being examined
and remitted to the commissioner.

(5) In lieu of such examination, the commissioner may
accept the report of an examination made by other states.


(1) The commissioner may suspend or revoke any
certificate of authority issued to a health maintenance
organization under this article if he finds that any of the
following conditions exist:

(a) The health maintenance organization is operating
significantly in contravention of its basic organizational
document, in any material breach of contract with an
enrollee, or in a manner contrary to that described in and
reasonably inferred from any other information sub-
mitted under section three unless amendments to such
submissions have been filed with an approval by the
commissioner;

(b) The health maintenance organization issues evi-
dence of coverage or uses a schedule of premiums for
health care services which do not comply with the re-
quirements of section eight of this article;
(c) The health maintenance organization does not provide or arrange for basic health care services;

(d) The department of health certifies to the commissioner that: (i) The health maintenance organization is unable to fulfill its obligations to furnish health care services as required under its contract with enrollees; or (ii) the health maintenance organization does not meet the requirements of subsection (1), section four of this article;

(e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;

(f) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under section six of this article;

(g) The health maintenance organization has failed to implement the complaint system required by section twelve of this article in a manner to reasonably resolve valid complaints;

(h) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive or unfair manner;

(i) The continued operation of the health maintenance organization would be hazardous to its enrollees; or

(j) The health maintenance organization has otherwise failed to substantially comply with this article.

(2) A certificate of authority shall be suspended or revoked only after compliance with the requirements of section twenty-one of this article.

(3) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of
existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(4) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to terminate its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization as he may find to be in the best interests of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

§33-25A-19. Rehabilitation, liquidation or conservation of health maintenance organization.

Any rehabilitation, liquidation or conservation of a health maintenance organization shall be deemed to be the rehabilitation, liquidation or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to the law governing the rehabilitation, liquidation or conservation of insurance companies. The commissioner may apply for an order directing him to rehabilitate, liquidate or conserve a health maintenance organization upon any one or more grounds set out in the vocational rehabilitation statutes or when, in his opinion, the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state.


The commissioner may after notice and hearing promulgate reasonable rules and regulations in accordance with chapter twenty-nine-a of this code, as are necessary or proper to effectuate the purposes of this article and to prevent circumvention and evasion thereof.


(1) When the commissioner has cause to believe that
grounds for the denial of an application for a certificate of authority exist, or that grounds for the suspension or revocation of a certificate of authority exist, he shall notify the health maintenance organization in writing specifically stating the grounds for denial, suspension or revocation and fixing a time of at least twenty days thereafter for a hearing on the matter.

(2) After such hearing, or upon the failure of the health maintenance organization to appear at such hearing, the commissioner shall take action as is deemed advisable on written findings which shall be mailed to the health maintenance organization. The action of the commissioner shall be subject to review. The court may modify, affirm or reverse the order of the commissioner in whole or in part.

(3) The provisions of the administrative procedures act, chapter twenty-nine-a of this code, shall apply to proceedings under this article to the extent that they are not in conflict with subsections (1) and (2) of this section.


Every health maintenance organization subject to this article shall pay to the commissioner the following fees: For filing an application for a certificate of authority or amendment thereto, one hundred dollars; and for filing each annual report, ten dollars. Fees charged under this section shall be deposited in the general fund of the state treasury.

§33-25A-23. Penalties and enforcement.

(1) The commissioner may, in lieu of suspension or revocation of a certificate of authority under section nineteen of this article, levy an administrative penalty in an amount not less than one hundred dollars nor more than five thousand dollars, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The commissioner may
augment this penalty by an amount equal to the sum that he calculates to be the damages suffered by enrollees or other members of the public.

(2) Any person who violates any provision of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(3) (a) If the commissioner shall for any reason have cause to believe that any violation of this article or regulations promulgated pursuant thereto has occurred or is threatened, prior to the levy of a penalty or suspension or revocation of a certificate of authority, the commissioner shall give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in such suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to such suspected violation, and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing such violation.

(b) Proceedings under this subsection shall not be governed by any formal procedural requirements, and may be conducted in such manner as the commissioner may deem appropriate under the circumstances. Enrollees shall be afforded notice by publication of proceedings under this subsection (3) and shall be afforded the opportunity to intervene.

(4) (a) The commissioner may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of this article or regulations promulgated pursuant thereto.

(b) Within ten days after service of the order of cease and desist, the respondent may request a hearing on the
question of whether acts or practices in violation of this
article have occurred. Such hearings shall be conducted
pursuant to chapter twenty-nine-a of this code, and
judicial review shall be available as provided by chapter
twenty-nine-a of this code.

(5) In the case of any violation of the provisions of
this article or regulations promulgated pursuant thereto,
if the commissioner elects not to issue a cease and desist
order, or in the event of noncompliance with a cease and
desist order issued pursuant to subsection (4) of this
section, the commissioner may institute a proceeding to
obtain injunctive relief, or seek other appropriate re-
lief, in the circuit court of the county of the principal
place of business of the health maintenance organization.

(6) Any enrollee of or resident of the service area of
the health maintenance organization may bring an action
to enforce any provision, standard or regulation enforce-
able by the commissioner. In the case of any successful
action to enforce this article, or accompanying standards
or regulations, the individual shall be awarded the costs
of the action together with a reasonable attorney's fee
as determined by the court.

§33-25A-24. Statutory construction and relationship to other
laws.

(1) Except as otherwise provided in this article, provi-
sions of the insurance law and provisions of hospital or
medical service corporation laws shall not be applicable to
any health maintenance organization granted a certifi-
cate of authority under this article. This provision shall
not apply to an insurer or hospital or medical service
corporation licensed and regulated pursuant to the in-
surance laws or the hospital or medical service corpora-
tion laws of this state except with respect to its health
maintenance corporation activities authorized and regu-
lated pursuant to this article.

(2) Factually accurate advertising or solicitation re-
garding the range of services provided, the premiums
and copayments charged, the sites of services and hours
of operation, and any other quantifiable, nonprofessional
aspects of its operation by a health maintenance organization granted a certificate of authority, or its representative shall not be construed to violate any provision of law relating to solicitation or advertising by health professions: Provided, That nothing contained herein shall be construed as authorizing any solicitation or advertising which identifies or refers to any individual provider, or makes any qualitative judgment concerning any provider.

(3) Any health maintenance organization authorized under this article shall not be deemed to be practicing medicine and shall be exempt from the provision of chapter thirty of this code, relating to the practice of medicine.

§33-25A-25. Filings and reports as public documents.

All applications, filings and reports required under this article shall be treated as public documents.


Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except (1) to the extent that it may be necessary to facilitate an assessment of the quality of care delivered pursuant to section seventeen of this article or to review the complaint system pursuant to section twelve of this article; (2) upon the express written consent of the enrollee or legally authorized representative; (3) pursuant to statute or court order for the production of evidence or the discovery thereof; or (4) in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent.

A health maintenance organization shall be entitled to claim any statutory privileges against such disclosure which the provider who furnished such information to the health maintenance organization is entitled to claim.
§33-25A-27. Authority to contract with health maintenance organizations under medicaid.

The department of welfare is hereby authorized to enter into contracts with health maintenance organizations certified and permitted to market under the laws of this state, and to furnish to recipients of medical assistance under Title XIX of the Social Security Act, 42 U.S.C. Section 1396, et. seq., health care services offered to such recipients under the medical assistance plan of West Virginia.


(1) Each employer shall offer no less than once every year to every employee and dependent entitled to receive health care under an existing health benefit plan supported in whole or in part by such employer the opportunity to become enrollees in certified health maintenance organizations which have the capacity to provide basic health services in health maintenance organization service areas in which at least twenty-five such employees reside: Provided, That nothing herein shall require an employer to contribute more on behalf of an employee seeking to enroll in a health maintenance organization than would be contributed on the employee's behalf to the existing health plan.

(2) If any employees of an employer are represented by a collective bargaining representative or other employee representative designated or selected under any law of this state, the offer described in subsection (1) of this section should be made to such collective bargaining representatives or other employee representative, and only if such representative approves the offer should it be made to employees represented by such representatives.

(3) If there is more than one certified health maintenance organization which meets the requirements of subsection (1) of this section and such health maintenance organizations have service areas contemporaneously covering the same twenty-five or more employees, the employer shall offer such employees at least one health...
maintenance organization which provides health services primarily through staff physicians, or medical groups, or a combination of both; and one health maintenance organization which provides health services through other means.

(4) Any employer who knowingly fails to comply with any of the requirements of this section shall be subject to a fine of not more than ten thousand dollars for every thirty-day period that such violation continues.

(5) The commissioner is authorized, in addition to the remedy provided in subsection (4) of this section, to seek an injunction in a court of competent jurisdiction to compel compliance with the provisions of this section.

CHAPTER 118

(H. B. 952—By Mr. Shingleton and Mr. Shiflet)

[Passed March 23, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-six-a, relating to the creation of a life and health insurance guaranty association; short title; purpose; scope of article; construction of article; definitions; creation of association; board of directors; powers and duties of association; assessments; plan of operation; duties and powers of commissioner of insurance; prevention of impairments; appointment of association nominee; miscellaneous provisions; examination of the association; annual reports; tax exemptions; immunity; and stay of court proceedings and reopening default judgments.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-six-a, to read as follows:
ARTICLE 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.


This article shall be known and may be cited as the West Virginia life and health insurance guaranty association act.


The purpose of this article is to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this article, and (3) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

§33-26A-3. Scope of article.

(a) This article shall apply to direct life insurance
policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons licensed to transact insurance in this state at any time.

(b) This article shall not apply to:

(1) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(2) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued.


This article shall be liberally construed to effect the purpose under section two of this article which shall constitute an aid and guide to interpretation.


As used in this article:

(1) “Account” means either of the three accounts created under section six of this article.

(2) “Association” means the West Virginia life and health insurance guaranty association created under section six of this article.

(3) “Commissioner” means the commissioner of insurance of this state.

(4) “Contractual obligation” means any obligation under covered policies.

(5) “Covered policy” means any policy or contract within the scope of this article under section three of this article.

(6) “Impaired insurer” means (i) an insurer which after the effective date of this article becomes insolvent and is placed under a final order of liquidation, rehabilitation or conservation by a court of competent jurisdiction, or (ii) an insurer deemed by the commissioner after the effective date of this article to be unable or potentially unable to fulfill its contractual obligations.
20 (7) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this article applies under section three.

21 (8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in section nine, "premiums" are those for the calendar year preceding the determination of impairment.

22 (9) "Person" means any individual, corporation, partnership, association or voluntary organization.

23 (10) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

24 (11) "Health insurance" means accident and sickness insurance as defined in subsection (b), section ten, article one, of this chapter.

§33-26A-6. Creation of association; membership required; maintenance of accounts; supervision by commissioner.

1 (a) There is created a nonprofit legal entity to be known as the West Virginia life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section ten and shall exercise its powers through a board of directors established under section seven. For purposes of administration and assessment, the association shall maintain the following three accounts:

11 (1) The health insurance account;

12 (2) The life insurance account; and

13 (3) The annuity account.

14 (b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

(a) The board of directors of the association shall consist of not less than five nor more than nine members serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term in the manner described in the plan of operation. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.

(b) In approving selections or in appointing members of the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.


In addition to the powers and duties enumerated in other sections of this article:

(a) If a domestic insurer is an impaired insurer, the association may, prior to an order of liquidation or rehabilitation, and subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(1) Guarantee or reinsure, or cause to be guaranteed, assumed or reinsured, all the covered policies of the impaired insurer;

(2) Provide such moneys, pledges, notes, guarantees or
other means as are proper to effectuate subdivision (1),
subsection (a) of this section, and assure payment of the
contractual obligations of the impaired insurer pending action
under said subdivision (1), subsection (a); and

   (3) Lend money to the impaired insurer.

(b) If a foreign or alien insurer is an impaired insurer,
the association may, prior to an order of liquidation, rehabilita-
tion or conservation, with respect to the covered policies
of residents and subject to any conditions imposed by the
association other than those which impair the contractual
obligations of the impaired insurer, and approved by the
impaired insurer and the commissioner:

   (1) Guarantee or reinsure, or cause to be guaranteed,
assumed or reinsured, the impaired insurer's covered policies
of residents;

   (2) Provide such moneys, pledges, notes, guarantees or
other means as are proper to effectuate subdivision (1), sub-
section (b) of this section, and assure payment of the impaired
insurer's contractual obligations to residents pending action
under subdivision (1), subsection (b); and

   (3) Lend money to the impaired insurer.

(c) If a domestic insurer is an impaired insurer under
an order of liquidation or rehabilitation, the association
shall, subject to the approval of the commissioner, (1)
 guarantee, assume or reinsure, or cause to be guaranteed,
assumed or reinsured the covered policies of the impaired
insurer, (2) assure payment of the contractual obligations
of the impaired insurer, and (3) provide such moneys, pledges,
notes, guarantees, or other means as are reasonably necessary
to discharge such duties. If the association fails to act
within a reasonable period of time, the commissioner shall
have the powers and duties of the association under this
article with respect to such domestic impaired insurer.

(d) If a foreign or alien insurer is an impaired insurer
under an order of liquidation, rehabilitation or conservation,
the association shall, subject to the approval of the com-
missioner:

   (1) Guarantee, assume or reinsure, or cause to be guaran-
teed, assumed or reinsured, the covered policies of residents;

(2) Assure payment of the contractual obligations of the impaired insurer to residents; and

(3) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties. If the association fails to act within a reasonable period of time, the commissioner shall have the powers and duties of the association under this article with respect to such foreign or alien impaired insurer.

(e) In carrying out its duties under subsections (c) and (d) of this section, the association may request that there be imposed policy liens, contract liens, moratoriums on payments, or other similar means and such liens, moratoriums, or similar means may be imposed if the commissioner:

(1) Finds that the amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the impaired insurer’s contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens, moratoriums, or similar means to be in the public interest; and

(2) Approves the specific policy liens, contract liens, moratoriums, or similar means to be used.

Before being obligated under subsections (c) and (d) of this section, the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans and such temporary moratoriums and liens may be imposed if they are approved by the commissioner.

(f) The association shall have no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute or regulation, for residents of this state protection substantially similar to that provided by this article for residents of other states.

(g) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation,
payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.

(h) The association shall have standing to appear before any court in this state with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this article. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired insurer and the determination of the covered policies and contractual obligations.

(i) Any person receiving benefits under this article shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this article whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this article upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.

The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired insurer as that possessed by the person entitled to receive benefits under this article.

(j) The contractual obligations of the impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by subsection (e) of this section, but the association shall have no liability with respect to any portion of a covered policy to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars.

(k) The association may:
(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article.

(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section nine.

(3) Borrow money to effect the purposes of this article. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this article.

(5) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(6) Take such legal action as may be necessary to avoid payment of improper claims.

(7) Exercise, for the purposes of this article and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.


(a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessments after thirty days' written notice to the member insurers before payment is due.

(b) There shall be three classes of assessments, as follows:

(1) Class A assessments shall be made for the purpose
of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under section eight with regard to an impaired domestic insurer.

(3) Class C assessments shall be made to the extent necessary to carry out the powers and duties of the association under section eight with regard to an impaired foreign or alien insurer.

(c) The amount of any Class A assessment for each account shall be determined by the board. The amount of any Class B or C assessment shall be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bears to the premiums received by such insurer on all covered policies.

Class A and Class C assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bears to such premiums received on business in this state by all assessed member insurers.

Class B assessments for each account shall be made separately for each state in which the impaired domestic insurer was authorized to transact insurance at any time, in the proportion that the premiums received on business in such state by the impaired insurer on policies covered by such account bears to such premiums received in all such states by the impaired insurer. The assessments against member insurers shall be in the proportion that the premiums received on business in each such state by each assessed member insurer on policies covered by each account bears to such premiums received on business in each state by all assessed member insurers.

Assessments for funds to meet the requirements of the association with respect to an impaired insurer shall not be made until necessary to implement the purposes of this article. Classification of assessments under subsection (b)
of this section, and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies covered by the account.

(e) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (d) of this section, the amount by which such assessment is abated or deferred, shall be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

(f) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(g) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this article, to con-
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87 consider the amount reasonably necessary to meet its assessment obligations under this article.

89 (h) The association shall issue to each insurer paying an assessment under this article a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.


1 (a) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the commissioner.

7 If the association fails to submit a suitable plan of operation within one hundred eighty days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this article. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

17 (b) All member insurers shall comply with the plan of operation.

19 (c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article:

21 (1) Establish procedures for handling the assets of the association;

23 (2) Establish the amount and method of reimbursing members of the board of directors under section seven of this article;
(3) Establish regular places and times for meetings of the board of directors;

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) Establish the procedures whereby selections for the board of directors will be made and submitted to the commissioner;

(6) Establish any additional procedures for assessments under section nine of this article; and

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision (3), subsection (k), section eight, and section nine of this article, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization which extends protection not substantially less favorable and effective than that provided by this article.


(a) In addition to the duties and powers enumerated elsewhere in this article the commissioner shall:

(1) Notify the board of directors of the existence of an impaired insurer not later than three days after a determination of impairment is made or he receives notice of impairment;

(2) Upon request of the board of directors, provide the
association with a statement of the premiums in the appropriate states for each member insurer; and

(3) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this article.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within thirty days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this article.


(a) To aid in the detection and prevention of insurer impairments the board of directors shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

(b) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may
be unable or potentially unable to fulfill its contractual obligations. The commissioner may conduct such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors of the association prior to its release to the public, but this shall not excuse the commissioner from his obligation to comply with subsection (c) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public and shall be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(c) The commissioner shall report to the board of directors when he has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations.

(d) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.

(e) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

(f) The board of directors shall, at the conclusion of any insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit such report to the commissioner.

1. The association may recommend a natural person to serve as a special deputy to act for the commissioner and under his supervision in the liquidation, rehabilitation or conservation of any member insurer.

§33-26A-14. Reduction of liability for unpaid assessments; records to be kept; association deemed creditor of impaired insurer; distribution of ownership rights; unfair trade practice; rights upon liquidation or rehabilitation.

1. (a) Nothing in this article shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability.

5. (b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section eight. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section fifteen of this article.

16. (c) For the purpose of carrying out its obligations under this article, the association shall be deemed to be a creditor of the impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subdivision (i), section eight of this article. All assets of the impaired insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired insurer as required by this article. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets which the reserves that should have been established for such policies bear to the reserve that should have been established for all policies of insurance written by the impaired insurer.
(d) Prior to the termination of any liquidation, rehabilitation or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and policy owners of the impaired insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such impaired insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer. No distribution to stockholders, if any, of an impaired insurer shall be made until and unless the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

(e) It shall be a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this article in the sale of insurance.

(f) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions other than stock dividends paid by the insurer on its capital stock made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of this subsection. No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations. Any person who, as an affiliate, controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who, as an affiliate, controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable. The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the impaired insurer to pay the contractual obligations of the impaired insurer. If
any person is liable as an affiliate who controlled the insurer, its affiliates that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

§33-26A-15. Examination of association; annual report.

1 The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than the first day of May of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.


1 The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.


1 There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken by them in the performance of their powers and duties under this article.


1 All proceedings in which the impaired insurer is a party in any court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.
AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-c, relating to establishing a state labor-management advisory council; providing for appointment, terms, and setting forth certain functions and duties of the council; and establishing duration of council.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-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-c, to read as follows:

ARTICLE 1C. WEST VIRGINIA LABOR-MANAGEMENT ADVISORY COUNCIL.

§21-1C-1. Appointment, terms, vacancies, chairman, quorum of the labor-management advisory council.

§21-1C-2. Powers, duties and functions of the council; annual reports.

§21-1C-3. Duration of council.

§21-1C-1. Appointment, terms, vacancies, chairman, quorum of the labor-management advisory council.

There is hereby created the West Virginia labor-management advisory council which shall consist of nineteen members. One member of the council shall be the commissioner of labor, one member of the council shall be a member of the economic development authority, and one member of the council shall be the employment security commissioner or his designated representative, who shall be ex officio non-voting members of the council. The other members of the council shall be appointed by the governor by and with the advice and consent of the Senate for terms of four years and until their successors have been appointed and have qualified, except that the members first appointed shall be for two, three and four years, respectively, as designated by the gover-
nor at the time of their appointment, and until their successors have been appointed and have qualified.

Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.

In making appointments to the council, the governor shall consider names of persons recommended to him by the West Virginia chamber of commerce, the West Virginia coal association, the West Virginia manufacturers' association, the West Virginia retailers' association, utilities, other industrial groups in this state, the West Virginia labor federation, the united mine workers union, the West Virginia building trades council and other labor organizations in the state. Membership shall be composed of, in addition to those of the state or other government agencies, no less than eight members from industry and eight from labor. The commissioner of labor shall serve as the chairman of the council.

The council shall meet at least two times each year and at other times on call of the chairman or a majority of the members. Ten members of the council shall constitute a quorum for the transaction of business.

§21-1C-2. Powers, duties and functions of the council; annual reports.

The council shall function as an advisory agency of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.

The council shall not infringe upon or assume the responsibilities, duties or functions of the West Virginia labor-management relations board as set forth in article one-b of this chapter. The council may make recommendations to the governor and the Legislature and it shall publish an annual report of its activities during the preceding calendar year and shall forward a copy of the report to the governor and the Legislature not later than the first day of February of each year.
Meetings of the council may be held at any location in this state: Provided, That the first and organizational meeting of said council shall be held at the state capitol.

The commissioner of labor shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary costs incurred as a result of attending council meetings, and he shall act as the executive secretary of the council. The attorney general shall provide legal assistance to the council when required.

§21-1C-3. Duration of council.

Unless sooner terminated by law and until and unless extended, the West Virginia labor-management advisory council shall cease to exist on the thirtieth day of June, one thousand nine hundred eighty.

CHAPTER 120

(Com. Sub. for H. B. 1124—By Mr. Moore and Mr. Bumgarner)

[Passed March 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to establishing days of commemoration, and designating the third Saturday in January as Martin Luther King Day.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1a. Special memorial days.

The governor shall, by proclamation, declare the third Saturday in January as a special memorial day to be known as Martin Luther King Day.
AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-b; to amend and reenact sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of said code; to further amend article one of said chapter twenty-two by adding thereto one new section, designated section thirty-a; to amend and reenact sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter twenty-two; to further amend article two of said chapter twenty-two by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; to further amend chapter twenty-two, by adding thereto two new articles, designated articles two-a and two-c; to amend and reenact section five, article six of said chapter; and to amend and reenact section five, article six-a of said chapter twenty-two, all relating to coal miners’ health and safety; certification of surface mine foremen; definitions; duties of the director; contents of annual report; eligibility for appointment as mine inspector and qualifications and salary thereof; duties of inspectors and foremen and removal thereof; duties of mine foremen and assistant mine foremen; suspension of foremen; foremen suspended out of state; supervision of apprentices; daily inspection of working places; records; safety inspection and removal of gases; roof control; equipment to conform with height of seam; haulage roads and equipment; transportation of men by cars; general provisions; telephone service or communication facilities; safeguards for mechanical equipment; creation of board of coal mine health and safety; power of the board to promulgate rules and regulations, rules and regulations
not to be promulgated pursuant to chapter twenty-nine-a; outlets and emergency roadways; access roads; shafts, slopes and underground construction; right of miner to refuse to operate unsafe equipment; promulgation of regulation of long wall and short wall mining; construction of surface facilities; control of respirable dust; emergency medical personnel; definitions; permit of apprenticeship of underground mines; supervision of apprentices; certificate of competency and qualifications of underground or surface miners; limitations of article; board of miner training powers and duties; and providing for penalties thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, eleven, thirteen, twenty, twenty-one and thirty, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections seven, eight, twelve, thirteen, fourteen, twenty-six, thirty-seven, thirty-eight, forty, forty-two, forty-nine and sixty, article two of said chapter, be amended and reenacted; that section five, article six of said chapter, be amended and reenacted; that section five, article six-a of said chapter, be amended and reenacted; that article six, chapter twenty of said code, be amended by adding thereto a new section, designated section twenty-b; that article one, chapter twenty-two of said code, be further amended by adding thereto a new section, designated section thirty-a; that article two of said chapter be further amended by adding thereto six new sections, designated sections twenty-eight-a, fifty-three-a, seventy-a, seventy-b, seventy-c and seventy-d; and that said chapter twenty-two be further amended by adding thereto two new articles, designated articles two-a and two-c, all to read as follows:

Chapter
20. Natural Resources.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-20b. Certification of surface mine foremen.

1 (a) In every surface 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 chapter
twenty-two as a mine foreman. Each applicant for certifi-
cation as a mine foreman 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 three years’
experience in surface mining, which shall include at least
eighteen months’ experience on or at a working section
of a surface mine or be a graduate of the school of mines
at West Virginia University or of another accredited
mining engineering school and have had at least two
years’ practical experience in a surface mine, which shall
include at least eighteen months’ experience on or at a
working section of a surface mine; and (3) have demon-
strated his knowledge of mine safety, first aid, safety
appliances, emergency procedures relative to all equip-
ment, 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, chapter twenty-two.

(b) In surface mines in which the operations are so
extensive that the duties devolving upon the mine fore-
man cannot be discharged by one man, one or more
assistant mine foremen may be designated. Such persons
shall act under the instruction of the mine foreman 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 chapter twenty-
two. Each applicant for certification as assistant mine
foreman shall, at the time he is issued a certificate of com-
petency, possess all of the qualifications required of a
mine foreman: Provided, That he shall at the time he is
certified be required to have at least two years' experience
in surface mining, which shall include eighteen months on
or at a working section of a surface mine or be a graduate
of the school of mines at West Virginia University or of
another accredited mining engineering school and have
had twelve months' practical experience in a surface mine,
all of which shall have been on or at a working section.
42 (c) The director shall by the first day of July, one
thousand nine hundred seventy-eight, promulgate such
rules and regulations as may be necessary to carry out
the provisions of this section.

CHAPTER 22. MINES AND MINERALS.

Article

1. Administration; Enforcement.
2. Coal Mines.
   2A. Board of Coal Mine Health and Safety.
   2C. Emergency Medical Personnel.
6. Certification of Underground and Surface Coal Miners.
6A. Board of Miner Training, Education and Certification.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-1. Definitions.
§22-1-2. Department of mines; purposes; rules and regulations.
§22-1-4. Director of the department of mines—powers and duties.
§22-1-11. Eligibility for appointment as mine inspector; qualifications; salary
and expenses; removal.
§22-1-13. Director and inspectors authorized to enter mines; duties of in­
spectors to examine mines; no advance notice; reports after fatal
accidents.
§22-1-20. Penalties.
§22-1-30. Withdrawal of certification.
§22-1-30a. Certification of mine foreman or assistant mine foreman whose
license to engage in similar activities suspended in another state.

§22-1-1. Definitions.

1 Unless the context in which used clearly requires a
different meaning, the following definitions shall apply
to articles one and two of this chapter:

4 (a) General.

5 (1) Accident: The term “accident” shall mean any
mine explosion, mine ignition, mine fire, or mine inunda-
tion, or injury to, or death of any person.

8 (2) Agent: The term “agent” means any person
charged with responsibility for the operation of all or
a part of a mine or the supervision of the miners in a
mine.

12 (3) Approved: The term “approved” shall mean in
strict compliance with mining law, or, in the absence of
law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

(4) Face equipment: The term "face equipment" shall mean mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in by the last open crosscut in an entry or room.

(5) Imminent danger: The term "imminent danger" means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

(6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

(7) Miner: The term "miner" shall mean any individual working in a coal mine.

(8) Operator: The term "operator" shall mean any firm, corporation, partnership or individual operating any coal mine or part thereof, or engaged in the construction of any facility associated with a coal mine.

(9) Permissible: The term "permissible" shall mean any equipment, device or explosive that has been approved as permissible by the United States bureau of mines and meets all requirements, restrictions, exceptions, limitations and conditions attached to such classification by the bureau.

(10) Person: The term "person" shall mean any indi-
vidual, partnership, association, corporation, firm, subsidiary of a corporation or other organization.

(11) Work of preparing the coal: The term "work of preparing the coal" shall mean the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or lignite, and such other work of preparing such coal as is usually done by the operator of the coal mine.

(b) Department of Mines.

(1) Board of appeals: The term "board of appeals" shall mean as provided for in section thirty-one of this article.

(2) Department: The term "department" shall mean the state department of mines provided for in section two of this article.

(3) Director of the department of mines: The term "director of the department of mines" shall mean the director of the department of mines provided for in section three of this article, and is synonymous with the term "chief of the department of mines."

(4) Mine inspector: The term "mine inspector" shall mean a state mine inspector provided for in section seven of this article.

(5) Mine inspectors' examining board: The term "mine inspectors' examining board" shall mean the mine inspectors' examining board provided for in section twelve of this article.

(c) Mine areas.

(1) Abandoned workings: The term "abandoned workings" shall mean excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term "active workings" shall mean all places in a mine that are ventilated and inspected regularly.
(3) Drift: The term "drift" shall mean a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term "excavations and workings" shall mean any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term "inactive workings" shall include all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term "mechanical working section" shall mean an area of a mine (A) in which coal is loaded mechanically, (B) which is comprised of a number of working places that are generally contiguous, and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term "panel" shall mean workings that are or have been developed off of submain entries which do not exceed three thousand feet in length.

(8) Return air: The term "return air" shall mean a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term "shaft" shall mean a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of men and material, in connection with the mining of coal.

(10) Slope: The term "slope" shall mean a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term "working face" shall mean any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.
(12) Working place: The term "working place" shall mean the area of a coal mine in by the last open crosscut.

(13) Working section: The term "working section" shall mean all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term "working unit" shall mean an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine Personnel.

(1) Assistant mine foreman: The term "assistant mine foreman" shall mean a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term "certified electrician" shall mean any person who is qualified as a mine electrician and who has passed an examination given by the department of mines, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the department of mines.

(3) Certified person: The term "certified person", when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, shall mean a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term "interested persons" shall include the operator, members of any mine safety committee at the mine affected and other duly authorized
(5) Mine foreman: The term "mine foreman" shall mean the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term "qualified person" shall mean a person who has completed an examination and is considered qualified on record by the department of mines.

(7) Shot firer: The term "shot firer" shall mean any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him by the department of mines.

(8) Superintendent: The term "superintendent" shall mean the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term "supervisor" shall mean a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical.

(1) Armored cable: The term "armored cable" shall mean a cable provided with a wrapping of metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

(2) Borehole cable: The term "borehole cable" shall mean a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term "branch circuit" shall mean any circuit, alternating current or direct current, connected to and leading from the main power lines.
(4) Cable: The term "cable" shall mean a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(5) Circuit breaker: The term "circuit breaker" shall mean a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term "delta connected" shall mean a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term "effectively grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

(8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" shall mean a portable flame-resistant cable that has passed the flame tests of the federal bureau of mines.

(9) Ground or grounding conductor (mining): The term "ground or grounding conductor (mining)", also referred to as a safety ground conductor, safety ground, and frame ground, shall mean a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term "grounded (earthed)" shall mean that the system, circuit, or apparatus referred to is provided with a ground.

(11) High voltage: The term "high voltage" shall mean voltages of more than one thousand volts.

(12) Lightning arrestor: The term "lightning arrestor" shall mean a protective device for limiting surge volt-
age on equipment by discharging or by passing surge
current; it prevents continued flow of follow current to
ground and is capable of repeating these functions as
specified.

(13) Low voltage: The term "low voltage" shall mean
up to and including six hundred sixty volts.

(14) Medium voltage: The term "medium voltage"
shall mean voltages from six hundred sixty-one to one
thousand volts.

(15) Mine power center or distribution center: The
term "mine power center or distribution center" shall
mean a combined transformer or distribution unit, com-
plete within a metal enclosure from which one or more
low-voltage power circuits are taken.

(16) Neutral (derived): The term "neutral (derived)"
shall mean a neutral point or connection established by
the addition of a "zig-zag" or grounding transformer to
a normally underground power system.

(17) Neutral point: The term "neutral point" shall
mean the connection point of transformer or generator
windings from which the voltage to ground is nominally
zero, and is the point generally used for system ground-
ings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term "portable
(trailing) cable" shall mean a flexible cable or cord used
for connecting mobile, portable or stationary equipment
in mines to a trolley system or other external source
of electric energy where permanent mine wiring is pro-
hibited or is impracticable.

(19) Wye-connected: The term "wye-connected" shall
mean a power system connection in which one end of
each phase windings or transformers or a.c. generators
are connected together to form a neutral point, and a
neutral conductor may or may not be connected to the
neutral point, and the neutral point may or may not be
grounded.

(20) Zig-zag transformer (grounding transformer):
The term "zig-zag transformer (grounding transformer)"
§22-1-2. Department of mines; purposes; rules and regulations.

The department of mines heretofore created is hereby continued and shall have as its purpose the supervision of the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid purposes, it shall give prime consideration to the protection of the safety and health of persons employed within or at the mines of this state. In addition, the department shall, consistent with the aforesaid prime consideration, protect and preserve mining property and property used in connection therewith.

The department is hereby given authority, where authorized and in the manner prescribed in this chapter, to enact such rules and regulations as may be necessary to effectuate the above stated purposes.

§22-1-4. Director of the department of mines—powers and duties.

The director of the department of mines shall have full charge of the department. He shall have the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this chapter.

(2) Appoint a deputy director of the department of mines, fix his compensation and prescribe his powers and duties.

(3) Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out the provisions of this law and fix their compensation, except as otherwise provided in this article.

(4) Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of section seven of this article as may be necessary to fully and effectively carry out the provisions of this law, including the hiring and training of inspectors for the spe-
cialized requirements of surface mining, shaft and
slope sinking, and surface installations and to super-
vise and direct such mine inspectors in the performance
of their duties.

(5) Suspend, for good cause, any mine inspector with­
out compensation for a period not exceeding thirty
days in any calendar year.

(6) Prepare report forms to be used by mine inspec­
tors in making their findings, orders and notices, upon
inspections made in accordance with this chapter.

(7) Hear and determine applications made by mine
operators for the annulment or revision of orders made
by mine inspectors, and to make inspections of mines,
in accordance with the provisions of this article.

(8) Cause a properly indexed permanent and public
record to be kept of all inspections made by himself or
by mine inspectors.

(9) Make annually a full and complete written re­
port of the administration of his department to the gov­
ernor and the Legislature of the state for the year ending
the thirtieth day of June. Such report shall include
the number of visits and inspections of mines in the
state by mine inspectors, the quantity of coal, coke and
other minerals (including oil and gas) produced in the
state, the number of men employed, number of mines
in operation, statistics with regard to health and safety
of persons working in the mines including the causes
of injuries and deaths, improvements made, prosecutions,
the total funds of the department from all sources
identifying each source of such funds, the expendi­
tures of the department, the surplus or deficit of the
department at the beginning and end of the year, the
amount of fines collected, the amount of fines imposed,
the value of fines pending, the number and type of viola­
tions found, the amount of fines imposed, levied and
turned over for collection, the total amount of fines
levied but not paid during the prior year, the titles and
salaries of all inspectors and other officials of the depart­
ment, the number of inspections made by each inspector,
the number and type of violations found by each inspector: Provided, That no inspector shall be identified by name in this report. Such reports shall be filed with the governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records, or other documents relevant or material to the hearing. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

(12) Perform all other duties which are expressly imposed upon him by the provisions of this chapter.

(13) Make all records of the department open for inspection of interested persons and the public.

§22-1-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person shall be eligible for appointment as a mine inspector unless, at the time of his probationary appointment, he (1) is a citizen of West Virginia, in good health, not less than twenty-four nor more than sixty years of age, and of good character, reputation and temperate habits; (2) has had at least six years' practical experience in coal mines, at least three years of which, immediately preceding his original appointment, shall
have been in mines of this state: Provided, That graduation from any accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than fifteen thousand three hundred dollars per year, with graduations of two hundred seventy dollars annually for a ten-year period; assistant inspector-at-large, not less than sixteen thousand eight hundred seventy-five dollars per year, with graduations of two hundred seventy dollars annually for a ten-year period; inspectors-at-large, not less than eighteen thousand dollars per year, with graduations of two hundred seventy dollars annually for a ten-year period, and they shall receive mileage at the rate of not less than fifteen cents for each mile actually traveled in the discharge of their official duties in a privately owned vehicle. Within the limits provided by law, the salary of each inspector shall be fixed by the director of the department of mines, subject to the approval of the mine inspectors' examining board. In fixing salaries of mine inspectors, the director of the department of mines shall consider ability, performance
of duty and experience. No reimbursement for traveling
expenses shall be made except on an itemized account of
such expenses submitted by the inspector, who shall
verify upon oath, that such expenses were actually in-
curred in the discharge of his official duties. Every in-
spector shall be afforded compensatory time or compen-
sation of at least his regular rate for all time in excess
of forty-two hours per week.

(d) Any mine inspector who has fulfilled the require-
ments of this section with respect to employment and
who has served satisfactorily as a mine inspector for a
minimum period of one year and who has terminated
his employment as a mine inspector, upon successfully
passing a physical examination, may be reinstated as a
mine inspector within two years after terminating his
employment with the approval of the examining board
and the director of the department of mines.

(e) A mine inspector, after having received a per-
manent appointment, shall be removed from office only
for physical or mental impairment, incompetency, neglect
of duty, drunkenness, malfeasance in office, or other
good cause.

Proceedings for the removal of a mine inspector may
be initiated by the director of the department of mines
whenever he has reasonable cause to believe and does
believe that adequate cause exists, warranting removal.
Such a proceeding shall be initiated by a verified peti-
tion, filed with the board by the director of the depart-
ment of mines, setting forth with particularity the facts
alleged. Not less than twenty reputable citizens, who are
operators or employees in mines in the state, may
petition the director of the department of mines for
the removal of a mine inspector. If such petition is
verified by at least one of the petitioners, based on ac-
tual knowledge of the affiant and alleged facts, which,
if true, warrant the removal of the inspector, the director
of the department of mines shall cause an investigation
of the facts to be made. If, after such investigation, the
director finds that there is substantial evidence, which,
if true, warrants removal of the inspector, he shall file
a petition with the board requesting removal of the inspector.

On receipt of a petition by the director of the department of mines seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chairman of the board and the director of the department of mines shall have power to administer oaths and subpoena witnesses.

Any mine inspector who shall willfully refuse or fail to appear before the board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to waive immunity from prosecution on account of any relevant matter about which he may be asked to testify at any such hearing before the board, shall forfeit his position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.

§22-1-13. Director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.

The director of the department of mines shall have authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish
the director of the department of mines or mine inspector proper facilities for entering such mine and making examination or obtaining information.

If miners at any mine or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director of the department of mines may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether a danger, described in section fourteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in any such mine.

In addition to the other duties imposed by articles one and two of this chapter, it shall be the duty of each inspector to note each violation he finds and issue a finding order or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the director of the department of mines, setting forth the results of such examination, including the condition of the mine and the
cause or causes of such fatal accident, if known, and
all such reports shall be made available to the interested
parties, upon written requests.

At the commencement of any inspection of a coal mine
by an authorized representative of the director, the autho-
rized representative of the miners at the mine at the time
of such inspection shall be given an opportunity to ac-
company the authorized representative of the director on
such inspection.

§22.1.20. Penalties.

(a) (1) Any operator of a coal mine in which a
violation occurs of any health or safety rule or regulation
or who violates any other provision of this law, shall be
assessed a civil penalty by the director under subdivision
(3) of this subsection, which penalty shall be not more
than three thousand dollars, for each such violation. Each
such violation shall constitute a separate offense. In de-
termining the amount of the penalty, the director shall
consider the operator's history of previous violations, the
appropriateness of such penalty to the size of the business
of the operator charged, the gravity of the violation and
the demonstrated good faith of the operator charged in
attempting to achieve rapid compliance after notification
of a violation.

(2) Any miner who knowingly violates any health or
safety provision of this chapter or health or safety rule or
regulation promulgated pursuant to this chapter shall be
subject to a civil penalty assessed by the director under
subdivision (3) of this subsection which penalty shall not
be more than two hundred fifty dollars for each occurrence
of such violation.

(3) A civil penalty shall be assessed by the director
only after the person charged with a violation under this
chapter or rule or regulation promulgated pursuant to
this chapter has been given an opportunity for a public
hearing and the director has determined, by a decision
incorporating his findings of fact therein, that a violation
did occur, and the amount of the penalty which is war-
ranted, and incorporating, when appropriate, an order
therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the director shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the director shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the director or it may remand the proceedings to the director for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section eighteen of this article, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent him in any action to enforce an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fourteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-one of this article, shall be assessed a civil penalty
by the director under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules or regulations promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-one of this article, any director, officer, or agent of such corporation who knowingly authorized, ordered or carried out such violation, failure or refusal shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this law or any order or decision issued under this law shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in the county jail not more than six months, or both fined and imprisoned. The conviction of any person under this subsection shall result in the revocation of any certifications held by him under this chapter which certified him or authorized him to direct other persons in coal mining by operation of law and shall bar him from being issued any such license under this chapter, except a miner's certification, for a period of not less than one year or for such longer period as may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale, introduces or delivers in commerce any equipment for use in a coal mine, including, but not limited to, components and accessories of such equipment, who willfully misrepresents such equipment as complying with the
provisions of this law, or with any specification or regulation of the director applicable to such equipment, and which does not so comply, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to the same fine and imprisonment that may be imposed upon a person under subsection (d) of this section.


(a) No person shall discharge or in any other way discriminate against or cause to be discharged or discriminated against any miner or any authorized representative of miners by reason of the fact that he believes or knows that such miner or representative (1) has notified the director, his authorized representative, or an operator, directly or indirectly, of any alleged violation or danger, (2) has filed, instituted or caused to be filed or instituted any proceeding under this law, (3) has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this law. No miner or representative shall be discharged or in any other way discriminated against or caused to be discriminated against because a miner or representative has done (1), (2) or (3) above.

(b) Any miner or a representative of miners who believes that he has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at his last address of record as reflected in the records
of the department of mines shall be deemed adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's findings therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

§22-1-30. Withdrawal of certification.

(a) Charge of breach of duty.—A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pur-
suitant to article one or two of this chapter. The charge shall state the name of the person charged, the duty or duties he is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals.—Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall investigate the charge and report the results of the investigation to the board of appeals within ten days of his receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the director, the representative of the miner or miners affected, and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing.—The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence
and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate.—Any person charged who shall, without just cause refuse or fail to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire boss or other certified person.

(e) Penalties.—The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed
penalties and monetary fines imposed elsewhere in this chapter.

(f) **Integrity of penalties imposed.**—No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter twenty or twenty-two of this code, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder shall be entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22-1-30a. **Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.**

Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

**ARTICLE 2. COAL MINES.**

§22-2-7. When underground mine foreman-fire boss required; assistants; certification.

§22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

§22-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.


§22-2-26. Roof control programs and plans; refusal to work under unsupported roof.

§22-2-28a. Equipment to conform with height of seam.

§22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

§22-2-38. Transportation of men by cars; self-propelled equipment; belts.


§22-2-42. Telephone service or communication facilities.

§22-2-49. Safeguards for mechanical equipment.

§22-2-53a. Railroad cars; dumping areas.

§22-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.

§22-2-70a. Right of miner to refuse to operate unsafe equipment.

§22-2-70b. Long wall and short wall mining.
§22-2-70c. Shafts, slopes and construction of surface facilities; legislative findings; duties of director to promulgate rules and regulations.

§22-2-70d. Control of respirable dust.

§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, mechanical or civil 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, mechanical engineering or civil 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, mechanical or civil 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, mechanical or civil 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 section, 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 section, 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.

§22-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that, as the miners advance their excavations, proper break-throughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts, or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks.
or doors placed on the entries or other suitable places, and he shall not permit any room to be opened in advance of the ventilation current. The mine foreman or other certified persons designated by him, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director of the department of mines. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After the effective date of this article, hinged man doors, at least thirty inches square or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of five hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.

§22-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.

The department of mines shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to such employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person shall be first employed as a miner. It shall further be the duty and responsibility of the department of mines to see that such course shall be given to all persons as above provided after their first being employed in any mine in this state.
It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work in such mine, and be furnished a copy of the mining laws and rules of such mine. It shall be the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article six of this chapter, to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his assistant mine foreman and they shall be responsible for his safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his assistant mine foreman shall remain responsible for the apprentice. During the first ninety days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in such a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. Such location shall be on the same side of any belt, conveyor or mining equipment.

Persons whose duties require them to use a flame safety lamp or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the West Virginia department of mines and a record of such examination shall be kept by the operator and the department of mines. Flame safety lamps and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to ensure that such lamp or other device is in a permissible condition.

Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman or his assistants upon observing a violation or potential violation of article two of this chapter or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman—fire boss or pumper to be on a working section by himself. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall place his initials, time and the date at or near each place he examines. He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.


It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his supervision for hazards at least once every two hours during each coal-producing shift, or more
often if necessary for safety. In all mines such examina-
tions shall include tests with an approved detector for
methane and oxygen deficiency and may also include
tests with a permissible flame safety lamp. It shall also
be his duty to remove as soon as possible after its dis-
covery any accumulations of explosive or noxious gases
in active workings, and where practicable, any accumu-
lations of explosive or noxious gases in the worked out
and abandoned portions of the mine. It shall be the
duty of the mine foreman, assistant mine foreman or
fire boss to examine each mine within three hours prior
to the beginning of a shift and before any miner in such
shift enters the active workings of the mine.

§22-2-26. Roof control programs and plans; refusal to work
under unsupported roof.

(a) Each operator shall undertake to carry out on a
continuing basis a program to improve the roof control
system of each coal mine and the means and measures
to accomplish such system. The roof and ribs of all
active underground roadways, travelways, and working
places shall be supported or otherwise controlled ade-
quately to protect persons from falls of the roof or ribs.
A roof control plan and revisions thereof suitable to the
roof conditions and mining systems of each coal mine and
approved by the director of the department of mines
shall be adopted and set out in printed form before new
operations. The safety committee of the miners of each
mine where such committee exists shall be afforded the
opportunity to review and to submit comments and
recommendations to the director and operator concerning
the development, modification or revision of such roof
control plans. The plan shall show the type of support
and spacing approved by the director. Such plan shall
be reviewed periodically, at least every six months by
the director, taking into consideration any falls of roof
or rib or inadequacy of support of roof or ribs. A copy
of the plan shall be furnished to the director of the
department of mines or his authorized representative
and shall be available to the miners and their representa-
tives.
(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof
control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be engaged in any activity involving the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those parts of the roof control plan relevant to the type of mining and roof control to be pursued by such miner. The time, and parts of the plan reviewed shall be recorded in a log book kept for such purpose. Each log book entry so recorded shall be signed by such immediate supervisor making such entry.

(g) Any action taken against a miner due in whole or in part to his refusal to work under unsupported roof, where such work would constitute a violation of this section, is prohibited as an act of discrimination pursuant to section twenty-one, article one of this chapter. Upon a finding of discrimination by the appeals board pursuant to subsection (b), section twenty-one, article one of this chapter, the miner shall be awarded by the appeals board all reliefs available pursuant to subsections (b) and (c), section twenty-one, article one of this chapter.

§22-2-28a. Equipment to conform with height of seam.

1 The use of underground mining equipment of a size that does not conform to the height of the seam being mined, which creates unsafe working conditions for the miner operating the equipment or others, is prohibited.

5 The board of coal mine health and safety shall promulgate such rules and regulations as are necessary to effectuate this section.

§22-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 (a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within five hundred feet of the nearest working face.
(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throw and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries developed after the effective date of this article shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, after the effective date of this article, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors, which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries driven after the effective date of this article where locomotive, rope or animal haulage is used. Such shelter holes shall be spaced not more than one hundred feet apart; they shall be on the side of the entry opposite the trolley wire: Provided, That where belt haulage and secondary track haulage are located in the same entry, shelter holes may be on the trolley wire and feeder wire side if the trolley wire and feeder wire are guarded in a manner approved by the director of the department of mines.

(j) Shelter holes made after the effective date of this
article shall be at least five feet in depth, not more than
four feet in width, and as high as the traveling space.
Room necks and crosscuts may be used as shelter holes
even though their width exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and
other obstructions.

(l) After the effective date of this article, shelter holes
shall be provided at switch throws and manually oper-
ated permanent doors.

(m) No steam locomotive shall be used in mines where
men are actually employed in the extraction of coal, but
this shall not prevent operation of a steam locomotive
through any tunnel haulway or part of a mine that is not
in actual operation and producing coal.

(n) Underground equipment powered by internal
combustion engines using petroleum products, alcohol,
or any other compound shall not be used in a coal mine.

(o) Locomotives, personnel carriers, mine cars, supply
cars, shuttle cars, and all other haulage equipment shall
be maintained in a safe operating condition. Each loco-
motive, personnel carrier, barrier tractor and other re-
lated equipment shall be equipped with a suitable lifting
jack and handle. An audible warning device and head-
lights shall be provided on each locomotive and each
shuttle car. All other mobile equipment, using the face
areas of the mine, purchased after the effective date of
this article, shall be provided with a conspicuous light or
other approved device so as to reduce the possibility of
collision.

(p) No persons other than those necessary to operate
a trip or car shall ride on any loaded car or on the out-
side of any car. Where pusher locomotives are not used,
the locomotive operator shall have an assistant to assist
him in his duties.

(q) The pushing of trips, except for switching purposes,
is prohibited on main haulage roads: Provided, That
nothing herein shall prohibit the use of a pusher loco-
motive to assist the locomotive pulling a trip. Motormen
and trip riders shall use care in handling locomotives
and cars. It shall be their duty to see that there is a
conspicuous light on the front and rear of each trip or
train of cars when in motion: Provided, That trip lights
need not be used on cars being shifted to and from
loading machines, on cars being handled at loading heads
during gathering operations at working faces, or on trips
being pulled by animals. No person except the operator
or his assistant shall ride on locomotives or loaded cars.
An empty car or cars shall be used to provide a safe
distance between the locomotive and the material car
when rail, pipe or long timbers are being hauled. A safe
clearance shall be maintained between the end car of
trips placed on side tracks and moving traffic. On haulage
roads the clearance point shall be marked with an ap-
proved device.

(r) No motorman, trip rider or brakeman shall get on
or off cars, trips or locomotives while they are in motion,
except that a trip rider or brakeman may get on or off the
rear end of a slowly moving trip or the stirrup of a
slowly moving locomotive to throw a switch, align a derail
or open or close a door.

(s) Flying or running switches and riding on the front
bumper of a car or locomotive are prohibited. Back
poling shall be prohibited except with precaution to the
nearest turning point (not over eighty feet), or when
going up extremely steep grades and then only at slow
speed. The operator of a shuttle car shall face in the
direction of travel except during the loading operation
when he shall face the loading machine.

(t) (1) A system of signals, methods or devices shall
be used to provide protection for trips, locomotives and
other equipment coming out onto tracks used by other
equipment.

(2) In any coal mine where more than three hundred
fifty tons of coal are produced on any shift in each twenty-
four hour period, a dispatcher shall be on duty when
there are movements of track equipment underground,
including time when there is no production of coal. Such
traffic shall move only at the direction of the dispatcher.
(3) The dispatcher's only duty shall be to direct traffic. Where a dispatcher is employed, no person shall move a locomotive, personnel carrier or self-propelled equipment on or onto haulageways without instructions from the dispatcher.

(4) Any dispatcher's station provided after the effective date of this article shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stopblocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes, and surface inclines. Positive-acting stopblocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator.

(y) Mining equipment shall not be parked within fifteen feet of a check curtain or fly curtain.

§22-2-38. Transportation of men by cars; self-propelled equipment; belts.

(a) Man trips shall be pulled, unless self-propelled, at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour. Each man trip shall be under the charge of a certified person or other competent person designated by a mine foreman or assistant mine foreman. It shall be operated independently of any loaded trip of coal or other heavy material, but may transport tools, small machine parts and supplies. When mine cars are used for man trips, a locomotive shall be used on each end of the trip.

(b) Cars on the man trip shall not be overloaded, and
sufficient cars in good mechanical condition shall be provided. Sufficient space shall be afforded so that no miner shall have to be transported in a hazardous position.

(c) No person shall ride under the trolley wire unless the man cars used are suitably covered and insulated. No person shall ride on loaded timber cars, loaded supply trucks, empty timber cars or empty supply trucks which are not equipped with side guards, on top of locomotives, on chain conveyors, inside shuttle cars, on the tops of machinery or equipment, or on the sides of machinery or equipment, except for operators of such machinery or equipment.

(d) Men shall not load or unload before the cars in which they are to ride, or are riding, come to a full stop. Men shall proceed in an orderly manner to and from man trips.

(e) When belts are used for transporting men, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Visible reflectors shall be placed where projected equipment, cap pieces, overhead cables, wiring or other pieces cross the belt line. Where the height of the coal seam permits, the clearance shall not be less than twenty-four inches.

(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while men are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and men shall ride not less than six feet apart.

(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where men are required to cross over belts, adequate and safe facilities shall be provided.
(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport men, and such controls shall be readily accessible, and maintained so that the belt can be stopped or started at any location.

(i) Belt conveyors used for man trips shall be stopped while men are loading or unloading.

(j) There shall be at least thirty-six inches of side clearance where men board or leave such belt conveyors.

(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.

(l) Telephone or other suitable communications shall be provided at points where men are regularly loaded on or unloaded from belt conveyors.

(m) After supplies have been transported on man trip cars, such cars shall be examined for unsafe conditions prior to the transportation of men.

(n) While trackmen are working on haulageways, the dispatcher, or if there is no dispatcher, such other person responsible for communications with haulage crews shall give notice to haulage crews to maintain traffic under a slow and safe operating speed at the point of construction or repair.


1 Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

2 (1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be
kept locked at all times, unless authorized persons are present.

(2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

(3) Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.

(4) Transformers shall be provided with adequate overload protection.

(5) “Danger—High Voltage” signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

(6) Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(7) Capacitors used for power factor connection shall be noninflammable liquid filled. Suitable drain-off resistors or other means to protect workman against electric shock following removal of power shall be provided.

(8) All unattended underground loading points where electric driven hydraulic systems are used shall utilize a fireproof oil or emulsion.

(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director of the department of mines.

(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.
(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horse-power electric face equipment which are taken into or used in the last open crosscut of any coal mine shall be permissible.

(13) All electric face equipment which is taken into or used in the last open crosscut of any coal mine shall be permissible.

(14) In mines operated in coal seams which are located at elevations above the water table, the phrase "coal seams above the water table" means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.

(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used in the last open crosscut of any mine.

(16) Except where permissible power connection units are used, all power-connection points out by the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman's gloves.

(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work,
except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by persons authorized by the operator or his agent.

(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director of the department of mines and to the miners in such mine.

(21) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating material.

(22) All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables pass through metal frames, the holes shall be substantially bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

(25) Power wires and cables, including but not limited to phone communication and control wires, except trolley
120 wires, trolley feeder wires and bare signal wires, shall
121 be insulated adequately and fully protected. The pro-
122 visions of this subdivision shall not become effective until
123 the first day of January, one thousand nine hundred
124 seventy-eight.

125 (26) Automatic circuit-breaking devices or fuses of
126 the correct type and capacity shall be installed so as to
127 protect all electric equipment and circuits against short
128 circuit and overloads. Three-phase motors on all electric
129 equipment shall be provided with overload protection
130 that will deenergize all three phases in the event that
131 any phase is overloaded.

132 (27) Incandescent lamps installed along haulageways
133 and at other locations shall not contact combustible
134 material, and if powered from trolley or direct current
135 feeder circuits, need not be provided with separate
136 short circuits or overload protection, if the lamp is not
137 more than eight feet in distance from such circuits.

138 (28) In all main power circuits, disconnecting
139 switches shall be installed underground within five hun-
140 dred feet of the bottoms of shafts and boreholes through
141 which main power circuits enter the underground area
142 of the mine and within five hundred feet of all other
143 places where main power circuits enter the underground
144 area of the mine.

145 (29) All electric equipment shall be provided with
146 switches or other controls that are safely designed, con-
147 structed and installed.

148 (30) Each underground, exposed power conductor that
149 leads underground shall be equipped with suitable light-
150 ning arrestors of approved type within one hundred
151 feet of the point where the circuit enters the mine.
152 Lightning arrestors shall be connected to a low-resistance
153 grounding medium on the surface which shall be sepa-
154 rated from neutral ground by a distance of not less than
155 twenty-five feet.

156 (31) Except for areas of a coal mine inby the last
157 open crosscut, incandescent lamps may be used to illumi-
nate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

(32) An authorized representative may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used in by the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the director of the department of mines of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four-hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the
machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term “splice” means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made, they shall be:

(A) Mechanically strong with adequate electrical conductivity and flexibility,

(B) Effectively insulated and sealed so as to exclude moisture, and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes and to electrical equipment shall not be made or broken under load.

(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director of the department of mines.

(43) Except where waived by the director, metallic frames, casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and on or before the first day of January, one thousand
nine hundred seventy-eight, shall have a ground monitor-
ing system.

(44) In instance where single-phase 110-220 volt cir-
cuits are used to feed electrical equipment, the only
method of grounding that will be approved is the con-
nection of all metallic frames, casings and other enclo-
sures of such equipment to a separate grounding conduc-
tor which establishes a continuous connection to a
grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine
tract or other grounded power conductor will be approved
if separate clamps, suitable for such purpose, are used
and installed to provide a solid connection.

(46) The frames of all offtrack direct-current machines
and the enclosures of related detached components shall
be effectively grounded or otherwise maintained at no
less safe voltages.

(47) Installation of silicon diodes shall be restricted
to electric equipment receiving power from a direct-
current system with one polarity grounded. Where such
diodes are used on circuits having a nominal voltage
rating of two hundred fifty, they must have a forward
current rating of four hundred amperes or more, and
have a peak inverse voltage rating of four hundred or
more. Where such diodes are used on circuits having
nominal voltage rating of five hundred fifty, they must
have a forward current rating of two hundred fifty
amperes or more, and have a peak inverse voltage rating
of eight hundred or more.

(48) In addition to the grounding diode, a polarizing
diode must be installed in the machine control circuit
to prevent operation of the machine when the polarity
of a trailing cable is reversed.

(49) When installed on permissible equipment, all
grounding diodes, over-current devices, and polarizing
diodes must be placed in explosion-proof compartments.

(50) High-voltage lines, both on the surface and
underground, shall be deenergized and grounded before
271 work is performed on them, except that repairs may be
272 permitted, in the case of energized surface high-voltage
273 lines, if such repairs are made by a qualified person in
274 accordance with procedures and safeguards, including,
275 but not limited to, a requirement that the operator of
276 such mine provide, test and maintain protective devices
277 in making such repairs.

(51) When two or more persons are working on an
278 energized high-voltage surface line simultaneously, and
279 any one of them is within reach of another, such per-
280 sons shall not be allowed to work on different phases or
281 on equipment with different potentials.

(52) All persons performing work on energized high-
283 voltage surface lines shall wear protective rubber gloves,
284 sleeves, and climber guards if climbers are worn. Pro-
285 tective rubber gloves shall not be worn wrong side
286 out or without protective leather gloves. Protective
287 devices worn by a person assigned to perform repairs
288 on high-voltage surface lines shall be worn continuously
289 from the time he leaves the ground until he returns
290 to the ground, and, if such devices are employed for
291 extended periods, such person shall visually inspect the
292 equipment assigned him for defects before each use, and,
293 in no case, less than twice each day.

(53) Disconnecting or cutout switches on energized
295 high-voltage surface lines shall be operated only with
296 insulated sticks, fuse tongs or pullers which are ade-
297 quately insulated and maintained to protect the operator
298 from the voltage to which he is exposed. When such
299 switches are operated from the ground, the person oper-
300 ating such devices shall wear protective rubber gloves.

(54) Solely for purposes of grounding ungrounded
302 high-voltage power systems, grounded messenger wires
303 used to suspend the cables of such systems may be used
304 as a grounding medium.

(55) When not in use, power circuits underground
306 shall be deenergized on idle days and idle shifts, except
307 that rectifiers and transformers may remain energized.
(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit and overcurrent.

(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.

(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(60) High-voltage circuits extending underground and supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from the circuit, except that the director or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of
the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) High-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity check circuit.

(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded...
at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.

(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers' specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under-voltage, grounded phase, short circuit and overcurrent.

(71) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the director may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers
are examined prior to such movement by such person
and found to be grounded by methods approved by an
authorized representative of the director and otherwise
protected from hazards to the miner. A record shall be
kept of such examinations. High-voltage cables, other
than trailing cables, shall not be moved or handled at any
time while energized, except that when such centers and
transformers are moved while energized as permitted
under this section, energized high-voltage cables attached
to such centers and transformers may be moved only by a
qualified person and the operator of such mine shall
require that such person wear approved and tested in-
sulated wireman's gloves.

(72) Low- and medium-voltage three-phase alternating-
current circuits used underground shall contain either
a direct or derived neutral which shall be grounded
through a suitable resistor at the power center, and a
grounding circuit, originating at the grounded side of
the grounding resistor, shall extend along with the power
conductors and serve as a grounding conductor for the
frames of all the electrical equipment supplied power
from the circuit, except that the director or his autho-
rized representative may permit underground low- and
medium-voltage circuits to be used underground to feed
such stationary electrical equipment if such circuits are
either steel armored or installed in grounded rigid steel
conduit throughout their entire length. The grounding
resistor, where required, shall be of the proper ohmic
value to limit the ground fault current to twenty-five
amperes. The grounding resistor shall be rated for
maximum fault current continuously and insulated from
ground for a voltage equal to the phase-to-phase voltage
of the system.

(73) Low- and medium-voltage resistance grounded
systems serving portable or mobile equipment shall in-
clude a fail-safe ground check circuit to monitor con-
tinuously the grounding circuit to assure continuity
which ground check circuit shall cause the circuit breaker
to open when either the ground or pilot check wire is
broken, or other not less effective device approved by the director or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the director on a mine-to-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may be used if the insulation is rated two thousand volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within fifteen feet of the last open crosscut and shall be kept at least one hundred fifty feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross
other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:

(A) At all points where men are required to work or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

Temporary guards shall be provided where trackmen and other persons work in proximity to trolley wires and trolley feeder wires.

Adequate precaution shall be taken to ensure that equipment being moved along haulageways will not come in contact with trolley wires or trolley feeder wires.

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Installation of trolley wire hangers shall be provided within three feet of each splice in a trolley wire.

§22-2-42. Telephone service or communication facilities.

Telephone service or equivalent two-way communication facilities shall be provided in all mines at least one of which shall be in service at all times as follows:

(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when men are underground can hear the facility and respond immediately in the event of an
emergency. “Two-way communication facility” shall mean a system maintained to allow voice contact to come in and out of the working section at all times.

(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet out by the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.

(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.

(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off: Provided, That where trolley phones and telephones are both used, an alternate source of power for the trolley phone system is not required.

(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.

(5) Where required by the director, trucks used for haulage of coal, men or supplies by an operator shall be equipped with two-way communication instruments.

(c) On or after the first day of January, one thousand nine hundred seventy-eight, unless the director for good cause grants a waiver, all such telephones or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so that in the event of an emergency, emergency medical attendants or other personnel can communicate from within the mine directly to health care facilities.
(d) Telephone lines and cables shall be carried on insulators installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately. Lightning arrestors shall be provided at the points where telephone circuits enter the mine.

§22-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.

(d) No person shall stand along the side of the boom, or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.

(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track mounted mobile equipment shall be equipped with workable sanding devices.

(f) On and after the first day of January, one thousand nine hundred seventy-eight, all battery powered equipment shall be equipped with an under-voltage indicator which will indicate when the voltage is less than three fourths of its rated capacity, at which time such equipment
shall be withdrawn from use except for the purpose of returning the vehicle to the recharging station.

§22-2-53a. Railroad cars; dumping areas.

Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. Where required by rule or regulation, safety belts shall be worn and properly attached by all car droppers handling railroad cars. All dumping ramps shall be of a sufficient width to ensure safe operation of vehicles used thereon.

§22-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.

(a) No operator or mine foreman of any coal mine shall employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein unless they are provided with two openings or outlets to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft; if the mine be worked by shaft and slope, such openings shall be separated by one hundred feet of natural strata; and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to the effective date of this article.

(b) At least two separate and distinct travelable passageways designated as escapeways shall be maintained to ensure passage at all times to any person, including disabled persons. The escapeway openings to the surface shall be separated in such manner as shall be prescribed by the director. If at least two escapeways are not available for any reason, all miners in the affected area other than those requisite to remedy the situation shall be withdrawn from the affected area until such time as the escapeway is made passable. Where the height of the coal bed is more than five feet, the escapeways shall be maintained at a height of at least five feet excluding necessary roof support, and the travelway in such escape-
way shall be maintained at a width of at least six feet, excluding necessary roof support and in those situations where the height of the coal bed is less than five feet the escapeway should be maintained to the height of the coal bed excluding any necessary roof support, and the travelway in such escapeway shall be maintained at a width of at least six feet. At least one escapeway ventilated with intake air, maintained to the last open crosscut, shall be provided from each working section continuously to the nearest available opening on the surface, and shall be maintained in safe condition and properly marked. Mine openings shall be adequately protected to prevent the entrance into the underground area of the mine of floodwater. Escape facilities approved by the director of the department of mines, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in event of an emergency. Return airways entries designated as escapeways shall be provided with permissible two-way communication systems to the surface, and such systems shall be located at points not to exceed every four thousand feet. On or after the first day of April, one thousand nine hundred seventy-eight, each operator shall provide lifeline cords, with reflective material at twenty-five foot intervals, from the last open crosscut to the surface along a designated escapeway ventilated by return air: Provided, That in case of a shaft mine such lifeline cords shall extend from the last open crosscut to the bottom of the designated escape shaft. Such lifeline cord shall be of durable construction sufficient to allow miners to see and to use effectively to guide themselves out of the mine in the event of an emergency.

(c) Escapeways shall be inspected and traveled at least once each week by a certified mine examiner who shall place his initials and the date in a conspicuous place or places and who shall file a written report thereon which shall be kept on the surface.

(d) When new coal mines are opened, not more than twenty men shall be allowed at any one time in any
mine until a connection has been made between the two
mine openings, and such connections shall be made as
soon as possible.

(e) When only one opening is available because of
final mining of pillars, not more than twenty miners shall
be allowed in such mine at any one time, and the dis-
tance between the mine opening and working face shall
not exceed five hundred feet.

(f) First aid materials and such other equipment as
the director may require shall be maintained within five
hundred feet of each area in which miners are regularly
working to which they may have access in case of an
emergency and for protection against hazards.

(g) Each working area of the mine not serviced by
track mounted or rubber tired vehicles which uses con-
voyor belts for removal of coal shall be equipped with a
special capsule in which an injured person can be placed
and transported on the belt to the surface or to other
transportation facilities. The director shall within nine
months of the effective date of this section promulgate
standards and guidelines as to what such "special capsule"
as used in this subsection shall include. Each section of
the mine using or serviced by track mounted or rubber
tired equipment shall have readily available a vehicle
which can be used to promptly remove a person in case of
injury.

§22-2-70a. Right of miner to refuse to operate unsafe equip-
ment.

No miner shall be required to operate unsafe equip-
ment. On or before the first day of January, one thousand
nine hundred seventy-eight, the board of coal mine health
and safety shall by rule or regulation establish a procedure
for resolving disputes arising out of the refusal by a
miner to operate such alleged unsafe equipment. No
action shall be taken against a miner by an operator
unless such miner is found to have acted in bad faith
and without good cause by the director or his authorized
representative.

§22-2-70b. Long wall and short wall mining.

(a) The Legislature finds that new methods of extract-
ing coal known as long wall or short wall mining is being
used in this state. The board of coal mine health and
safety shall investigate or cause to be investigated the
technology, procedures and techniques used in such
mining methods and shall promulgate by the first day
of January, one thousand nine hundred seventy-eight, and
continuously update the same, rules and regulations
governing long wall and short wall mining, which rules
and regulations shall have as their paramount objective,
the health and safety of the persons involved in such
operations, and which said regulations shall include, but
not be limited to, the certification of personnel involved in
such operation.

(b) The director may modify the application of any
provision of this section to a mine if the director deter-
mines that an alternative method of achieving the result
of such provision exists which will at all times guarantee
no less than the same measure of protection afforded the
miners of such mine by such provision, or that the ap-
plication of such provision to such mine will result in
a diminution of the health of, or safety to, the miners in
such mine. The director shall give notice to the operator
and the representative of miners in the affected mine, as
appropriate, and shall cause such investigation to be
made as he deems appropriate. Such investigation shall
provide an opportunity for a hearing, at the request of
such operator or representative or other interested party,
to enable the operator and the representative of miners
in such mine or other interested party to present informa-
tion relating to the modification of such provision. The
director shall issue a decision incorporating his findings
of fact therein, and send a copy thereof to the operator
and the representative of the miners, as appropriate. Any
such hearing shall be of record.

§22-2-70c. Shafts, slopes and construction of surface facilities;
legislative findings; duties of director to promul-
gate rules and regulations.

The board of coal mine health and safety shall investi-
gate or cause to be investigated the technology, procedures
and techniques used in the construction of shafts, slopes
and surface facilities, the safety hazards, attendant there-with, and shall promulgate by the first day of January, one thousand nine hundred seventy-eight, and continuous-ly update the same, rules and regulations governing the construction of shafts, slopes and surface facilities, which rules and regulations shall have as their paramount con-cern, the health and safety of the persons involved in such operations, and which said regulations shall include, but not be limited to, the certification of all supervisors, the certification and training of hoist operators and shaft workers, the certification of blasters, and approval of plans. The provisions of such rules and regulations may be enforced against operators and construction companies in accord with the provisions of article one of this chapter. For purposes of this chapter, a construction company shall be deemed an operator.

§22-2-70d. Control of respirable dust.

Each operator shall maintain the concentration of respirable dust in the mine atmosphere during each shift to which miners in active workings of such mine are exposed below such level as the board may establish. The board of the department of mines may promulgate rules and regulations governing respirable dust, including, but not limited to, dust standards, sampling procedures, sampling devices, equipment and sample analysis by using the data gathered by the federal bureau of mines.

Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules and regulations of the board or the director of mines may thereafter order such operator to discontinue such operation.

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-1. Declaration of legislative findings and purpose.
§22-2A-3. Board created; membership; method of nomination and appoint-ment; meetings; vacancies; quorum.
§22-2A-4. Board powers and duties.
§22-2A-6. Reports.
§22-2A-1. Declaration of legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) The Legislature concurs with the Congressional declaration made in the "Federal Coal Mine Health and Safety Act of 1969" that "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner";

(2) Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners;

(3) During each session of the Legislature, coal mine health and safety standards are proposed which require knowledge and comprehension of scientific and technical data related to coal mining;

(4) The formulation of appropriate regulations and practices to improve health and safety and provide increased protection of miners can be accomplished more effectively by persons who have experience and competence in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose of this article to:

(1) Create a board of coal mine health and safety;

(2) Require such board to adopt as standard rules and regulations the coal mine health and safety provisions of this chapter;

(3) Compel the board to review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, to revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety; and

(4) Authorize such board to conduct such other activities as it deems necessary to implement the provisions of this chapter.


Unless the context in which a word or phrase appears clearly requires a different meaning, the words and
phrases defined in section one, article one of this chapter shall have, when used in this article, the meaning therein assigned to them. For the purpose of this article "board" means the board of coal mine health and safety created by section three of this article.

§22-2A-3. Board created; membership; method of nomination

(a) There is hereby created a board of coal mine health and safety, which shall consist of seven members who shall be residents of this state, six of whom shall be appointed as hereinafter specified in this section.

(1) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds one million tons annually and one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds three hundred fifty thousand tons annually but is less than one million tons annually. When such members are to be appointed, the governor may request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. For purposes of this subsection, the major trade association representing operators in this state shall be deemed to be that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production is less than three hundred fifty thousand tons annually which tonnage shall include tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners.
(3) Three members who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) All appointments made by the governor under this section shall be with the advice and consent of the Senate.

(b) The seventh member of the board shall be the director of the department of mines who shall serve as chairman of the board. The director shall furnish to the board such secretarial, clerical and other services as are deemed necessary to the conduct of the business of the board.

(c) The six members of the board to be appointed by the governor shall be appointed by him within ninety days of the effective date of this article. As soon as such members of the board are appointed, the director of the department of mines shall call an organizational meeting of the board. At such meeting, the group of members appointed to represent the viewpoint of operators and the group of members appointed to represent the viewpoint of working miners shall draw lots by group to determine the length of the term the members of each group shall serve. One member from each group shall serve for three years; one member from each group shall serve for two years; and one member from each group shall serve for one year. Thereafter, members shall be nominated and appointed in the manner provided in this section and
shall serve for a term of three years. The board shall meet at the call of the director, or upon the request of any three members of the board: Provided, That no meeting of the board for any purpose other than an emergency shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most practical means of communication available.

(d) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(e) A quorum of the board shall be five members which shall include the director, at least two members representing the viewpoint of operators and at least two members representing the viewpoint of working miners, and the board may act officially by a majority of those members who are present.

§22-2A-4. Board powers and duties.

(a) At the organizational meeting of the board required by subsection (c), section three of this article, the board shall adopt as standard rules and regulations the "coal mine health and safety provisions of this chapter". Such standard rules and regulations and any other rules and regulations shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code.

(b) The board shall review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety.
(c) The board shall develop, promulgate and revise, as may be appropriate, rules and regulations as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code.

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules and regulations may expand protections afforded by this chapter notwithstanding specific language herein, and such rules and regulations may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules or regulations promulgated by the board of mines shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator shall have the power to petition the circuit court of Kanawha county for a determination as to whether any rule or regulation promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law.

(4) The director shall cause proposed rules and regulations and a notice thereof to be posted and in the same manner as notices, orders and decisions are required to be posted in section seventeen of this article. The director shall deliver a copy of such proposed rules and regulations and accompanying notice to each operator affected. A copy of such proposed rules and regulations shall be provided to any individual by the director upon request. The notice of proposed rules and regulations shall contain a summary in plain language explaining the effect of the proposed rules and regulations.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules and regulations to submit written data or comments. The board may, upon the expiration of such period and after
consideration of all relevant matters presented, promul-
gate such rules and regulations with such modifications
as it may deem appropriate.

(6) On or before the last day of any period fixed for
the submission of written data or comments under sub-
division (5) of this section, any interested person may
file with the board written objections to a proposed
rule or regulation, stating the grounds therefor and re-
questing a public hearing on such objections. As soon as
practicable after the period for filing such objections has
expired, the board shall release a notice specifying the
proposed rules or regulations to which objections have
been filed and a hearing requested.

(7) Promptly after any such notice is released by the
board under subdivision (6) of this section, the board
shall issue notice of, and hold, a public hearing for the
purpose of receiving relevant evidence. Within sixty days
after completion of the hearings, the board shall make
findings of fact which shall be public, and may promulgate
such rules and regulations with such modifications as it
deems appropriate. In the event the board determines
that a proposed rule or regulation should not be promul-
gated or should be modified, it shall within a reasonable
time publish the reasons for its determination.

(8) All rules and regulations promulgated by the board
shall be published in the state register and shall continue
in effect until modified or superseded in accordance with
the provisions of this chapter.

(d) To effectuate the purpose of this article, the board
may, as it deems necessary, conduct research and studies,
employ experts and consultants and use the services,
facilities and personnel of any agency of this state.


1 The standard rules and regulations and any rules and
regulations promulgated by the board shall have the same
force and effect of law as if enacted by the Legislature
as a part of this chapter and any violation of any such
rule and regulation shall be deemed to be a violation of
§22-2A-6. Reports.

Prior to each regular session of the Legislature, the board shall submit to the Legislature an annual report upon the subject matter of this article, the progress concerning the achievement of its purpose and any other relevant information, including any recommendations it deems appropriate.

ARTICLE 2C. EMERGENCY MEDICAL PERSONNEL.

§22-2C-1. Emergency personnel in coal mines.

Emergency medical personnel shall be employed in every mine in the state. On or before the first day of July, one thousand nine hundred seventy-eight, at least one emergency medical attendant as defined in section two, article four-c, chapter sixteen of this code, paramedic as defined in section two, article three-b, chapter thirty of this code, or physician assistant as defined in section one, article three-a, chapter thirty of this code, shall be employed at a mine for every seventy employees or any part thereof who are engaged at one time, in the extraction, production or preparation of coal: Provided, That the provision of this section shall not apply to mines employing no more than ten employees.

Said emergency medical attendants shall be employed at their regular duties at a central location convenient for quick response to emergencies, and further shall have available to them at all times such equipment as shall be prescribed by the director, in consultation with the director of the department of health.

§22-2C-2. First-aid training of coal mine employees.

Each coal mine operator shall provide every new employee within six months of the date of his employment with the opportunity for first-aid training as prescribed
by the director unless such employee has previously re-
ceived such training. Each coal mine employee shall be
required to take refresher first-aid training of not less
than five hours within each twenty-four months of em-
ployment. The employee shall be paid regular wages,
or overtime pay if applicable, for all periods of first-aid
training.

ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SUR-
FACE COAL MINERS.

§22-6-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be
known as an apprentice. Any miner holding a certificate
of competency and qualification may have one person
working with him, and under his supervision and direc-
tion, as an apprentice, for the purpose of learning and
being instructed in the duties and calling of mining. Any
mine foreman—fire boss or assistant mine foreman or fire
boss may have three persons working with him under
his supervision and direction, as apprentices, for the pur-
pose of learning and being instructed in the duties and
calling of mining: Provided, That a mine foreman, as-
sistant mine foreman or fire boss supervising apprentices
in an area where no coal is being produced or which is
outby the working section may have as many as five
apprentices under his supervision and direction, as ap-
prentices, for the purpose of learning and being in-
structed in the duties and calling of mining or where the
operator is using a production section under program
for training of apprentice miners, approved by the board
of miner training, education and certification.

Every apprentice working at a surface mine shall be
at all times under the supervision and control of at least
one person who holds a certificate of competency and
qualification.

In all cases, it shall be the duty of every mine opera-
tor who employs apprentices to ensure that such per-
sons are effectively supervised and to instruct such
persons in safe mining practices. Each apprentice shall
29 wear a red hat which identifies him as such while
30 employed at or near a mine. No person shall be em-
31 ployed as an apprentice for a period in excess of eight
32 months, except that in the event of illness or injury,
33 time extensions shall be permitted as established by
34 the director of the department of mines.

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.

§22-6A-5. Board powers and duties.
1 (a) The board shall establish criteria and standards
2 for a program of education, training and examination to
3 be required of all prospective miners and miners prior to
4 their certification in any of the various miner specialties
5 requiring certification, under this article or any other
6 provision of this code. Such specialties include, but
7 are not limited to, underground miner, surface miner,
8 apprentice, underground mine foreman—fire boss, assistant
9 underground mine foreman—fire boss, shotfirer, mine
10 electrician and belt examiner. Notwithstanding the
11 provisions of this section the director may by rule or
12 regulation further subdivide the classification for certifi-
13 cation.

14 (b) The board may require certification in other miner
15 occupational specialties: Provided, That no new specialty
16 may be created by the board unless certification in a new
17 specialty is made desirable by action of the federal gov-
18 ernment requiring certification in a specialty not enu-
19 merated in this code.

20 (c) The board may establish criteria and standards for
21 a program of pre-employment education and training to
22 be required of miners working on the surface at under-
23 ground mines who are not certified under the provisions
24 of this article or any other provision of this code.

25 (d) The board shall set minimum standards for a
26 program of continuing education and training of certified
27 persons and other miners on an annual basis. Prior to is-
28 suing said standards, the board shall conduct public
29 hearings at which the parties that may be affected by its
30 actions may be heard. Such education and training shall
be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided for in this article or any other provision of this code.

(f) The board may also, from time to time, conduct such hearings and other oversight activities as may be required to ensure full implementation of programs established by it.

(g) Nothing in this article shall be deemed to empower the board to revoke or suspend any certificate issued by the director or the department of mines.

(h) The board may, upon its own motion or whenever requested to do so by the director, deem two certificates issued by this state to be of equal value or deem training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the director, or by the provisions of this code.

CHAPTER 122
(Com. Sub. for S. B. 113—By Mr. Rogers)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eleven-a; and to amend and reenact section five, article three of said chapter, all relating to the eligibility for appointment as surface mine inspector; qualifications; salary and expenses of surface mine inspectors and the surface mine inspector supervisor; removal; and salary of open-pit inspectors.
Be it enacted by the Legislature of West Virginia:

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

Article
1. Administration; Enforcement.
3. Open-pit Mines, Cement Manufacturing Plants and Underground Lime-
stone and Sandstone Mines.

ARTICLE 1. ADMINISTRATION; ENFORCEMENT.

§22-1-11a. Eligibility for appointment as surface mine inspec-
tor; qualifications; salary and expenses; removal.

1. In order to qualify for an appointment as a surface mine
inspector, an eligible applicant shall have had at least
five years' practical experience in surface mines, at least
one year of which, immediately preceding his original
appointment, shall have been in surface mines in this
state, and submit to a written and oral examination given
by the mine inspectors' examining board. The examination
shall relate to the duties to be performed by a surface
mine inspector and may, subject to the approval of the
mine inspectors' examining board, be prepared by the
director of the West Virginia department of mines.

2. If the board finds after investigation and examination
that the applicant (1) is eligible for appointment, and (2)
has passed all oral and written examinations with a grade
of at least eighty percent, the board shall add such appli-
cant's name and grade to a register of qualified eligible
candidates and certify its action to the director of the
department of mines. The director may then appoint
one of the candidates from the three having the highest
grades.

3. All such appointees shall be citizens of West Virginia,
in good health, not less than twenty-five years of age, of
good character and reputation, and temperate in habits.

4. No person shall be eligible for permanent appointment as
a surface mine inspector until he has served in a proba-
tionary status for a period of one year to the satisfaction of the director of the department of mines.

Surface mine inspectors serving as such on the effective date of this section may continue to serve for a probationary period not exceeding one year and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.

However, surface mine inspectors employed on the effective date of this section and who have served to the satisfaction of the director of the department of mines for a period of two years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the inspector-at-large of the department of mines of their respective division.

The salary of the surface mine inspector supervisor shall be not less than seventeen thousand dollars per year. Salaries of surface mine inspectors shall be not less than twelve thousand nine hundred dollars per year during the first year of probationary services. After serving for a probationary period of one year, the salary of a surface mine inspector shall be not less than fifteen thousand dollars per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than fifteen cents per mile.

A surface mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

ARTICLE 3. OPEN-PIT MINES, CEMENT MANUFACTURING PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES.

§22-3-5. Inspectors.

1. The director of the department of mines shall divide the state into not more than two mining districts and
assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, having a minimum of five years of practical experience in such mining operations and at the time of his appointment is not more than fifty-five years of age. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the department of mines. No candidate's name shall remain in the register for more than three years without requalifying.

Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (d), section eight, article one of this chapter and shall be paid not less than fifteen thousand dollars per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than fifteen cents for each mile actually traveled in the discharge of their duties in a privately owned vehicle. Such inspector shall also be reimbursed for any expense incurred in maintaining an office in his or her home, which office is used in the discharge of official duties: Provided, That such reimbursement shall not exceed two hundred forty dollars per annum.

CHAPTER 123
(Com. Sub. for H. B. 1745—By Mr. Sattes)

[Passed April 8, 1977; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact sections one, one-f, one-g, one-h, one-j, one-k, two. two-a, two-b, three, three-a, four, four-a,
nine, ten, twelve, thirteen and eighteen, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto two new sections, designated sections eight-b and twenty, redefining certain terms; right to request inspection for violations; findings and orders of inspectors; rights of persons to seek review of findings; judicial review of final orders of deputy director; information required on permit applications; drilling notice to coal operators and others; bond requirements; notice to coal operators and others of intent to fracture; notice to coal operators and others regarding introduction of liquids or wastes into wells; objections to proposed drilling or fracturing; objections to proposed drilling or converting for introducing liquids or wastes into wells; appeal from order of issuance or refusal of permit to drill or fracture; appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting; filing of well log with department of mines; notice to coal operators and others of intent to plug or abandon wells; methods of plugging wells; appeals from final decision of department of mines; rules and regulations by and hearing before department of mines; injunctive relief; declaration of oil and gas notice by owners and lessees of coal seams.

Be it enacted by the Legislature of West Virginia:

That sections one, one-f, one-g, one-h, one-j, one-k, two, two-a, two-b, three, three-a, four, four-a, nine, ten, twelve, thirteen and eighteen, 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 two new sections, designated sections eight-b and twenty, all to read as follows:

ARTICLE 4. OIL AND GAS WELLS.

§22-4-1. Definitions.

§22-4-1f. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.

§22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

§22-4-1h. Review of findings and orders by deputy director for oil and gas; special inspection; annulment, revision, etc., of order; notice.
§22-4-1j. Judicial review of final orders of deputy director for oil and gas.
§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, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.
§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.
§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notices and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.
§22-4-3. Objections to proposed drilling or fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.
§22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.
§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.
§22-4-4a. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.
§22-4-8b. Well log to be filed; contents; authority to promulgate regulations.
§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.
§22-4-10. Methods of plugging well.
§22-4-12. Supervision by department of mines over drilling, mining and reclamation operations; complaints; hearings; appeals.
§22-4-13. Rules and regulations; hearings before department of mines; appeals.
§22-4-18. Injunctive relief.
§22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.

§22-4-1. Definitions.

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

3 (a) "Deputy director" means the deputy director for oil and gas;

5 (b) "Well" means any shaft or hole sunk, drilled, bored or dug unto the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does
not include any shaft or hole sunk, drilled, bored or dug
into the earth for the sole purpose of core drilling or
pumping or extracting therefrom potable, fresh or usable
water for household, domestic, industrial, agricultural or
public use;

(c) "Facility" means any facility utilized in the oil and gas
industry in this state and specifically named or referred to in
this article or in articles five or seven of this chapter, other
than a well or well site;

(d) "Owner" when used with reference to any such well,
shall include any person or persons, firm, partnership, part-
nership association or corporation that owns, manages, oper-
ates, controls or possesses such well as principals, or as lessee
or contractor, employee or agent of such principal;

(e) "Well operator" or "operator" means any person or
persons, firm, partnership, partnership association or corpora-
tion that proposes to or does locate, drill, operate or abandon
any well as herein defined;

(f) "Chief" means chief of the division of water resources
of the department of natural resources;

(g) "Coal operator" means any person or persons, firm,
partnership, partnership association or corporation that pro-
poses to or does operate a coal mine;

(h) "Department" or "department of mines" means the
duly constituted authorities under the laws of this state having
jurisdiction over coal mining operations;

(i) "Plat" means a map, drawing or print showing the
location of a well or wells as herein defined;

(j) "Casing" means a string or strings of pipe commonly
placed in wells drilled for natural gas or petroleum or both;

(k) "Oil" means natural crude oil or petroleum and other
hydrocarbons, regardless of gravity, which are produced at
the well in liquid form by ordinary production methods and
which are not the result of condensation of gas after it leaves
the underground reservoirs;
(1) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (k) of this section;

(m) "Cement" means hydraulic cement properly mixed with water only;

(n) "Coal seam" or "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(o) "Stimulate" means any action taken by any well operator to increase oil or gas production from any oil or gas well, including fracturing, shooting or acidizing, but excluding cleaning out or bailing operations.

§22-4-lf. Authority and duty of deputy director and inspectors to visit and inspect wells and facilities; inspectors to devote full time to duties.

The deputy director for oil and gas of the department of mines shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the deputy director to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the deputy director for oil and gas, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they
shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

§22-4-1g. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

(a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, he shall also find whether or not an imminent danger to persons engaged in active coal mining exists. If he finds that such imminent danger exists, he shall forthwith make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations until such imminent danger has been abated. If he finds that no such imminent danger exists, he shall determine what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain reference to the provisions of this article which he finds are being violated, and a detailed description of the conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time may be extended by such inspector, or by any other oil and gas inspector duly authorized by the deputy director for oil and gas, from time to time, but on not more than three occasions, upon the making of a special inspection to ascertain whether or not such violation has been totally abated. The deputy director for oil and gas shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) upon expiration of such period of time as originally fixed or as extended, unless the deputy director for oil and gas is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall de-
termine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he deter-
mines that such period of time should be extended, he shall
determine what a reasonable extension would be. If he deter-
mines that such violation has not been totally abated, and if
such period of time as originally fixed, or as so fixed and ex-
tended, has then expired, and if he also determines that such
period of time should not be further extended, he shall there-
upon make an order requiring the operator of such well or well
site or other oil or gas facility to cease further operations of
such well, well site or facility, as the case may be. Such find-
ings and order shall contain reference to the specific provisions
of this article which are being violated.

(c) Notice of each finding and order made under this sec-
tion shall promptly be given to the operator of the well or
well site or other oil or gas facility to which it pertains by the
person making such finding or order.

(d) No order shall be issued under the authority of this
section which is not expressly authorized herein.

§22-4-1h. Review of findings and orders by deputy director for
oil and gas; special inspection; annulment, revision,
etc., of order; notice.

Any well operator, complaining coal operator, owner or
lessee, if any, aggrieved by findings or an order made by an
oil and gas inspector pursuant to section one-g of this article,
may within fifteen days apply to the deputy director for oil
and gas for annulment or revision of such order. Upon receipt
of such application the deputy director for oil and gas shall
make a special inspection of the well, well site or other oil and
gas facility affected by such order, or cause two duly authorized
oil and gas inspectors, other than the oil and gas inspector who
made such order or the supervising inspector and one duly
authorized oil and gas inspector other than the oil and gas in-
spector who made such order, to make such inspection of such
well, or well site or other oil or gas facility and to report there-
on to them. Upon making such special inspection himself, or
upon receiving the report of such special inspection, as the
case may be, the deputy director for oil and gas shall make
an order which shall include his findings and shall annul, re-

The deputy director for oil and gas shall cause notice of
each finding and order made under this section to be given
promptly to the operator of the well, well site or other oil
or gas facility to which such findings and order pertain, and

the complainant under section one-f, if any.

At any time while an order made pursuant to section one-g
of this article is in effect, the operator of the well, well site or
other oil or gas facility affected by such order may apply to
the deputy director for oil and gas for annulment or revision
of such order. The deputy director for oil and gas shall there-
upon proceed to act upon such application in the manner pro-
vided in this section.

In view of the urgent need for prompt decision of matters
submitted to the deputy director for oil and gas under this
article, all actions which he, or oil and gas inspectors, or the
supervising inspector, is required to take under this article,
shall be taken as rapidly as practicable, consistent with ade-
quately consideration of the issues involved.

§22-4-1j. Judicial review of final orders of deputy director for
oil and gas.

(a) Any well operator, complaining coal operator, owner
or lessee, if any, adversely affected by a final order issued by
the deputy director under section one-h of this article shall be
entitled to judicial review thereof. All of the pertinent pro-
visions 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 extenso in this section.

(b) The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals in accordance with the provisions of section one,
article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the deputy director 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 com-
penation. The deputy director, with written approval of the
attorney general, may employ special counsel to represent the
deputy director at any such appeal proceedings.

§22-4-lk. Permits required; application for permit; information;
responsible agent; drilling permit number; when per-
mits not to be issued; penalty.

It shall be unlawful for any well to be drilled, redrilled,
depthened, fractured, stimulated, plugged, pressured, con-
verted, 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:

(a) The name and address of the well operator;
(b) The name and address of the owner of the surface lands
upon which the well is or may be located;
(c) The name and address of every coal operator operating
coal seams under the tract of land on which the well is or
may be located, or the coal seam owner of record and lessee
of record required to be given notice by section two, if any, if
said owner or lessee is not yet operating said coal seams;
(d) The name and address of the agent of the well operator,
if any such agent is required to be designated under the pro-
visions of this section;
(e) The approximate depth to which the well is to be
drilled;
(f) 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;
(g) The proposed method of reclamation which shall
comply with the requirements of section twelve-b of this
article; and
(h) Any other information which the deputy director by
rule or regulation may require.

If the well operator named in such application is a cor-
poration, 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 com-
munications issued pursuant to this article or article five-a,
chapter twenty, may be served, and upon whom process may
be served. Every well operator required to designate an agent
under this section shall within five days after the termination
of such designation notify the department of such termination
and designate a new agent.

The 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 manner of installation
shall be in accordance with the administrative 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 or 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; prepara-
tion and contents; notice and information furnished to
coal operators, owners or lessees; issuance of permits;
performance bonds or securities in lieu thereof; bond
forfeiture.

Before drilling for oil or gas, or before fracturing or stimu-
lating a well on any tract of land, the well operator shall have
a plat prepared by a licensed land surveyor or registered engi-
neer 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 lo-
cation 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 frac-
tured and shall forward by registered or certified 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 coal
seams, copies of the plat shall be forwarded by registered or
certified mail to each and every coal operator operating said
coal seams beneath said tract of land, who has mapped the
same and filed his maps with the department in accordance
with article two of this chapter, or the coal seam owner of
record and lessee of record, if any, if said owner or lessee has
recorded the declaration provided in section twenty of this arti-
cle, and if said owner or lessee is not yet operating said coal
seams beneath said tract of land. 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 depart-
ment of mines and to each such coal operator, owner and
lessee, if any, at their respective addresses, informing them that
such plat and notice are being mailed to them respectively by
registered or certified mail, pursuant to the requirements of this
article. If no objections are made, or are found by the depart-
ment, to such proposed location or proposed fracturing within
fifteen days from receipt of such plat and notice by the depart-
ment 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 forth-
with issue to the well operator a permit reciting the filing of
such plat, that no objections have been made by the coal opera-
tors, owners and lessees, if any, or found thereto by the depart-
ment, and authorizing the well operator to drill at such location,
or to fracture the well. Unless the department has objections to
such proposed location or proposed fracturing or stimulating,
such permit may be issued prior to the expiration of such fifteen
day period upon the obtaining by the well operator of the con-
sent in writing of the coal operator or operators, owners and
lessees, if any, 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
by registered or certified mail as above to any agent or superin-
tendent 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 ac-
accompanied by a bond of the operator in the sum of two thou-
sand 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, redrilling, 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 guaran-
teed by, or for which the credit of the United States or agency
therefor 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 Dis-
trict of Columbia, unconditionally guaranteed as to the princi-
pal and interest by such other state or territory of the United
States, or the District of Columbia if such other state, terri-
tory, or the District of Columbia has the power to levy taxes
81 for the payment of the principal and interest of such securities,
82 and if at the time of the deposit such other state, territory, or
83 the District of Columbia is not in default in the payment of
84 any part of the principal or interest owing by it upon any part
85 of its funded indebtedness; (3) direct general obligation bonds
86 of any county, district, city, town, village, school district or
87 other political subdivision of this state issued pursuant to law
88 and payable from ad valorem taxes levied on all the taxable
89 property located herein, that the total indebtedness after de-
90 ducting sinking funds and all debts incurred for self-sustaining
91 public works does not exceed five percent of the assessed value
92 of all taxable property therein at the time of the last assessment
93 made before the date of such deposit, and that the issuer has
94 not, within five years prior to the making thereof, been in
95 default for more than ninety days in the payment of any
96 part of the principal or interest on any debt evidenced by its
97 bonds; (4) revenue bonds issued by this state or any agency of
98 this state when such bonds are payable from revenues or earn-
99 ings specifically pledged for the payment of principal and
100 interest, and a lawful sinking fund or reserve fund has been
101 established and is being maintained for the payment of such
102 bonds; (5) revenue bonds issued by a municipality in this
103 state for the acquisition, construction, improvement or exten-
104 sion of a waterworks system, or a sewerage system, or a com-
105 bined waterworks and sewerage system, when such bonds are
106 payable from revenue or earnings specifically pledged for the
107 payment of principal and interest, and a lawful sinking fund or
108 reserve fund has been established and is being maintained for
109 the payment of such bonds; (6) revenue bonds issued by a
110 public service board of a public service district in this state for
111 the acquisition, construction, improvement or extension of any
112 public service properties, or for the reimbursement or payment
113 of the costs and expenses of creating the district, when such
114 bonds are payable from revenue or earnings specifically pledg-
115 ed for the payment of principal and interest, and a lawful
116 sinking fund or reserve fund has been established and is being
117 maintained for the payment of such bonds; (7) revenue bonds
118 issued by a board of trustees of a sanitary district in this state
119 for the corporate purposes of such district, when such bonds
120 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 shall determine whether any such securities satisfy the requirements of this section. If the securities are approved they shall be accepted by the treasurer. If the securities are not approved, they shall be rejected and returned to the operator and no permit shall be issued until a corporate surety bond is filed or cash or proper collateral securities are filed in lieu of such surety. The treasurer shall hold any cash or securities in the name of the state in trust for the purposes for which the deposit was made. The operator shall be entitled to all interest and income earned on the collateral securities filed by such operator so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, 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, in 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.

When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas, or both, its operator may deposit with the deputy director for oil and gas cash from the sale of the oil or gas, or both, until the total deposited is two thousand five hundred dollars. When the sum of the cash deposited is two thousand five hundred dollars, the separate bond for the
161 well shall be released by the department. Upon receipt of
162 such cash, the deputy director for oil and gas shall im-
163 mediately deliver the same to the treasurer of the state of
164 West Virginia. The treasurer shall hold such cash in the
165 name of the state in trust for the purpose for which the
166 bond was furnished and the deposit was made. The operator
167 shall be entitled to all interest and income which may be
168 earned on the cash deposited so long as the operator is in
169 full compliance with all laws, rules and regulations relating
170 to the drilling, redrilling, deepening, casing, plugging, abandon-
171 ment and reclamation of the well for which the cash was de-
172 posited and so long as he has furnished all reports and in-
173 formation as may be required by the department. If the cash
174 realized from the sale of oil or gas, or both, from the well is
175 not sufficient for the operator to deposit with the deputy
176 director for oil and gas the sum of two thousand five hundred
177 dollars within one year of the day the well started producing,
178 the corporate or surety company which issued the bond on the
179 well may notify the operator and the department of its intent
180 to terminate its liability under its bond. The operator then
181 shall have thirty days to furnish a new bond from a corporate
182 bonding or surety company or collateral securities, as provided
183 in the next preceding paragraph of this section, with the
184 department. If a new bond or collateral securities are fur-
185 nished by the operator, the liability of the corporate bonding
186 or surety company under the original bond shall terminate as
187 to any acts and operations of the operator occurring after the
188 effective date of the new bond or the date the collateral securi-
189 ties are accepted by the treasurer of the state of West Virginia.
190 If the operator does not furnish a new bond or collateral securi-
191 ties, as provided in the next preceding paragraph of this
192 section, with the department, he shall immediately plug, fill and
193 reclaim the well in accordance with all of the provisions of
194 law, rules and regulations applicable thereto. In such case,
195 the corporate or surety company which issued the original bond
196 shall be liable for any plugging, filling or reclamation not
197 performed in accordance with such laws, rules and regula-
198 tions.

199 Any such bond shall remain in force until released by the
200 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.

§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the department of mines and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, or the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the department of mines and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by the department to enable the department and the coal operators to locate and identify such well and shall inform them that such
notice is being mailed to them, respectively, by registered
or certified mail, pursuant to the requirements of this article.
(The form for such notice of intention shall be furnished on
request by the department of mines.) If no objections are
made, or are found by the department, to such proposed
fracturing within fifteen days from receipt of such notice by
the department of mines, the same shall be filed and become
a permanent record of such fracturing, subject to inspection
at any time by any interested person, and the department
shall forthwith issue to the well operator a permit reciting the
filing of such notice, that no objections have been made by the
coal operators, or found thereto by the department, and
authorizing the well operator to fracture such well. Unless
the department has objections to such proposed fracturing,
such permit shall be issued prior to the expiration of such
fifteen day period upon the obtaining by the well operator
of the consent in writing of the coal operator or operators,
owners or lessees, if any, to whom notice of intention to
fracture 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 by registered or certified mail as
above to any agent or superintendent in actual charge of
mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste into
wells; preparation and contents; notice and informa-
tion furnished to coal operators, owners or lessees
and chief of water resources; issuance of permits;
performance bonds or security in lieu thereof.

Before drilling a well for the introduction of liquids for
the purposes provided for in section ten-a of this article or for
the introduction of liquids for the disposal of sewage, industrial
waste or other waste or the effluent therefrom on any tract
of land, or before converting an existing well for such purposes,
the well operator shall have a plat prepared by a registered
engineer or licensed land surveyor showing the district and
county in which the tract of land is located, the name and
acreage of the same, the names of the owners of all adjacent
tracts, the proposed or actual location of the well or wells
determined by a survey, the courses and distances of such location from two permanent points of land marked on said tract and the number to be given to the well, and shall forward by registered or certified mail the original and one copy of the plat to the department of mines. In addition, the well operator shall provide the following information on the plat or by way of attachment thereto to the department in the manner and form prescribed by the department's rules and regulations: (a) The location of all wells, abandoned or otherwise located within the area to be affected; (b) where available, the casing records of all such wells; (c) where available, the drilling log of all such wells; (d) the maximum pressure to be introduced; (e) the geological formation into which such liquid or pressure is to be introduced; (f) a general description of the liquids to be introduced; (g) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (h) such other information as the deputy director by rule and regulation may require.

In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlaid with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed his maps with the department in accordance with article two of this chapter, or the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section twenty of this article, and if said owner or lessee is not yet operating said seams beneath said tract of land. 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, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section. The deputy director shall forward a copy of the plat, notice and all other information required by this section to the chief
of the division of water resources of the department of natural resources.

If no objections are made by any such coal operator, owner, lessee or such chief, or are found by the department to such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the department of mines, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the department shall forthwith issue to the well operator a permit reciting the filing of such plat and notice, that no objections have been made by the coal operators, owners and lessees, if any, or found thereto by the department of mines or by the chief, and authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. Such permit shall be issued prior to the expiration of such thirty day period upon the obtaining by the well operator, of the consent in writing of the coal operator, owners and lessees, if any, to whom copies of the plat and notice must have been mailed as herein required and upon obtaining the consent in writing of the chief, and upon presentation of such written consent in writing of the chief, 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 by registered or certified mail as above to any agent or superintendent in actual charge of the mines.

A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section two of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section two of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section ten-a, or introducing of liquids
for the disposal of sewage, industrial waste or other waste or the effluent therefrom including the redrilling, deepening, casing, plugging or abandonment of all such wells.

§22-4-3. Objections to proposed drilling or fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

1. When the proposed drilling or fracturing site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the department of the plat and notice required by section two of this article, or within fifteen days from the receipt by the department of notice required by section two-a of this article, file objections in writing (forms for which will be furnished by the department on request) to such proposed drilling or fracturing with the department of mines, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

2. If any objection or objections are so filed, or are made by the department, the department shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the department, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent
record, and in the case of proposed fracturing, such parties, present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the department, at which time the plat and notice required by section two, or the notice required by section two-a, as the case may be, shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section two, or the notice required by said section two-a, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section two-a, as the case may be.

(a) In the case the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The department shall take into consideration upon its decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or coal mines already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into con-
Consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal;

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling location;

(3) That it will issue a permit for drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the department’s order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order: Except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the new drilling location on the plat on file with the department and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the department and shall be open to inspection by the public.

(b) In the case, the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the department, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this
The department shall take into consideration upon its decision whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the department shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the department shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the department’s order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the department has ruled that it will issue a permit, it shall issue a permit effective ten days after it has mailed such order: Except that for good cause shown, the department may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the well to be fractured on that plat on file with the department and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two of this article, and each notice mailed to it as provided in section two-a of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the department, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the department and shall be open to inspection by the public.

§22-4-3a. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

When a well is proposed to be drilled or converted for the purposes provided for in section two-b of this article, and
is above a seam or seams of coal, then the coal operator
operating said coal seams beneath the tract of land, or the
coal seam owner or lessee, if any, if said owner or lessee is
not yet operating said coal seams, may within fifteen days
from the receipt by the department of the plat and notice
required by section two of this article, file objections in
writing (forms for which will be furnished by the department
on request) to such proposed drilling or conversion.

In any case wherein a well proposed to be drilled or con-
verted for the purposes provided for in section two-b of this
article shall, in the opinion of the chief of the division of
water resources of the department of natural resources, affect
detrimentally the reasonable standards of purity and quality
of the waters of the state, such chief shall, within thirty days
from the receipt of the plats and notices required by section
two-b, file with the department his objections in writing to
such proposed drilling or conversion, setting out therein as
definitely as is reasonably possible the ground or grounds upon
which such objections are based and indicating the conditions,
consistent with the provisions of this article and the rules or
regulations promulgated thereunder, as may be necessary for
the protection of the reasonable standards of the purity and
quality of such waters under which such proposed drilling or
conversion may be completed to overcome such objections,
if any.

If any objection or objections are so filed, or are made by
the department, the department shall notify the well operator
of the character of the objections and by whom made and
fix a time and place, not less than thirty days from the end
of said thirty day period, at which such objections will be
considered, of which time and place the well operator and
all objecting coal operators, the owners or lessees, if any, or
such chief, shall be given at least ten days' written notice
by the department, by registered or certified mail, and
summoned to appear. At the time and place so fixed the
well operator and the objecting coal operators, owners or
lessees, if any, or such of them as are present or represented,
or such chief, shall proceed to consider the objections. In
the case of proposed drilling or converting of a well for the
purposes provided for in section two-b, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the department, and any change in the original location so agreed upon and approved by the department shall be indicated on said plat on file with the department, and the distance and direction of the new location from the original location shall be shown, and, as so altered, the plat shall be filed and become a permanent record. In the case of proposed conversion, such parties present or represented may agree upon conditions under which the conversion is to take place for the protection of life and property or for protection of reasonable standards of purity and quality of the waters of the state. At which time the plat and notice required by section two-b shall be filed and become a permanent record. Whereupon the department shall forthwith issue to the well operator a permit to drill or convert, as the case may be, reciting the filing of the plat and notice required by said section two-b that at a hearing duly held a location as shown on the plat or the conditions under which the conversion is to take place for the protection of life and property and reasonable standards of purity and quality of the waters of the state where agreed upon and approved, and that the well operator is authorized to drill at such location or to convert at the site shown on such plat, as the case may be.

(a) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the department of mines, then the department shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article. The department shall take into consideration upon its decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, traveling, air haulage, drainage or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine,
or coal mine already surveyed and platted, but not yet being
operated;

(2) Whether the proposed drilling can reasonably be done
through an existing or planned pillar of coal, or in close
proximity to an existing well or such pillar of coal, taking
into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into con-
sideration the dangers from creeps, squeezes or other disturb-
ances, due to the extraction of coal;

(4) The extent to which the proposed drilling location
unreasonably interferes with the safe recovery of coal, oil
and gas.

At the close of the hearing or within ten days thereafter the
department shall issue an order stating:

(1) That it refuses to issue a permit;

(2) That it will issue a permit for the proposed drilling
location;

(3) That it will issue a permit for a drilling location
different than that requested by the well operator.

The order shall state with particularity the reasons for
the department’s order and shall be mailed by registered or
certified mail to the parties present or represented at such
hearing. If the department has ruled that it will issue a permit,
it shall issue a permit effective ten days after it has mailed
such order: Except that for good cause shown, the department
may stay the issuance of a permit for a period not to exceed
thirty days.

If a permit is issued, the department shall indicate the new
drilling location on the plat on file with the department and
shall number and keep an index of and docket each plat and
notice mailed to it as provided in section two of this article,
and each notice mailed to it as provided in section two-a of
this article, entering in such docket the name of the well oper-
ator, and the names and addresses of all persons notified, the
dates of hearings and all actions taken by the department,
permits issued or refused, the papers filed and a transcript
of the hearing. This shall constitute a record of the proceed-
ings before the department and shall be open to inspection
by the public.

(b) In the case, the well operator and the objecting coal
operators, owners or lessees, if any, and such chief, or such
as are present or represented at such hearing, are unable
to agree upon the conditions under which the well is to be
converted as to protect life and property, and the reasonable
standards of purity and quality of the waters of the state, or
upon conditions of converting that meet with the approval
of the department, then the department shall proceed to hear
the evidence and testimony in accordance with sections one
and two, article five, chapter twenty-nine-a of this code,
except where such provisions are inconsistent with this article.

The department shall take into consideration upon its
decision:

(1) Whether the well can be converted safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances;

(2) Whether the well can be converted, taking into con-
sideration the reasonable standards of the purity and quality
of the waters of the state.

At the close of the hearing, or within ten days thereafter,
the department shall issue an order stating the conditions
under which the conversion is to take place, providing the
well can be converted safely, taking into consideration the
dangers from creeps, squeezes or other disturbances and the
reasonable standards of purity and quality of the waters of
this state. If such converting cannot be done safely, or if the
reasonable standards of purity and quality of such waters
will be endangered, the department shall issue an order
stating with particularity the reasons for refusing to issue a
permit.

The order shall state with particularity the reasons for the
department’s order and shall be mailed by registered or
certified mail to the parties present or represented at such
hearing. If the department has ruled that it will issue a permit,
it shall issue a permit effective ten days after it has mailed such order: Except that for good cause shown, the depart-
ment may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the department shall indicate the well to be converted on the plat on file with the department and shall number and keep an index of and docket each plat and notice mailed to it as provided in section two-b, of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the department, permits issued or refused, the papers filed and a transcript of the hearings. This shall constitute a record of the proceedings before the department and shall be open to inspection by the public.

§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to the proceedings under section three of this article adversely affected by the issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22-4-4a. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

Any party to the proceedings under section three-a of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the department to grant a drilling permit or fracturing per-
mit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22-4-8b. Well log to be filed; contents; authority to promulgate regulations.

Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the deputy director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations and such other information as the deputy director may require to effectuate the purposes of this article.

The deputy director may promulgate such reasonable rules and regulations in accordance with article three, chapter twenty-nine-a of this code, as it may deem necessary to insure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, That the deputy director shall not require logging by the use of an electrical logging device.

§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 operating coal seams, or the coal seam owner of record or lessee of record, if any, to whom notices are
required to be given by section two of this article, and to the
coal operators to whom notices are required to be given by sec-
tion 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 fix-
ing 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 depart-
ment and such coal operator, owner or lessee, if any, 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 such coal
operator, owner or lessee, if any, or (c) in the event the well
to be plugged and abandoned is one on which drilling or re-
working operations have been continuously progressing pur-
suant 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 plugging 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 oper-
tor 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 infor-
mation 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 busi-
ness in this state as surety thereon, and conditioned as afore-
said. In lieu of corporate surety on a separate or blanket bond,
as the case may be, the operator may elect to deposit with the
deputy director for oil and gas cash or collateral securities as
specified in section two of this article. All of the provisions
of section two dealing with cash or collateral securities in lieu
of corporate surety shall be fully applicable hereto except for
the condition of the bond with respect to which the operator
must be in full compliance in order to be entitled to the interest
and income earned on such securities. The operator shall be
entitled to such interest and income under this section so long
as the operator is in full compliance with all laws, rules and
regulations relating to the casing, plugging, abandonment and
reclamation of wells and for furnishing such reports and infor-
mation 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, con-
verting or drilling for the introduction of liquids, for the dis-
posal 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 pro-
visions 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.
§22-4-10. Methods of plugging well.

Upon the abandonment or cessation of the operation of any well drilled for natural gas or petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the introduction of liquid for the purposes provided for in section ten-a of this article or for the disposal of sewage, industrial waste or other waste or the effluent therefrom the well operator, at the time of such abandonment or cessation, shall fill and plug the well in the following manner:

(a) Where the well does not penetrate workable coal beds, it shall either be filled with mud, clay or other nonporous material from the bottom of the well to a point twenty feet above the top of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud, clay or other nonporous material to a point twenty feet above such stratum; at this point there shall be placed a plug of cement or other suitable material which will completely seal the hole. Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing stratum, the hole shall either be filled, or bridged and filled, in the manner just described; and at such point there shall be placed another plug of cement or other suitable material which will completely seal the hole. In like manner the hole shall be filled and plugged, or bridged, filled and plugged with reference to each of its oil, gas or water-bearing strata. However, whenever such strata are not widely separated and are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final plug shall be anchored approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:
(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material;

(b) Where the well has penetrated one or more workable coal beds, it shall be filled and securely plugged in the manner aforesaid, to a point fifty feet below the lowest workable coal bed. If, in the judgment of the well operator, the coal operator and the department of mines, a permanent outlet to the surface is required, such outlet shall be provided in the following manner: A plug of cement, or other suitable material, shall be placed in the well at a suitable point, not less than forty feet below the lowest workable coal bed. In this plug and passing through the center of it shall be securely fastened an open pipe not less than two inches in diameter, which shall extend to the surface. At or above the surface the pipe shall be provided with a device which will permit the free passage of gas, and prevent obstruction of the same. Following the setting of the cement plug and outlet pipe as aforesaid, the hole shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the hole shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next underlying workable coal bed, if such there be, and the next
succeeding sixty feet of the hole filled with cement, and similarly, in case there are more overlying workable coal beds. If, in the judgment of the well operator, the coal operator and the department of mines, no outlet to the surface is considered necessary, the plugging, filling and cementing shall be as last above described.

Where a coal protection string of casing has been cemented in and circulated to the surface, if a coal outlet pipe is not required in a well which penetrates one or more workable coal beds, then a sixty foot cement plug shall be placed from forty feet below the casing seat. The well shall then be filled to twenty feet of surface with nonporous material, and cement plug with the monument installed in cement from twenty feet to the surface and extending thirty inches above ground level.

Where a coal protection string of casing has been cemented in and circulated to the surface, if a coal outlet pipe is required in a well which penetrates one or more workable coal beds, then a sixty foot cement plug shall be placed from thirty feet to ninety feet below casing seat completely sealing the well. The outlet pipe shall be placed twenty feet below the casing seat centrally located in the casing. A cement basket shall be installed on the outlet pipe and placed ten feet above the casing seat with twenty feet of cement in the annulus between the outlet pipe and the casing. The remaining annulus shall be filled with non-porous material to ten feet of surface. The outlet pipe and monument shall then be cemented from ten feet to the surface with a bleeder pipe which will permit the free passage of gas and prevent obstructions of the same.

The deputy director may from time to time promulgate reasonable rules and regulations in accordance with article three, chapter twenty-nine-a of this code for the plugging of wells for the protection and safety of persons working in or about coal seams beneath the wells.

§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 cas-
ing, or not plugging or filling, or reclaiming any well in ac-
cordance 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 per-
son 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 hear-
ing, 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 re-
claiming the same, except under such conditions as the depart-
ment may impose in order to insure a strict compliance with
the provisions of this article relating to such matters, or re-
straining further mining operations in proximity to any well,
except under such conditions as the department may impose.

Any well operator or coal operator adversely affected by a
final decision or order of the department, may appeal in the
manner set forth in section four of this article.

§22-4-13. Rules and regulations; hearings before department of
mines; appeals.

(a) The department of mines may promulgate such reason-
able rules and regulations as it may deem necessary or desirable
to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon it under the provisions of this article and for securing uniformity of procedure in the administration of the provisions of article three, chapter twenty-nine-a of this code.

(b) Any hearing or proceeding before the department shall be in accordance with the provisions of article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

Any well operator, coal operator, owner or lessee, if any, who would be required to be given notice by section two, adversely affected by an order or final decision of the department may appeal the same in accordance with the provisions of section four, article five, chapter twenty-nine-a except where such provisions are inconsistent with this article.

§22-4-18. Injunctive relief.

(a) In addition to other remedies, and aside from various penalties provided by law, whenever it appears to the department that any person is violating or threatening to violate any provision of this article, any order or final decision of the department, or any lawful rule or regulation promulgated hereunder, the department may apply in the name of the state to the circuit court of the county in which the 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 persons and any other persons who have been, are or are about to be, involved in any practices, acts or admissions so in violation, enjoining such person or persons from any violation or violations. Such application may be made and prosecuted to conclusion, whether or not any violation or violations have resulted or shall result, in prosecution or conviction under the provisions of this article.

(b) Upon application by the department, the circuit courts of this state may, by mandatory or prohibitory injunction compel compliance with the provisions of this article, and all orders and final decisions of the department. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this
code to the contrary notwithstanding, the state shall not be re-
quired to furnish bond or other undertaking as a prerequisite
to obtaining mandatory, prohibitory or temporary injunctive
relief under the provisions of this article.

(c) The judgment of the circuit court upon application
permitted by the provisions of this section, shall be final un-
less reversed, vacated or modified on appeal to the supreme
court of appeals. Any such appeal shall be sought in the man-
er and within the time provided by law for appeals from
circuit courts in other civil actions.

(d) The department shall be represented in all such pro-
cedings by the attorney general or his assistants or in such
proceedings in the circuit courts by the prosecuting attorney of
the several counties as well, all without additional compen-
sation. The department, with the written approval of the at-
torney general, may employ special counsel to represent the de-
partment in any such proceedings.

(e) If the department shall refuse or fail to apply for an
injunction to enjoin a violation or threatened violation of any
provision of this article, any order or final decision of the
department, or any rules or regulations promulgated hereunder,
within ten days after receipt of a written request to do so by any
well operator, coal operator, operating coal seams beneath the
tract of land, or the coal seam owner or lessee, if any, if said
owner or lessee is not yet operating said coal seams beneath
said tract of land, or the chief of the division of water resources
of the department of natural resources, adversely affected by
such violation or threatened violation, the person making such
request may apply in his own behalf for an injunction to enjoin
such violation or threatened violation in any court in which
the department might have brought suit. The department shall
be made party defendant in such application in addition to the
person or persons violating or threatening to violate any pro-
vision of this article, any final order or decision of the de-
partment, or any rule or regulation promulgated hereunder.
The application shall proceed and injunctive relief may be
granted in the same manner as if the application had been made
by the department: Except that the court may require a bond
or other undertaking from the plaintiff.
§ 22-4-20. Declaration of oil and gas notice by owners and lessees of coal seams.

For purposes of notification under this article, any owner or lessee of coal seams shall file a declaration of his interest in such coal seams with the clerk of the county commission in the county where such coal seams are located. Said clerk shall file and index such declaration in accordance with section two, article one, chapter thirty-nine of this code, and shall index the name of the owner or lessee of such coal seams in the grant- or index of the record maintained for the indexing of leases.

The declaration shall entitle such owner or lessee to the notices provided in sections two, two-a, two-b and nine of this article: Provided, That the declaring owner shall be the record owner of the coal seam, and the declaring lessee shall be the record lessee with his source or sources of title recorded prior to recording such lessee's declaration.

The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may be a part of the coal lease under which the lessee claims. Such declaration may be in the following language:

"DECLARATION OF OIL AND GAS NOTICE

The undersigned hereby declares:

(1) The undersigned is the ('owner' or 'lessee') of one or more coal seams or workable coal beds as those terms are defined in section one, article four, chapter twenty-two of the code of West Virginia.

(2) The coal seam(s) or workable coal bed(s) owned or leased partly or wholly by the undersigned lie(s) under the surface of lands described as follows:

(Here insert a description legally adequate for a deed, whether by metes and bounds or other locational description, or by title references such as a book and page legally sufficient to stand in lieu of a locational description.)

(3) The undersigned desires to be given all notices of oil and gas operations provided by sections two, two-a, two-b and nine, article four, chapter twenty-two of the code of West Virginia, addressed as follows:
(Here insert the name and mailing address of the under-
signed owner or lessee.)

(Signature)

(Here insert an acknowledgment legally adequate for a
deed)."

The benefits of the foregoing declaration shall be personal
to the declaring owner or lessee, and not transferable or
assignable in any way.

CHAPTER 124

(Com. Sub. for H. B. 1060—By Mr. Harris and Mr. Burke)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and twelve, article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to dealing in oil without consent of owner or a majority of the owners in interest thereof and penalty therefor.

Be it enacted by the Legislature of West Virginia:

That sections eight and twelve, article five, 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 5. TRANSPORTATION OF OILS.

§22-5-8. Dealing in oil without consent of owner.


§22-5-8. Dealing in oil without consent of owner.

1 No company, its officers or agents, or any person or persons
2 engaged in the transportation or storage of petroleum, crude or
3 refined, shall sell or encumber, ship, transfer, or in any manner
4 remove or procure, or permit to be sold, encumbered, shipped,
5 transferred, or in any manner removed from the tanks or pipes
6 of such company engaged in the business aforesaid, any
petroleum, crude or refined, without the written order of the owner or a majority of the owners in interest thereof.


Any company, its officers or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or a majority of the owners in interest thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars and, if the offender be a natural person, imprisoned in the county jail not less than ninety days nor more than one year.

CHAPTER 125
(H. B. 1403—By Mr. Teets)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting from certification of title tax vehicles of ambulance squads organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; penalty for false swearing.

Certificates of registration of any vehicle or registration plates therefor, whether original issues or duplicates, shall
Motor Vehicles

not be issued or furnished by the department of motor vehicles or any other officer charged with such duty, unless the applicant therefor already has received, or shall at the same time make application for and be granted, an official certificate of title of such vehicle. Such application shall be upon a blank form to be furnished by the department of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer’s serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant’s title and of any liens or encumbrances upon such vehicle, the names and addresses of the holders of such liens and such other information as the department of motor vehicles may require. The application shall be signed and sworn to by the applicant. A tax is hereby imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of said motor vehicle at the time of such certification. If the vehicle is new, the actual purchase price or consideration to the purchaser thereof shall be the value of said vehicle; if the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase shall be deemed the value thereof for the purpose of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax herein imposed has been paid by the purchaser shall be deducted from the total actual price or consideration paid for said vehicle, whether the same be new or secondhand; if the vehicle be acquired through gift, or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer shall be deemed the value thereof for the purposes of this section. No certificate of title for any vehicle shall be issued to any applicant unless such applicant shall have paid to the department of motor vehicles the tax imposed by this section which shall be five percent of the true and actual value of said vehicle whether the vehicle be acquired through purchase, by gift, or by any other manner whatsoever except gifts between husband and wife or between parents and children: Provided, however, That husband or wife, or parents or
children previously have paid said tax on the vehicle so transferred to the state of West Virginia. The tax imposed by this section shall not apply to vehicles to be registered as Class H vehicles, or Class S vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce, nor shall the tax imposed by this section apply to titling of vehicles by a registered dealer of this state for resale only, nor shall the tax imposed by this section apply to titling of vehicles by this state or any political subdivisions thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the state of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the state road fund and expended by the commissioner of highways for matching federal aid funds allocated for West Virginia. In addition to said tax, there shall be a charge of two dollars for each original certificate of title or duplicate certificate of title so issued: Provided further, That this state or any political subdivision thereof, or any such volunteer fire department, or duly chartered rescue squad, shall be exempted from payment of such charge.

Such certificate shall be good for the life of the vehicle, so long as the same is owned or held by the original holder of such certificate, and need not be renewed annually, or any other time, except as herein provided.

If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax herein imposed previously has been paid, to the department of motor vehicles, on that vehicle, he shall not be required to pay such tax.

A person who has paid the tax imposed by this section shall not be required to pay the tax a second time for the same motor vehicle, but he shall be required to pay a charge of two dollars for the certificate of retitle of that motor vehicle, except that such tax shall be paid by such person when the title to such vehicle has been transferred either in this or another state from such person to another person and transferred back to such person.

Notwithstanding any provisions of this code to the contrary,
the owners of trailers, semitrailers and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter shall be subject to the privilege tax imposed by this section: Provided, That mobile homes, house trailers, modular homes and similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for such vehicle is accompanied by an affidavit stating that such vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, shall not be subject to the tax imposed by this section, but shall be taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

If any person making any affidavit required under any provision of this section, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one hundred dollars or be imprisoned in the county jail for a period not to exceed thirty days, or in the discretion of the court be subject to both such fine and imprisonment.

CHAPTER 126

(S. B. 335—By Mr. Gilligan)

[Passed March 19, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles; increasing number of state vehicles to be operated by the arson investigators of the office of state fire marshal.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-23. Registration plates for state, county, municipal and other governmental vehicles.

Any motor vehicle designed to carry passengers, owned or leased by the state of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the governor, vehicles operated by the department of public safety, not to exceed six vehicles operated by conservation officers of the department of natural resources, and not to exceed ten vehicles operated by the arson investigators of the office of state fire marshal, shall not be operated or driven by any person unless it shall have displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line, and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

Such vehicle shall also have attached to the rear a plate bearing a number and such other words and figures as the commissioner of motor vehicles shall prescribe. The rear plate shall also be green with the number in white.

On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top, and the words “West Virginia” on the bottom. The colors may not be reversed and shall be of reflectorized material. The com-
missioner is hereby authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of such vehicles. No other registration plate shall be issued for, or attached to, any such state-owned vehicle.

The commissioner of motor vehicles shall have a sufficient number of both front and rear plates produced to attach to all state-owned cars. The numbered registration plates for such vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

It shall be the duty of each office, department, bureau, commission or institution furnished any such vehicle to have such plates affixed thereto prior to the operation of such vehicle by any official or employee.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars.

Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.

CHAPTER 127

(S. B. 107—By Mr. Steptoe and Mr. Beall)

[Passed April 2, 1977; In effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact sections one and three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increased allowance of weight and registration fees for motor vehicles of farm class.
Be it enacted by the Legislature of West Virginia:

That sections one and three, 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-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions of this chapter shall be placed in the following classes for the purpose of registration:

2 Class A. Motor vehicles of passenger type, other than those operated for compensation;

3 Class B. Motor vehicles designated as trucks, truck tractors, or road tractors other than those operated for compensation;

4 Class C. All trailers and semitrailers, except those operated for compensation, and except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

5 Class E. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of property for compensation, but being exempt from the operating jurisdiction of the public service commission, and for which a statement of exemption has been received from the public service commission;

6 Class G. Motorcycles;

7 Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the public service commission;

8 Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

9 Class K. Motor vehicles designated as trucks, truck tractors, or road tractors operated for transportation of
property for compensation under a certificate of con-
vienience and necessity or a contract carrier permit issued
by the public service commission;

Class L. All trailers and semitrailers used for trans-
portation of property for compensation;

Class R. House trailers;

Class S. Special mobile equipment as defined in sub-
division (r), section one, article one of this chapter;

Class T. Trailers or semitrailers of a type designed
to be drawn by Class A vehicles and having a gross weight
of less than two thousand pounds;

Class U. Passenger motor vehicles rented for com-
ensation without a driver;

Class Farm Truck. Motor vehicles designated as trucks
having a minimum gross weight of more than eight thou-
sand pounds and a maximum gross weight of sixty-four
thousand pounds, used exclusively in the conduct of a
farming business, engaged in the production of agricul-
tural products by means of (a) the planting, cultivation
and harvesting of agricultural, horticultural, vegetable
or other products of the soil, (b) the raising, feeding and
care of livestock, poultry, bees and dairy cattle. Such
farm truck shall be used only for the transportation of
agricultural products so produced by the owner thereof,
or for the transportation of agricultural supplies used in
such production, or for private passenger use.

§17A-10-3. Registration fees for vehicles equipped with pneu-
matic tires.

The following registration fees for the classes indi-
cated shall be paid annually to the department for the
registration of vehicles subject to registration hereunder
when equipped with pneumatic tires:

Class A. The registration fee for all motor vehicles of
this class shall be as follows:

(1) For motor vehicles of a weight of three thousand
pounds or less—twenty dollars.

(2) For motor vehicles of a weight of three thousand
and one pounds to four thousand pounds—twenty-four dollars.

(3) For motor vehicles of a weight in excess of four thousand pounds—thirty dollars.

For the purpose of determining the weight the actual weight of the vehicle shall be taken: Provided, That for vehicles owned by churches, or by trustees for churches, which vehicles are regularly used for transporting parishioners to and from church services, no license fee shall be charged, but notwithstanding such exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

Class B, Class E and Class K. The registration fee for all motor vehicles of these three classes shall be as follows:

(1) For declared gross weights of four thousand pounds or less—twenty dollars.

(2) For declared gross weights of four thousand and one pounds to eight thousand pounds—twenty-two dollars and fifty cents.

(3) For declared gross weights of eight thousand and one pounds to sixteen thousand pounds—twenty-two dollars and fifty cents plus forty-five cents for each hundred pounds or fraction thereof that gross weight of such vehicle or combination of vehicles exceeds eight thousand pounds.

(4) For declared gross weights greater than sixteen thousand pounds—sixty-eight dollars and fifty cents plus ninety cents for each one hundred pounds or fraction thereof that the gross weight of such vehicle or combination of vehicles exceeds sixteen thousand pounds.

If the declared gross weight of a Class B, Class E or Class K motor vehicle includes the gross weight of a Class C or Class L vehicle used in combination with such Class B, Class E or Class K motor vehicle and the declared gross weight of the vehicles constituting such combination exceeds sixteen thousand pounds and the
registration fee prescribed hereunder for such Class C or Class L vehicle has been paid, there shall be deducted from the registration fee for such Class B, Class E or Class K motor vehicle the amount of seventeen dollars and fifty cents; but, there shall be no such deduction where the declared gross weight of the vehicles constituting such combination is less than sixteen thousand and one pounds.

Class C and Class L. The registration fee for all vehicles of these two classes shall be seventeen dollars and fifty cents.

Class G. The registration fee for each motorcycle having two wheels shall be six dollars. The registration fee for each motorcycle having three wheels shall be seven dollars and fifty cents.

Class H. The registration fee for all vehicles for this class operating entirely within the state shall be five dollars; and for vehicles engaged in interstate transportation of persons, the registration fee shall be fees provided by this section for Class B, Class E and Class K reduced by the amount that the mileage of such vehicles operated in states other than West Virginia bears to the total mileage operated by such vehicles in all states under a formula to be established by the department of motor vehicles.

Class J. The registration fee for all motor vehicles of this class shall be eighty-five dollars. Ambulances and hearses used exclusively as such shall be exempted from the above special fees.

Class R. The registration fee for all vehicles of this class shall be ten dollars.

Class S. The registration fee for all vehicles of this class shall be seventeen dollars and fifty cents.

Class T. The registration fee for all vehicles of this class shall be six dollars.

Class U. The registration fee for all vehicles of this class shall be fifty-seven dollars and fifty cents.
Class Farm Truck. The registration fee for all motor vehicles of this class shall be as follows: (1) For farm trucks of declared gross weights of eight thousand and one pounds to sixteen thousand pounds—thirty dollars; (2) for farm trucks of declared gross weights of sixteen thousand and one pounds to twenty-two thousand pounds—sixty dollars; (3) for farm trucks of declared gross weights of twenty-two thousand and one pounds to twenty-eight thousand pounds—ninety dollars; (4) for farm trucks of declared gross weights of twenty-eight thousand and one pounds to thirty-four thousand pounds—one hundred fifteen dollars; (5) for farm trucks of declared gross weights of thirty-four thousand and one pounds to forty-four thousand pounds—one hundred sixty dollars; (6) for farm trucks of declared gross weights of forty-four thousand and one pounds to fifty-four thousand pounds—two hundred five dollars; and (7) for farm trucks of declared gross weights of fifty-four thousand and one pounds to sixty-four thousand pounds—two hundred fifty dollars.

CHAPTER 128
(H. B. 1056—By Mr. Farley)

[Passed April 8, 1977; in effect ninety days from passage. Approved by Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to traffic regulations and laws of the road; and including truss trailers within the definition of pole trailers.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article one, 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 1. WORDS AND PHRASES DEFINED.

§17C-1-17. Pole trailer.

"Pole trailer" means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, trusses, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

CHAPTER 129

(H. B. 1440—By Mr. Singleton and Mr. Shiflet)

[Passed March 23, 1917; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conditions under which written accident report must be filed with department of motor vehicles and increasing amount of property damage in accident necessitating filing of such report from one hundred dollars to two hundred fifty dollars.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, 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 4. ACCIDENTS.

§17C-4-7. Written reports of accidents.

(a) The driver or the attorney or agent of such driver of a vehicle involved in an accident occurring on the public highways of this state resulting in bodily injury to or death of any person or total property damage to an apparent extent of two hundred fifty dollars or more shall, within five days after such
accident, forward a written report of such accident to the department of motor vehicles.

(b) The department may require any driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient in the opinion of the department and may require witnesses of accidents to render reports to the department.

(c) Every law-enforcement officer who, in the regular course of duty, investigates a motor vehicle accident of which report must be made as required in this section, either at the time of and at the scene of the accident or thereafter by interviewing participants or witnesses shall, within twenty-four hours after completing such investigation, forward a written report of such accident to the department. The department shall prepare a form for such accident report and, after approval of such form by the commissioner, the superintendent of the department of public safety and the state road commissioner, shall supply copies of such form to police departments, sheriffs and other appropriate law-enforcement agencies. Every accident report required under the provisions of this subsection (c) shall be made on such form.

AN ACT to amend and reenact section six, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing allowable fees for inspecting certain types of vehicles.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 16. INSPECTION OF VEHICLES.**

§17C-16-6. Assignment, transfer and posting of official inspection station permit; issuance and record of certificate of inspection; inspection fee.

1 No permit for an official inspection station shall be assigned or transferred or used at any location other than therein designated and every said permit shall be posted in a conspicuous place at the station location designated.

2 The person operating any such station shall issue a certificate of inspection and approval, upon an official form, to the owner of a vehicle upon inspecting such vehicle and determining that its equipment required hereunder is in good condition and proper adjustment, but otherwise no certificate shall be issued, except such as may be issued pursuant to section two of this article. When required by the superintendent, a record and report shall be made of every inspection and every certificate so issued.

3 A fee of not more than four dollars fifty cents may be charged for an inspection, but the imposition of such charge shall not be mandatory.

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**CHAPTER 131**

(5. B. 321—By Mr. Brotherton, Mr. President)

[Passed March 11, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preparation, publication and disposition of financial statements of municipalities.
Be it enacted by the Legislature of West Virginia:

That section twenty-three, article thirteen, 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 13. TAXATION AND FINANCE.

PART VII. MUNICIPAL FINANCIAL STATEMENTS.

§8-13-23. Preparation, publication and disposition of financial statements.

1 Every city, within ninety days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner and cause to be published a sworn statement revealing (a) the receipts and expenditures of the city during the previous fiscal year arranged under descriptive headings, (b) the name of each person who received more than fifty dollars from any fund during the previous fiscal year, together with the amount received and the purpose for which paid, and (c) all debts of the city, the purpose for which each debt was contracted, its due date, and to what date the interest thereon has been paid. Such statement shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city.

2 Every city shall transmit to any resident of such city requesting the same a copy of any published statement for the fiscal year designated, supplemented by a document listing the names of each person who received less than fifty dollars from any fund during such fiscal year and showing the amount paid to each and the purpose for which paid.

3 Every town or village, within one hundred twenty days after the beginning of each fiscal year, shall prepare on a form to be prescribed by the state tax commissioner a sworn statement revealing (a) the receipts and expenditures of the town or village during the previous fiscal year arranged under descriptive headings, (b) the
30 name of each person who received money from any fund
31 during the previous fiscal year, together with the amount
32 received and the purpose for which paid, and (c) all debts
33 of the town or village, the purpose for which each debt
34 was contracted, its due date, and to what date the interest
35 thereon has been paid.

36 Every town or village shall transmit to any resident of
37 such town or village requesting the same a copy of any
38 such statement for the fiscal year designated. Any such
39 town or village may, if the governing body thereof so
40 elects, also publish such statement as a Class I legal
41 advertisement in compliance with the provisions of said
42 article three, chapter fifty-nine, and in such event, the
43 publication area for such publication shall be the town
44 or village.

45 The statement required by the first paragraph of this
46 section and the statement required by the third paragraph
47 of this section shall be sworn to by the recorder of the
48 municipality and the mayor thereof and two members of
49 the governing body of such municipality. As soon as
50 practicable following the close of the fiscal year, a copy
51 of any statement herein required shall be filed by the
52 municipality with the state tax commissioner, and the
53 clerk of the county commission of the county, and the
54 clerk of the circuit court of the circuit, in which the
55 municipality or the major portion of the territory thereof
56 is located. If the governing body fail or refuse to perform
57 any of the duties set forth in this section, every member
58 of such governing body and the recorder thereof con-
59 curring in such failure or refusal shall be guilty of a
60 misdemeanor, and, upon conviction thereof, shall be fined
61 not less than ten nor more than one hundred dollars. If
62 any of the provisions of this section are violated, it shall
63 be the duty of the prosecuting attorney of the county in
64 which the municipality or the major portion of the terri-
65 tory thereof is located to immediately present the evi-
66 dence thereof to the grand jury if in session, and if not
67 in session, he shall cause such violations to be investigated
68 by the next succeeding grand jury.
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 municipality 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 municipality 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 municipality to the funds on deposit in such neighborhood rehabilitation fund; and providing that any such municipality 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.

1 (a) The Legislature hereby finds and declares that there has been for a number of years a clear trend for

* The title to this act proposes to enact a new article 20A. Since there is an existing article 20A, this act is being treated as amending the existing article.
younger and more affluent persons and families residing in municipalities 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 urban 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 rehabilitation.

(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 municipality will be acting in all respects for the benefit
43 of the people of the state of West Virginia and shall
44 thereby serve a public purpose in improving and other-
45 wise promoting their health, welfare and prosperity.


1 As used in this article, unless the context otherwise
2 requires:

3 (1) "Eligible dwelling" means real estate upon which
4 there is located a structure designed primarily for resi-
5 dential housing and consisting of dwelling units for not
6 more than four families, provided that all occupancy
7 thereof shall be limited to persons and families who
8 would qualify as eligible residents.

9 (2) "Eligible resident" means a person or family re-
10 siding in an eligible dwelling owned by such person or
11 family situate within the corporate limits of a munici-
12 pality, irrespective of race, creed, national origin or sex,
13 with respect to whom it is determined by the governing
14 body of such city that (a) such person or family because
15 of financial condition, age, infirmity, family size or other
16 reasons, is unable to obtain, on suitable terms and condi-
17 tions, loans or other credit necessary for the rehabilita-
18 tion of such eligible dwelling, and hence requires the
19 assistance as provided in this article, (b) such rehabili-
20 tation is necessary to place such eligible dwelling in a
21 safe, sanitary and decent condition, and (c) the assistance
22 as authorized in this article shall make financing avail-
23 able to such person or family, or enable such person or
24 family to obtain such financing, on terms and conditions
25 substantially more favorable to such person or family
26 than would otherwise be available.

27 (3) "Rehabilitation" means a specific work of improve-
28 ment within a municipality undertaken primarily to re-
29 model, repair or rehabilitate an eligible dwelling occu-
30 pied by an eligible resident as his principal residence.


1 (a) Any municipality shall have plenary power and
2 authority, by charter provision, ordinance or resolution,
3 to establish a special fund of moneys made available by
appropriation, 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 municipality 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 as to authorize any city to make any contract or incur any obligation or liability of any kind or nature, except such as shall be discharged or payable solely from the funds on deposit in such neighborhood rehabilitation fund.

§8-20A-4. Inspection and technical assistance.

In addition to all other powers and rights of a municipality, any municipality 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 133

(Com. Sub. for S. B. 275—By Mr. Gainer and Mr. Benson)

[Passed March 19, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and four, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authorization of municipalities and counties to contribute to and secure federal grants for certain nonstock, nonprofit corporations or health institutions for
certain public purposes; requiring that such corporations be either chartered in this state or licensed or authorized to do business therein; and authorizing county commissions to appropriate funds for health institutions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART I. MUSEUMS; CULTURAL CENTERS, ETC.

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations, conveyances or leases; limitations and restrictions.

PART III. OBTAINING FEDERAL GRANTS.

§8-32-3. Power to secure federal grants for certain nonprofit organizations.

PART IV. HEALTH INSTITUTIONS.

§8-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.

PART I. MUSEUMS; CULTURAL CENTERS, ETC.

§8-32-1. Legislative findings; authority of municipalities and counties to make appropriations, conveyances or leases; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public (1) museums, historic landmarks, facilities or cultural centers for the appreciation, advancement or enjoyment of art, crafts, music, dance, drama, nature, science or other educational and cultural activities or (2) parks, playgrounds, athletic fields, stadiums, swimming pools, skating rinks, arenas or other public park and recreational facilities for the promotion, advancement or enjoyment of education, recreation and health is for the general welfare of the public and is a public purpose. This section is enacted
in view of this finding and shall be liberally construed in
the light thereof.

(b) When a nonstock, nonprofit corporation, chartered
under the laws of this state, or licensed to do business
in this state, (1) is organized for the construction, mainte-
nance or operation of (i) museums, historic landmarks,
facilities or cultural centers for the appreciation, ad-
vancement or enjoyment of art, crafts, music, dance,
drama, nature, science or other educational and cultural
activities or (ii) parks, playgrounds, athletic fields,
stadiums, swimming pools, skating rinks, arenas or other
public park and recreational facilities for the promotion,
avancement or enjoyment of education, recreation and
health and provides in its charter that its buildings or
facilities, or a designated portion thereof, shall be de-
vote 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 the buildings, facilities and grounds in proper
condition and repair, and to pay the cost of insurance,
care, management, operations, teaching and attendants,
so that the general public may have the benefit of such
establishment for the uses set forth in such corporation's
charter at as little expense as possible, (2) provides in
its charter that no member trustee, or member of the
board of directors (by whatever name the same may
be called), of the corporation shall receive any compen-
sation, gain or profit from such corporation, and (3) is
operated in compliance with such charter provisions as
aforesaid, then, notwithstanding any statutory or munici-
pal charter provisions to the contrary, any municipality
in which such nonstock, nonprofit corporation is oper-
ating or which is or will be served by such nonstock,
nonprofit corporation, if any, and the county commission
of any county in which such nonstock, nonprofit corpora-
tion is operating or which is or will be served by such
nonstock, nonprofit corporation, may appropriate funds,
subject to the provisions and limitations set forth in sub-
sections (c) and (d) of this section, to such nonstock,
nonprofit corporation, for such public purposes or convey
or lease real or personal property, with or without con-
sideration, to such nonstock, nonprofit corporation, for
such public purposes, except that no such conveyance
or lease may be made by a municipality or a county
commission to such nonstock, nonprofit corporation for
any of the public purposes set forth in (2) of subsection
(a) of this section if such county has a county parks
and recreation commission or board operating in or for
such county, or participates in a consolidated recreation
commission or board with a municipality as the case may
be: Provided, That if at any time such property ceases
to be used for such public purposes, it shall by operation
of law revert to and vest in the municipality or county
commission which conveyed or leased the same and such
nonstock, nonprofit corporation shall thereafter have no
right, title or interest therein or thereto.

In every such case, the governing body of any such
municipality or any such county commission and such
corporation may agree for the appointment of additional
members to the board of directors of such corporation
by such governing body or county commission, either
as regular members or in an ex officio capacity.

(c) No funds appropriated by a municipality or county
commission under the authority of this section shall be
disbursed by any such nonstock, nonprofit corporation
unless and until the expenditure thereof has been ap-
proved by the governing body of such municipality or
any such county commission, as the case may be, which
made such appropriation, and such corporation shall upon
demand at any time make a full and complete accounting
of all such funds to such governing body or county com-
mission, as the case may be, and shall in every event
without demand make to such governing body or county
commission an annual 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 gov-
erning body of such municipality, the county, such county
§8-32-3. Power to secure federal grants for certain nonprofit organizations.

(a) Notwithstanding any statutory or charter provisions to the contrary, every municipality is, subject to the provisions and limitations set forth in subsections (b) and (c) of this section, hereby empowered and authorized to make application for, receive and accept grants from the federal government, or any agency thereof, for, on behalf of and for use by a nonstock, nonprofit corporation chartered under the laws of this state, or licensed to do business in this state, for charitable, patriotic or philanthropic or other public purposes and operating within the corporate limits of said municipality. The Legislature hereby finds that the support of such nonstock, nonprofit corporations is for the general welfare of the public and is a public purpose. This section is enacted in view of this finding and shall be liberally construed in the light thereof.

(b) No federal funds received by a municipality under the authority of this section shall be disbursed by any such nonstock, nonprofit corporation unless and until the expenditure thereof has been approved by the governing body of such municipality, and such corporation shall upon demand at any time make a full and complete accounting of all such funds to such governing body.

(c) Under no circumstances whatever shall any action taken by any municipality under the authority of this section give rise to or create any indebtedness on the part of such municipality, the governing body of such municipality, any member thereof or any municipal official or employee.
PART IV. HEALTH INSTITUTIONS.

§8-32-4. Legislative findings; authority of municipalities and county commissions to make appropriations; limitations and restrictions.

1 (a) The Legislature hereby finds that the support of public or nonprofit health institutions dedicated to making available to the general public health and mental health services is for the general welfare of the public and is a public purpose for which funds of a municipality or county commission may be lawfully expended. This section is enacted in view of this finding and shall be liberally construed in the light thereof. As used in this section, the term "health institution" means a hospital, health or mental health clinic, regional or community health or mental health center, mental retardation facility, extended care facility, nursing home, or other health or mental health institution, which is open to the general public.

(b) Notwithstanding any statutory or charter provision to the contrary, municipalities and county commissions are hereby empowered and authorized to appropriate funds, subject to the conditions and limitations set forth in this section, for the establishment, cost, operation, maintenance and projects of any health institution, whether such health institution be situate within or without the confines of any such municipality or county. Funds may not be appropriated by a municipality or county commission for the benefit and use of any health institution unless such health institution is either owned and operated by a unit of government, or is owned and operated by a nonstock, nonprofit corporation chartered under the laws of or licensed to do business in this state which provides in its charter that no member trustee or member of the board of directors (by whatever name the same may be called) shall receive any compensation, gain or profit from such corporation and which is operated in compliance with such charter provisions. Any such appropriation shall be made from the general funds of such municipality or county commission not otherwise
appropriated or from federal revenue sharing funds received by such municipality or county commission.

(c) The recipient of any funds appropriated under the provisions of this section shall upon demand at any time make a full and complete accounting of all such funds to the governing body of the municipality or county commission which made such appropriation and shall in every event without demand make to such governing body an annual 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 county, the governing body of such municipality, the county commission, any member of such governing body or county commission or any municipal or county official or employee.

CHAPTER 134
(S. B. 391—By Mr. Gainer)
[Passed April 8, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing director of department of natural resources to appoint two deputy directors.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.


1 A merit system of personnel management shall be
established and maintained for all personnel of the department in order to ensure and provide for impartial selection of competent and qualified personnel and to accord to all department employees rights of tenure and advancement during satisfactory discharge of their duties.

In lieu of establishment of a merit system of personnel management for the department, the director may resort to and rely upon the civil service commission and civil service system for personnel and personnel services of the department.

The director may select a personal secretary and two deputy directors of the department to serve at the director's will and pleasure. The director shall fix the compensation of the secretary and the two deputy directors and shall prescribe their duties and responsibilities. The director, the secretary and the two deputy directors shall not have and enjoy merit system status, as herein provided, but any deputy director, when selected from department personnel ranks, shall retain and be accorded all of the rights of his merit system status regardless of his selection and tenure as deputy director.

The director shall select and designate a competent and qualified person as department personnel officer who shall be responsible for personnel management, personnel records and general personnel services. The personnel officer, under supervision of the director and subject to merit system rules, regulations and requirements, shall prescribe qualifications, classifications and salary scales for department personnel. He shall furnish to the director information and data relating to qualified personnel available for the various offices, positions and places of employment and may make recommendations concerning the selection, retention and advancement of personnel of the department.
AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen, relating to requiring director of department of natural resources to prepare and maintain long-range, comprehensive management plan for state recreational facilities; legislative findings and purpose; and requiring plan to be delivered to governor and Legislature by the first day of December of each year.

Be it enacted by the Legislature of West Virginia:

That article one, 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 nineteen, to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-19. Director to prepare and maintain long-range, comprehensive management plan for state recreational facilities; legislative findings and purpose; delivery of plan to governor and Legislature.

1 The Legislature finds and declares that state recreational facilities should and must be managed in a professional manner. The Legislature finds that the department of natural resources does not have a long-range, comprehensive management plan for state recreational facilities and that such a plan is essential in order for the Legislature to understand and provide the needs of the department of natural resources for state recreational facilities. The Legislature's purpose and intent in enacting this section is to require the director to prepare and maintain a long-range, comprehensive management plan for state recreational facilities.

12 The director shall prepare a comprehensive five-year plan...
for state recreational facilities, update it yearly, and deliver it to the governor and the Legislature no later than the first day of December of each year.

The plan shall include, but is not limited to, the following:

(1) A policy on the final limits to which state recreational facilities should be developed, including the total number and area of state parks, forests and public hunting and fishing areas;

(2) Recommendations for the establishment and development of new state parks, forests and public hunting and fishing areas, the development of existing state recreational facilities, and the phasing out, replacement, construction, expansion and maintenance of buildings, roads, recreational facilities and other facilities and the costs thereof; and

(3) Recommendations on personnel, including their number, compensation, benefits and training.

CHAPTER 136
(S. B. 479—By Mr. Susman and Mr. Gainer)

(Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.)

AN ACT to amend article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty, relating to limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; and exceptions to limitations.

Be it enacted by the Legislature of West Virginia:

That article one, 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 twenty, to read as follows:
ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-20. Limitations on acquisition of land for state recreational facilities; limitations on construction of state recreational facilities; legislative findings and purpose; exceptions to limitations.

1 The Legislature finds that the acquisition of land to construct new or to expand existing state recreational facilities is becoming more costly. Also, the Legislature finds that the construction of new or the expansion of existing state recreational facilities is becoming more costly. After such facilities are constructed, they must be maintained indefinitely and, in many instances, personnel must be employed to operate the facilities. This necessitates and places a continuing burden on state revenues. Furthermore, these costs are also increasing continually. The Legislature hereby declares that there is an ultimate limit to how many recreational facilities this state, with its size, population and financial resources can or should support. Further, the Legislature hereby declares that it must establish, provide for, and maintain, limits on state recreational facilities. The Legislature hereby declares that is the purpose of this section.

After the effective date of this section, neither the director, nor any other officer, or employee, or agent of the department of natural resources may, without the express authorization of the Legislature:

(1) Acquire, or authorize the acquisition of, land for any new state park, forest, public fishing and hunting area, or other recreational facility; or

(2) Construct, or authorize the construction of, any new facility or building in any state park, forest, public hunting and fishing area, or other recreational facility.

Nothing in this section shall prohibit the director from expending any appropriations made on or before the effective date of this section to the department of natural resources for the purposes for which such appropriations were designated, including the acquisition of land or the construction of facilities or buildings.
Nothing in this section shall prohibit the director from expending any appropriations made at any time which are designated to complete land acquisitions for state parks, forests, public hunting and fishing areas, or other recreational areas, which are in existence on the effective date of this section. Nothing in this section shall prohibit the director from expending any appropriation made at any time which is designated to complete the construction of facilities and buildings, including electric, water and sewage systems for state parks, forests, public hunting and fishing areas, or other recreational areas, which are in existence on the effective date of this section.

CHAPTER 137
(5. B. 394—By Mr. Gainer)

[Passed April 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to when it is unlawful to carry uncased or loaded guns in woods; making it unlawful to pursue, take, kill, etc., wild mammals protected by conventions between United States, Great Britain and United Mexican States; and setting forth when it is unlawful to train dogs on wild animals or wild birds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

PART I. WILDLIFE MANAGEMENT.

§20-2-5. Unlawful methods of hunting and fishing.

1 Except as authorized by the director, it is unlawful at any time for any person to:
(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him;

(2) Dig out, cut out, or smoke out, or in any manner take or attempt to take any live wild animal or wild bird out of its den or place of refuge, except as may be authorized by regulations promulgated by the director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping, or killing any wild bird or wild animal, or to attempt to do so, while having in his possession or subject to his control, or for any person accompanying him to have in his possession or subject to his control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it shall not be unlawful to hunt or take raccoon, opossum or skunk by the use of artificial lights. No person shall be guilty of a violation of this subdivision merely because he looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at such time he has in his possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless such artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision shall be guilty of a misdemeanor, and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in the county jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as may be authorized by regulations promulgated by the director;
(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind, any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his possession such nest or eggs unless authorized to do so under regulations or under a permit by the director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state, unless he has in his possession a permit in writing issued to him by the director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Except as provided in section six of this article, carry an uncased or loaded gun after the hour of five o'clock antemeridian on Sunday in any woods or on any highway, railroad right-of-way, public road, field or stream of this state, except at a regularly used rifle, pistol, skeet, target or trapshooting ground or range;

(10) Have in his possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o'clock postmeridian of one day and seven o'clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from July first to September thirtieth, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms shall be permissible only from eight-
thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time;

(11) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday any wild animals or wild birds: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday, if the person so doing shall not have firearms or long bow of any description in his possession;

(12) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(13) Possess a ferret;

(14) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(15) Have in his possession or about his premises, without the written permission of the director, any hunting or fishing paraphernalia which cannot be used lawfully in this state for hunting or fishing, and any conservation officer shall remove and destroy such hunting and fishing paraphernalia, whenever found in this state, and the person or persons claiming ownership shall have no recourse at law against such confiscation and destruction;

(16) Catch, take, kill, or attempt to catch, take or kill any fish at any time by any means other than by rod, line, and hooks with natural or artificial lures unless otherwise authorized by law or regulation issued by the director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(17) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill, any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or regulations of the director, or the sale of which is prohibited;
(18) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August sixteen, one thousand nine hundred sixteen, and February seven, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act and regulations made thereunder;

(19) Kill, take, catch, or have in his possession living or dead, any wild bird, other than a game bird; or expose for sale, or transport within or without the state any such bird, except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale, except mounted or stuffed plumage, skin, bodies or heads of such birds legally taken and stuffed or mounted, irrespective of whether such bird was captured within or without this state, except the English or European sparrow (Passer domesticus), starling (Sturnus vulgaris), crow (Corvus brachyrhynchos) and cowbird (Molothrus ater), which shall not be protected and the killing thereof at any time is lawful;

(20) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(21) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(22) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife;

(23) Take or attempt to take turkey, bear, elk or deer with any arrow unless the same is equipped with a point
(24) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow, or an arrow which would affect wildlife by any chemical action;

(25) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(26) Permit any dog owned by him or under his control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds of lands of the owner or by his bona fide tenant or tenants or upon the grounds or lands of another person with his written permission or on public lands, at any time: Provided, however, That notwithstanding any of the above provisions, no person may train a dog in any county in which there is a legal bear hunting season, except that residents may train dogs in such counties after the twenty-fourth day of August through the end of the legal small game hunting season: Provided further, That nonresidents shall not train dogs in this state at any time except during the legal small game hunting season: And provided further, That the person training said dogs does not have firearms or other implements in his possession during the closed season on such wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(27) Conduct or participate in a field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold such trial at any time of the year upon obtaining such permit as is provided for in section fifty-six of this article. The person responsible for obtaining said permit shall prepare and keep an accurate record of the names and addresses of all persons participating...
in said trial, and make same readily available for inspection by any conservation officer upon request; and

(28) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by regulation of the director as authorized by subdivision six, section seven, article one of this chapter.

CHAPTER 138
(S. B. 485—By Mr. Gainer)

[Passed April 9, 1977; in effect January 1, 1978. Approved by the Governor.]

AN ACT to amend and reenact sections thirty-nine, forty, forty-a, forty-three and forty-six-b, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fees for Class A, B, AB, E and N hunting and fishing licenses, providing for issuance of Class H six-day, nonresident small game hunting license, and providing fee for Class H license is eight dollars.

Be it enacted by the Legislature of West Virginia:

That sections thirty-nine, forty, forty-a, forty-three and forty-six-b, 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.

§20-2-39. Class A resident statewide hunting and trapping license.
§20-2-40. Class B resident statewide fishing license.
§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.
§20-2-43. Class E, Class F, Class G and Class H licenses for nonresidents.
§20-2-46b. Class N special deer hunting license; fee; exceptions; regulations; limitations; authority of director.
§20-2-39. Class A resident statewide hunting and trapping license.

1 A Class A license shall be a resident statewide hunting and trapping license and shall entitle the licensee to hunt and trap all legal species of game in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are residents of this state. The fee therefor shall be six dollars.

§20-2-40. Class B resident statewide fishing license.

1 A Class B license shall be a resident statewide fishing license and shall entitle the licensee to fish for all legal fish in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States, and unnaturalized persons possessing the permit mentioned in section twenty-nine of this article, who are residents of this state. The fee therefor shall be six dollars.

§20-2-40a. Class AB combination resident statewide hunting, trapping and fishing license.

1 A Class AB combination license shall be a resident statewide hunting, trapping and fishing license and shall entitle the licensee to hunt and trap for all legal species of game, and fish for all legal species of fish and frogs in all counties of the state, except as prohibited by rules or regulations of the director. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are residents of this state. The fee therefor shall be ten dollars.

§20-2-43. Class E, Class F, Class G and Class H licenses for nonresidents.

1 A Class E license shall be a nonresident hunting license and shall entitle the licensee to hunt all game in all counties of the state, except wild boar. It shall be is-
sued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be forty dollars.

A Class F license shall be a nonresident fishing license and shall entitle the licensee to fish for all fish in all counties of the state. It shall be issued only to citizens of the United States and to unnaturalized persons who possess the permit referred to in section twenty-nine of this article who are not residents of this state. The fee therefor shall be twenty dollars.

A Class G license shall be a nonresident family fishing license and shall entitle the licensee and members of his family to fish within the territorial limits of state parks and state forests and in the waters of streams bounding same, for a distance of not to exceed one hundred yards from the exterior boundary of any state park or state forest, for a period not to exceed one week. It may be issued to any adult nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be three dollars for the head of the family, plus fifty cents additional for each member of his family to whom the privileges of such license are extended. Class G licenses may be issued in such manner and under such regulations as the director may see fit to prescribe.

A Class H license shall be a nonresident small game hunting license and shall entitle the licensee to hunt small game in all counties of the state for a period of six days beginning with the date it is issued. It shall be issued only to citizens of the United States who are not residents of this state. The fee therefor shall be eight dollars. As used in this section, "small game" means all game except bear, deer, wild turkey and wild boar.
licensee to hunt for and kill one antlerless deer of either sex during the Class N license season: Provided, That if a hunter kills a buck deer during the regular deer hunting season, he shall also be permitted to hunt for and kill one antlerless deer during Class N license season if he has applied for and has had issued to him a Class N license. Only one Class N license may be acquired during any calendar year in which such Class N license season is held, and such Class N license can be used only by the applicant. The fee for a Class N license shall be eight dollars.

The Class N license shall be issued only for the purpose of removing antlerless deer on a post-season basis when the director deems it essential for proper management of wildlife resources. The director shall establish such rules and regulations governing the issuance of such Class N licenses as he deems necessary to limit, on a fair and equitable basis, the number of persons who may hunt for antlerless deer in any county or any part of a county: Provided, however, That no more than four Class N licenses shall be issued for each deer that the director desires to have killed during the Class N season.

When the director deems it essential that Class N license season be held in a particular county or part of a county, such season shall be held on the Friday and Saturday following regular deer hunting season, and shall be extended beyond such two-day period only upon order of the director when necessary to accomplish the desired kill.

Bona fide resident landowners or their resident children, or bona fide resident tenants of such land shall not be required to have a Class N license in their possession while hunting antlerless deer on their own land during the Class N license season.

Notwithstanding any provision of this code to the contrary, no Class N license shall be issued for a county or a part of a county unless, during the regular deer hunting season in the previous year, two bucks have been killed
41 per square mile of deer range in that county or part of 42 the county in which the hunt is to be held, and the direc- 43 tor deems the holding of such Class N season advisable.

CHAPTER 139
(H. B. 1419—By Mr. Balloux and Mr. Goodwin)

[Passed April 1, 1977: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section forty-six-d, relating to issuance of Class P special resident boar hunting license, fee and authority of director to promulgate rules and regulations limiting the number of such licenses to be issued.

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 forty-six-d, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46d. Class P special resident boar hunting license; fee; authority of director to promulgate rules and regulations limiting the number of licenses issued.

1 A Class P license shall be a special resident boar hunting 2 license for wild boar of either sex and shall entitle the licensee 3 to hunt and kill such boar during the Class P license season. A 4 Class P license may be issued only to residents. Only one Class 5 P license may be acquired during any calendar year in which 6 a wild boar season is held and a Class P license may be used 7 only by the applicant to whom such license is issued. The fee 8 for a Class P license shall be five dollars.
The director shall promulgate rules and regulations governing the issuance of Class P licenses he deems necessary to limit on a fair and equitable basis the number of persons who may hunt wild boar in any county or any part of a county.

CHAPTER 140

(P. B. 611—By Mr. Brotherton, Mr. President)

[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]
certain provisions as to rental and other revenues from water development projects shall apply only to such projects as are owned by the authority; maintenance, operation and repair of projects; providing for the redemption of bonds and notes issued by the authority; and providing for the issuance of refunding bonds.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five-c be further amended by adding thereto three new sections, designated sections six-a, sixteen-a and sixteen-b, all to read as follows:

**ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.**

§20-5C-3. Definitions.

§20-5C-4. West Virginia water development authority created; West Virginia water development board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

§20-5C-6. Powers, duties and responsibilities of authority, generally.

§20-5C-6a. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

§20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§20-5C-9. Trustee for bondholders; contents of trust agreement.

§20-5C-13. Investment of funds by authority.

§20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

§20-5C-15. Maintenance, operation and repair of projects, reports by authority to governor and Legislature.

§20-5C-16a. Purchase and cancellation of notes or bonds.

§20-5C-16b. Refunding bonds.

§20-5C-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:
(1) "Authority" means the West Virginia water development authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) "Beneficial use" means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) "Board" means the West Virginia water development authority board created in section four of this article, which shall manage and control the West Virginia water development authority.

(4) "Bond" or "water development revenue bond" means a revenue bond or note issued by the West Virginia water development authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and sub-offices of the authority; the cost of diverting highways, interchange of highways, access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after
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42 completion of construction; the cost of all engineering
43 services and all expenses of research and develop-
44 ment with respect to waste water facilities; the cost
45 of all legal services and expenses; the cost of all plans,
46 specifications, surveys and estimates of cost and revenues;
47 all working capital and other expenses necessary or in-
48 cident to determining the feasibility or practicability
49 of acquiring or constructing any such project; all ad-
50 ministrative expenses and such other expenses as may
51 be necessary or incident to the acquisition or construc-
52 tion of the project; the financing of such acquisition or
53 construction, including the amount authorized in the
54 resolution of the authority providing for the issuance
55 of water development revenue bonds to be paid into any
56 special funds from the proceeds of such bonds; and
57 the financing of the placing of any such project in
58 operation. Any obligation or expenses incurred after
59 the effective date of this section by any governmental
60 agency, with the approval of the authority, for surveys,
61 borings, preparation of plans and specifications and other
62 engineering services in connection with the acqui-
63 sition or construction of a project shall be regarded
64 as a part of the cost of such project and shall be reim-
65 bursed out of the proceeds of loans or water develop-
66 ment revenue bonds as authorized by the provisions of
67 this article.

68 (7) "Establishment" means an industrial establish-
69 ment, mill, factory, tannery, paper or pulp mill, mine,
70 colliery, breaker or mineral processing operation, quarry,
71 refinery, well, and each and every industry or plant or
72 works or activity in the operation or process of which
73 industrial wastes, or other wastes are produced.

74 (8) "Governmental agency" means the state govern-
75 ment or any agency, department, division or unit thereof;
76 counties; municipalities; watershed improvement dis-
77 tricts; soil conservation districts; sanitary districts; pub-
78 lic service districts; drainage districts; regional govern-
79 mental authorities and any other governmental agency,
80 entity, political subdivision, public corporation or agency
81 having the authority to acquire, construct or operate
82 waste water facilities; the United States government or 
83 any agency, department, division or unit thereof; and 
84 any agency, commission or authority established pur-
85 suant to an interstate compact or agreement.

86 (9) "Industrial wastes" means any liquid, gaseous, 
87 solid or other waste substance, or any combination 
88 thereof, resulting from or incidental to any process of 
89 industry, manufacturing, trade or business, or from or 
90 incidental to the development, processing or recovery of 
91 any natural resources; and the admixture with such 
92 industrial wastes of sewage or other wastes, as defined 
93 in this section, shall also be considered industrial 
94 wastes.

95 (10) "Other wastes" means garbage, refuse, decayed 
96 wood, sawdust, shavings, bark and other wood debris 
97 and residues, sand, lime, cinders, ashes, offal, night soil, 
98 silt, oil, tar, dyestuffs, acids, chemicals, and all other 
99 materials or substances not sewage or industrial wastes 
100 which may cause or might reasonably be expected 
101 to cause or to contribute to the pollution of any 
102 of the waters of this state.

103 (11) "Owner" includes all persons, copartnerships or 
104 governmental agencies having any title or interest in 
105 any property rights, easements and interests authorized 
106 to be acquired by this article.

107 (12) "Person" means any public or private corpora-
108 tion, institution, association, firm or company organized 
109 or existing under the laws of this or any other state or 
110 country; the United States or the state of West Virginia; 
111 any federal or state governmental agency; political sub-
112 division; county court; municipality; industry, sanitary 
113 district; public service district; drainage district; soil 
114 conservation district; watershed improvement district; 
115 partnership; trust; estate; person or individual; group 
116 of persons or individuals acting individually or as 
117 a group or any other legal entity whatever.

118 (13) "Pollution" means (a) the discharge, release, 
119 escape, deposit or disposition, directly or indirectly, of 
120 treated or untreated sewage, industrial wastes, or other
wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) “Project” or “water development project” means any waste water facility, the acquisition or construction of which is authorized in whole or in part by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.
(15) "Public roads" mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) "Public utility facilities" mean public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia water development authority to governmental agencies to finance in whole or in part the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present.

(19) "Water resources," "water" or "waters" mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) "Waste water" means any water containing sewage, industrial wastes, other wastes or contaminants derived from the prior use of such water, and shall include without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.
(21) "Waste water facilities" mean facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including without limitation the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport waste water together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

§20-5C-4. West Virginia water development authority created; West Virginia water development board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

There is hereby created the West Virginia water development authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the seven-member board known as the West Virginia water development board, which is hereby created. The director of the department of natural resources, and the director of the department of health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development shall be members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of
two, three, four and six years, respectively. The successor
of each such appointed member shall be appointed for a
term of six years in the same manner the original ap-
pointments were made, except that any person appointed
to fill a vacancy occurring prior to the expiration of the
term for which his predecessor was appointed shall be
appointed only for the remainder of such term. Each board
member shall serve until the appointment and qualifica-
tion of his successor. No more than two of the appointed
board members shall at any one time belong to the same
political party. Appointed board members may be re-
appointed to serve additional terms: Provided, That each
person serving as a member of the West Virginia
water development board, for a term which has not ex-
pired on the effective date of this article, shall be appoint-
ed by the governor without Senate confirmation to the
West Virginia water development board, as one of the
four appointed members, for the term ending the thirtieth
day of June in the year in which his term would expire
as a member of the West Virginia water development
board.

All members of the board shall be citizens of the state.
Each appointed member of the board, before entering upon
his duties, shall comply with the requirements of article
one, chapter six of this code and give bond in the sum
of twenty-five thousand dollars in the manner provided
in article two, chapter six of this code. The governor
may remove any board member for cause as provided in
article six, chapter six of this code.

Annually the board shall elect one of its appointed
members as chairman and another as vice-chairman, and
shall appoint a secretary-treasurer, who need not be a
member of the board. Four members of the board shall
constitute a quorum and the affirmative vote of four
members shall be necessary for any action taken by vote
of the board. No vacancy in the membership of the board
shall impair the rights of a quorum by such vote to
exercise all the rights and perform all the duties of the
board and the authority. The person appointed as
secretary-treasurer, including a board member if he is so
62 appointed, shall give bond in the sum of fifty thousand
63 dollars in the manner provided in article two, chapter six
64 of this code.
65
66 The director of the department of natural resources, the
director of the department of health and the state officer
or employee most responsible for economic or community
development shall not receive any compensation for
serving as board members. Each of the four appointed
members of the board shall receive an annual salary of
five thousand dollars, payable in monthly installments.
Each of the seven board members shall be reimbursed for
all reasonable and necessary expenses actually incurred
in the performance of his duties as a member of such
board. All such expenses incurred by the board shall be
payable solely from funds of the authority or from funds
appropriated for such purpose by the Legislature and no
liability or obligation shall be incurred by the authority
beyond the extent to which moneys are available from
funds of the authority or from such appropriations.

81 There shall also be a director of the authority ap-
82 pointed by the board.

§20-5C-5. Authority may construct, finance, maintain, etc.,
water development projects; loans to governmental
agencies shall be subject to terms of loan agree-
ments.

1 To accomplish the public policies and purposes and
to meet the responsibility of the state as set forth in this
article, the West Virginia water development authority
may initiate, acquire, construct, maintain, repair and
operate water development projects or cause the same
to be operated pursuant to a lease, sublease or agreement
with any person or governmental agency; may make
loans and grants to governmental agencies for the acqui-
sition or construction of water development projects by
such governmental agencies; and may issue water de-
velopment revenue bonds of this state, payable solely
from revenues, to pay the cost of, or finance, in whole
or in part, by loans to governmental agencies, such
projects. A water development project shall not be
undertaken unless it has been determined by the auth-
rority to be consistent with any applicable compre-
hensive plan of water management approved by the
director of the department of natural resources or in
the process of preparation by such director and to be
consistent with the standards set by the state water re-
sources board, for the waters of the state affected thereby.
 Any resolution of the authority providing for acquiring
or constructing such projects or for making a loan or
grant for such projects shall include a finding by the
authority that such determinations have been made. A
loan agreement shall be entered into between the au-
thority and each governmental agency to which a loan
is made for the acquisition or construction of a water
development project, which loan agreement shall in-
clude without limitation the following provisions:

(1) The cost of such project, the amount of the loan,
the terms of repayment of such loan and the security
therefor, which may include, in addition to the pledge
of all revenues from such project after a reasonable
allowance for operation and maintenance expenses, a
deed of trust or other appropriate security instrument
creating a lien on such project;

(2) The specific purposes for which the proceeds of
the loan shall be expended, the procedures as to the
disbursement of loan proceeds and the duties and obliga-
tions imposed upon the governmental agency in regard
to the construction or acquisition of the project;

(3) The agreement of the governmental agency to
impose, collect, and, if required to repay the obligations
of such governmental agency under the loan agreement,
increase, service charges from persons using said project,
which service charges shall be pledged for the repay-
ment of such loan together with all interest, fees and
charges thereon and all other financial obligations of
such governmental agency under the loan agreement;
and

(4) The agreement of the governmental agency to
comply with all applicable laws, rules and regulations
issued by the authority or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project.

§20-5C-6. Powers, duties and responsibilities of authority,
generally.

1 The West Virginia water development authority is
hereby granted, has and may exercise all powers neces-
sary or appropriate to carry out and effectuate its cor-
porate purpose. The authority shall have the power and
capacity to:

6 (1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business and rules and
regulations to implement and make effective its powers
and duties, such rules and regulations to be promulgated
in accordance with the provisions of chapter twenty-
nine-a of this code.

13 (2) Adopt an official seal.

14 (3) Maintain a principal office and, if necessary,
regional suboffices at locations properly designated or
provided.

17 (4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to
enforce the obligations and covenants made under sec-
tions eight, nine and fourteen of this article. Any ac-
tions against the authority shall be brought in the circuit
court of Kanawha county in which the principal office
of the authority shall be located.

24 (5) Make loans and grants to governmental agencies
for the acquisition or construction of water development
projects by any such governmental agency and, in ac-
cordance with the provisions of chapter twenty-nine-a of
this code, adopt rules and procedures for making such
loans and grants.

30 (6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for operation by a governmental agency
or person, water development projects, and, in accordance
with the provisions of chapter twenty-nine-a of this code,
adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any water
development project to one or more persons, one or
more governmental agencies, or any combination
thereof.

(8) Issue water development revenue bonds and notes
and water development revenue refunding bonds of the
state, payable solely from revenues as provided in sec-
tion eight of this article unless the bonds are refunded
by refunding bonds, for the purpose of paying all or
any part of the cost of, or financing by loans to govern-
mental agencies, one or more water development proj-
jects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of
real and personal property in the exercise of its powers
and the performance of its duties as set forth in this
article.

(10) Acquire in the name of the state, by purchase
or otherwise, on such terms and in such manner as it
deems proper, or by the exercise of the right of eminent
domain in the manner provided in chapter fifty-four of
this code, such public or private lands, or parts thereof
or rights therein, rights-of-way, property, rights, eas-
ements and interests it deems necessary for carrying out
the provisions of this article, but excluding the acquisi-
tion by the exercise of the right of eminent domain of
any waste water facility operated under permits issued
pursuant to the provisions of article five-a, chapter
twenty of this code and owned by any person or gov-
ernmental agency, and compensation shall be paid for
public or private lands so taken.

(11) Make and enter into all contracts and agreements
and execute all instruments necessary or incidental to
the performance of its duties and the execution of its
powers. When the cost under any such contract or
agreement, other than compensation for personal ser-
vice, involves an expenditure of more than two thou-
sand dollars, the authority shall make a written contract
with the lowest responsible bidder after public notice
published as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, the publication area for such publication to
be the county wherein the work is to be performed or
which is affected by the contract, which notice shall
state the general character of the work and the general
character of the materials to be furnished, the place
where plans and specifications therefor may be examined
and the time and place of receiving bids, but a contract
or lease for the operation of a water development
project constructed and owned by the authority or an
agreement for cooperation in the acquisition or construc-
tion of a water development project pursuant to section
fourteen of this article is not subject to the foregoing
requirements and the authority may enter into such
contract or lease or such agreement pursuant to negotia-
tion and upon such terms and conditions and for such
period as it finds to be reasonable and proper under
the circumstances and in the best interests of proper
operation or of efficient acquisition or construction of
such project. The authority may reject any and all
bids. A bond with good and sufficient surety, approved
by the authority, shall be required of all contractors in
an amount equal to at least fifty percent of the contract
price, conditioned upon the faithful performance of the
contract.

(12) Employ managers, superintendents and other em-
ployees, who shall be covered by the state civil service
system, and retain or contract with consulting engineers,
financial consultants, accounting experts, architects,
attorneys and such other consultants and independent
contractors as are necessary in its judgment to carry
out the provisions of this article, and fix the compensa-
tion or fees thereof. All expenses thereof shall be pay-
able solely from the proceeds of water development
revenue bonds or notes issued by the authority, from
revenues and from funds appropriated for such purpose
by the Legislature.
(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any water development project or for research and development with respect to waste water facilities and receive and accept aid or contributions from any source or money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to waste water facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§20-5C-6a. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to ensure that the public purposes to be
served by the authority may be properly carried out and
in order to assure the timely payment to the authority of
all sums due and owing under loan agreements with
governmental agencies, as referred to in section five
of this article, notwithstanding any provision to the
contrary elsewhere contained in this code, in event of
any default by a governmental agency under such a loan
agreement, the authority shall have, and may, at its
option, exercise the following rights and remedies in
addition to the rights and remedies conferred by law or
pursuant to said loan agreement:

(1) The authority may directly impose, in its own
name and for its own benefit service charges determined
by it to be necessary under the circumstances upon all
users of the water development project to be acquired
or constructed pursuant to such loan agreement, and
proceed directly to enforce and collect such service
charges, together with all necessary costs of such en-
forcement and collection.

(2) The authority may exercise, in its own name or in
the name of and as agent for the governmental agency,
all of the rights, authority, powers and remedies of the
governmental agency with respect to the water develop-
ment project or which may be conferred upon the gov-
ernmental agency by statute, rule, regulation or judicial
decision, including without limitation all rights and
remedies with respect to users of such water development
project.

(3) The authority may, by civil action, mandamus or
other judicial or administrative proceeding, compel per-
formance by such governmental agency of all of the
terms and conditions of such loan agreement including
without limitation the adjustment and increase of service
charges as required to repay the loan or otherwise satisfy
the terms of such loan agreement, the enforcement and
collection of such service charges and the enforcement
by such governmental agency of all rights and remedies
conferred by statute, rule, regulation or judicial decision.
§20-5C-8. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The authority is hereby empowered to issue from time to time water development revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more water development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects.

11 The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of water development revenue refunding bonds by the state pursuant to the provisions of section sixteen-b of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes shall be obligations of the authority payable out of the revenues and reserves created for such purposes by the authority, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

33 All such bonds and notes shall have and are hereby declared to have all the qualities of negotiable instruments.

35 The bonds and notes shall be authorized by resolution of the authority, shall bear such date and shall
mature at such time, in the case of any such note or
any renewals thereof not exceeding five years from the
date of issue of such original note, and in the case of any
such bond not exceeding fifty years from the date of
issue, as such resolution may provide. The bonds and
notes shall bear interest at such rate, be in such denomi-
ations, be in such form, either coupon or registered, carry
such registration privileges, be payable in such medium
of payment, at such place and be subject to such terms
of redemption as the authority may authorize. The bonds
and notes of the authority may be sold by the authority,
at public or private sale, at or not less than the price
the authority determines. The bonds and notes shall be
executed by the chairman and vice-chairman of the
authority, both of whom may use facsimile signatures.
The official seal of the authority or a facsimile thereof
shall be affixed thereto or printed thereon and attested,
manually or by facsimile signature, by the secretary-
treasurer of the authority, and any coupons attached
thereto shall bear the signature or facsimile signature of
the chairman of the authority. In case any officer whose
signature, or a facsimile of whose signature, appears on
any bonds, notes or coupons ceases to be such officer
before delivery of such bonds or notes, such signature
or facsimile is nevertheless sufficient for all purposes
the same as if he had remained in office until such de-
ivery and in case the seal of the authority has been
changed after a facsimile has been imprinted on such
bonds or notes such facsimile seal will continue to be
sufficient for all purposes.

Any resolution authorizing any bonds or notes or any
issue thereof may contain provisions (subject to such agree-
ments with bondholders or noteholders as may then exist,
which provisions shall be a part of the contract with the
holders thereof) as to pledging all or any part of the reve-
ues of the authority to secure the payment of the bonds or
notes or of any issue thereof; the use and disposition
of revenues of the authority; a covenant to fix, alter and
collect rentals and other charges so that pledged reve-
ues will be sufficient to pay the costs of operation,
maintenance and repairs, pay principal of and interest
on bonds or notes secured by the pledge of such reve-
uues and provide such reserves as may be required by
the applicable resolution or trust agreement; the setting
aside of reserve funds, sinking funds or replacement and
improvement funds and the regulation and disposition
thereof; the crediting of the proceeds of the sale of
bonds or notes to and among the funds referred to or
provided for in the resolution authorizing the issuance
of the bonds or notes; the use, lease, sale or other dis-
position of any water development project or any other
assets of the authority; limitations on the purpose to
which the proceeds of sale of bonds or notes may be
applied and pledging such proceeds to secure the pay-
ment of the bonds or notes or of any issue thereof;
notes issued in anticipation of the issuance of bonds, the
agreement of the authority to do all things necessary for
the authorization, issuance and sale of such bonds in
such amounts as may be necessary for the timely re-
tirement of such notes; limitations on the issuance of
additional bonds or notes; the terms upon which addi-
tional bonds or notes may be issued and secured; the
refunding of outstanding bonds or notes; the procedure,
if any, by which the terms of any contract with bond-
holders or noteholders may be amended or abrogated,
the amount of bonds or notes the holders of which
must consent thereto and the manner in which such
consent may be given; limitations on the amount of
moneys to be expended by the authority for operating,
administrative or other expenses of the authority; secur-
ing any bonds or notes by a trust agreement; and any
other matters, of like or different character, which in
any way affect the security or protection of the bonds
or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes shall be less than
the minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chairman of the authority shall
certify, on or before the first day of December of each
year, the amount of such deficiency to the governor of
the state, for inclusion, if the governor shall so elect,
of the amount of such deficiency in the budget to be
submitted to the next session of the Legislature for
appropriation to the authority to be pledged for pay-
ment of such bonds or notes: Provided, That the Legis-
lature shall not be required to make any appropriation
so requested, and the amount of such deficiencies shall
not constitute a debt or liability of the state.

Neither the members of the authority nor any person
executing the bonds or notes shall be liable personally
on the bonds or notes or be subject to any personal
liability or accountability by reason of the issuance
thereof.

§20-5C-9. Trustee for bondholders; contents of trust agreement.

1 In the discretion of the authority, any water develop-
ment revenue bonds or notes or water development
revenue refunding bonds issued by the authority under
this article may be secured by a trust agreement between
the authority and a corporate trustee, which trustee may
be any trust company or banking institution having the
powers of a trust company within or without this state.

Any such trust agreement may pledge or assign rev-
enues of the authority to be received, but shall not
convey or mortgage any water development project or
any part thereof. Any such trust agreement or any reso-
lution providing for the issuance of such bonds or notes
may contain such provisions for protecting and enforcing
the rights and remedies of the bondholders or notehold-
ers as are reasonable and proper and not in violation
of law, including the provisions contained in section
eight of this article and covenants setting forth the
duties of the authority in relation to the acquisition of
property, the construction, improvement, maintenance,
repair, operation and insurance of the water develop-
ment project the cost of which is paid in whole or in part
from the proceeds of such bonds or notes, the rentals or
other charges to be imposed for the use or services of any
water development project, provisions with regard to
the payment of the principal of and interest, charges
and fees on loans made to governmental agencies from
the proceeds of such bonds or notes, the custody, safe-
guarding, and application of all moneys and provisions
for the employment of consulting engineers in connec-
tion with the construction or operation of such water
development project. Any banking institution or trust
company incorporated under the laws of this state which
may act as depository of the proceeds of bonds or notes or
of revenues shall furnish such indemnifying bonds or
pledge such securities as are required by the authority.
Any such trust agreement may set forth the rights and
remedies of the bondholders and noteholders and of the
trustee and may restrict individual rights of action by
bondholders and noteholders as customarily provided in
trust agreements or trust indentures securing similar
bonds. Such trust agreement may contain such other
provisions as the authority deems reasonable and proper
for the security of the bondholders or noteholders. All
expenses incurred in carrying out the provisions of any
such trust agreement may be treated as a part of the
cost of the operation of the water development project.
Any such trust agreement or resolution authorizing the
issuance of water development revenue bonds may pro-
vide the method whereby the general administrative
overhead expenses of the authority shall be allocated
among the several projects acquired or constructed by it
as a factor of the operating expenses of each such
project.

§20-5C-13. Investment of funds by authority.

1 The authority is hereby authorized and empowered to
2 invest any funds not needed for immediate disbursement
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of
7 indebtedness issued by any of the following agencies:
8 Banks for cooperatives; federal intermediate credit banks;
9 federal home loan bank system; Export-Import Bank of
the United States; federal land banks; the Federal Na-
tional Mortgage Association or the Government National
Mortgage Association;

(3) Public housing bonds issued by public agencies or
municipalities and fully secured as to the payment of
both principal and interest by a pledge of annual contri-
butions under an annual contributions contract or con-
tracts with the United States of America; or temporary
notes issued by public agencies or municipalities or pre-
liminary loan notes issued by public agencies or munici-
palities, in each case, fully secured as to the payment of
both principal and interest by a requisition or payment
agreement with the United States of America;

(4) Certificates of deposit secured by obligations of
the United States of America;

(5) Direct obligations of or obligations guaranteed by
the state of West Virginia;

(6) Direct and general obligations of any other state
within the territorial United States, to the payment of
the principal of and interest on which the full faith and
credit of such state is pledged: Provided, That at the time
of their purchase, such obligations are rated in either
of the two highest rating categories by a nationally
recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any
corporations organized and operating within the United
States: Provided, however, That such corporation shall
have a minimum net worth of fifteen million dollars and
its securities or its parent corporation's securities are
listed on one or more of the national stock exchanges:
Provided further, That (i) such corporation has earned
a profit in eight of the preceding ten fiscal years as re-
lected in its statements, and (ii) such corporation has not
defaulted in the payment of principal or interest on any
of its outstanding funded indebtedness during its preceding
ten fiscal years, and (iii) the bonds, notes or debentures
of such corporation to be purchased are rated "AA" or
the equivalent thereof or better than "AA" or the equiv-
alent thereof at least two or more nationally recognized
rating services such as Standard and Poor's, Dun & Bradstreet or Moody's.

§20-5C-14. Rentals and other revenues from water development projects owned by the authority; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

This section shall apply to any water development project or projects which are owned in whole or in part by the authority. The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain waste water facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the
parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection thereof, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection thereof, and by the payment of such appropriated money or the proceeds of such bonds or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held before or after the effective date of this section for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a waste water facility, whether or not the governmental agency at the time of such election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.
§20-5C-15. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

Each water development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority or if owned by a governmental agency, by such governmental agency, or the authority or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

§20-5C-16a. Purchase and cancellation of notes or bonds.

The authority, subject to such agreements with note holders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase notes or bonds of the authority.

If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest
payment date thereon. If the notes or bonds are not then
redeemable, the price of such purchase shall not exceed
the redemption price applicable on the first date after
such purchase upon which the notes or bonds become
subject to redemption plus accrued interest to such date.
Upon such purchase such notes or bonds shall be
canceled.

§20-5C-16b. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded
by the authority by the issuance of its refunding bonds
in such amount as it may deem necessary to refund the
principal of the bonds so to be refunded, together with
any unpaid interest thereon; to provide additional funds
for the purposes of the authority; and any premiums and
commissions necessary to be paid in connection there-ewith. Any such refunding may be effected whether the
bonds to be refunded shall have then matured or shall
thereafter mature, either by sale of the refunding bonds
and the application of the proceeds thereof for the re-
demption of the bonds to be refunded thereby, or by
exchange of the refunding bonds for the bonds to be re-
funded thereby: Provided, That the holders of any bonds
so to be refunded shall not be compelled without their
consent to surrender their bonds for payment or ex-
change prior to the date on which they are payable or,
if they are called for redemption, prior to the date on
which they are by their terms subject to redemption.
Any refunding bonds issued under the authority of this
article shall be payable from the revenues out of which
the bonds to be refunded thereby were payable, or from
other moneys or the principal of and interest on or other
investment yield from, investments or proceeds of bonds
or other applicable funds and moneys, including invest-
ments of proceeds of any refunding bonds, and shall be
subject to the provisions contained in section eight of
this article and shall be secured in accordance with the
provisions of sections eight and nine of this article.
CHAPTER 141

(H. B. 1382—By Mr. Balloux and Mr. Arnold)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections eight-a and eighteen-a, providing for a limitation on the issuance of any new permits for surface mining and requiring a special surface mining permit when coal is removed incidental to commercial, residential, industrial or civic construction.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-8a. Limitation on the issuance of new permits for surface mining.

§20-6-18a. Special permits for the removal of coal incidental to the development of land.

§20-6-8a. Limitation on the issuance of new permits for surface mining.

On and after the effective date of this section, no new permits, including prospecting permits, may be issued under the provisions of article six of this chapter for the surface mining of coal in any county, unless the operator is required to perform the following:

1. Ensure to the satisfaction of the director that, when engaged in surface mining on slopes of twenty degrees or greater, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided,

That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the
permittee can establish to the satisfaction of the director that
the soil or spoil will not slide and that the other requirements of
this section can still be met;

(2) Backfill, compact (where advisable to ensure stability
or to prevent leaching of toxic materials) and grade to restore
the approximate original contour of the disturbed land with all
highwalls, spoil piles and depressions eliminated (unless small
depressions are needed in order to retain moisture to assist
revegetation or as otherwise authorized pursuant to this
article); and

(3) Comply with all other provisions of article six of this
chapter: Provided, That in the event of any inconsistency be­
tween the provisions of this section and other provisions of
article six of this chapter, the provisions of this section shall
govern and control.

This subdivision shall not be construed so as to abrogate
or limit in any way the authority of the director to modify
reclamation requirements to bring about more desirable land
uses or watershed control, including, but not limited to, moun­
tain top removal and valley fill techniques: Provided, That the
use of any such technique shall be subject to the prior written
approval of the director.

This subdivision shall not be construed so as to prohibit the
retention of a properly maintained haul road on the disturbed
land after reclamation has been completed or to prohibit the
installation of diversion ditches and other minor deviations
from the approximate original contour of the disturbed land:
Provided, That the director has given his prior written approval
for the haul road, diversion ditch or other minor deviation.

(4) Notwithstanding the provisions of sections nineteen
and thirty-one, section six of this article, all surface-mining
permits previously issued which are valid on the effective date
of this section and all applications for surface-mining permits
which have been received by the department of natural re­
sources on the effective date of this section and all surface-
mining operations conducted or to be conducted thereunder
are hereby exempted from the requirements of this section.
§20-6-18a. Special permits for the removal of coal incidental to the development of land.

1 It shall hereafter be unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the department of natural resources a surface-mine permit therefor as provided in section eight of this article, unless a special permit therefor shall have been first obtained from the department as provided in this section.

Application for a special permit to engage in surface mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the department and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan prepared and certified by or under the supervision of a registered professional civil engineer or by a land surveyor approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the natural coal deposit to be mined and removed from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof, and such other information as prescribed by the director;

(2) A development plan for the proposed commercial, residential, industrial or civic use of said land;

(3) The owner or owners of the surface of the land to be developed;

(4) The owner or owners of the mineral to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of mineral that would be mined as a result of the proposed development of said land: Provided, That in no event may such number of acres to be mined exceed five acres;

(6) Such other information as the director may require to satisfy and assure the director that the surface mining under
the special permit is incidental or secondary to the proposed commercial, residential, industrial or civic use of said land.

There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state covering all development operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount not less than three hundred thousand dollars.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of three thousand dollars per acre, for a maximum disturbance of five acres. A special reclamation tax of sixty dollars for each acre of land to be disturbed in the mining operation, with the exception of roadway, storage areas and processing plants shall be paid to the director before a permit is issued.

The bond shall be payable to the state of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond released and any cash, securities or certificates furnished with said bond shall be returned to the applicant.

The filing fee for the special permit shall be one thousand dollars.

The special permit shall be valid until work permitted is completed.

The purpose of this section is to vest jurisdiction in the department of natural resources over the aspect of surface mining involved where the surface mining is incidental or secondary to preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, coal must be removed, such as the building and con-
construction of highways, railroads, shopping malls, factory and industrial sites, residential and building sites, recreational areas, etc. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that the same is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applicable to the operator holding a special permit: Provided, That this section shall not apply to a landowner engaged in the construction of a single family dwelling which construction does not require the disturbance of more than one acre of privately owned land.

CHAPTER 142
(Com. Sub. for H. B. 834—By Mrs. Neal)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article seven-a, relating to defining certain terms; vandalism of caves; prohibiting the sale of speleothems; prohibiting destruction or removal of certain plant or animal life; requiring archaeological permits in certain instances; specifying liability of owners of caves and their agents; and providing penalties for specific violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. CAVE PROTECTION.
§20-7A-1. Definitions.
§20-7A-2. Vandalism; penalties.
§20-7A-4. Biological policy; penalties for violation.
§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.


§20-7A-1. Definitions.

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

2 (a) "Cave" means any naturally occurring subterranean cavity. The word "cave" includes or is synonymous with cavern, pit, pothole, well, sinkhole and grotto.

3 (b) "Commercial cave" means any cave with improved trails and lighting utilized by the owner for the purpose of exhibition to the general public as a profit or nonprofit enterprise, wherein a fee is collected for entry.

4 (c) "Gate" means any structure or device located to limit or prohibit access or entry to any cave.

5 (d) "Person or persons" means any individual, partnership, firm, association, trust or corporation.

6 (e) "Speleothem" means a natural mineral formation or deposit occurring in a cave. This includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, palettes, flowstone, et cetera. Speleothems are commonly composed of calcite, epsomite, gypsum, aragonite, celestite and other similar minerals.

7 (f) "Owner" means a person who owns title to land where a cave is located, including a person who owns title to a leasehold estate in such land.

§20-7A-2. Vandalism; penalties.

1 It is unlawful for any person, without express, prior, written permission of the owner, to willfully or knowingly:

2 (a) Break, break-off, crack, carve upon, write, burn or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar or harm the surfaces of any cave or any natural material therein, including speleothems;
(b) Disturb or alter in any manner the natural condition of any cave;

(c) Break, force, tamper with or otherwise disturb a lock, gate, door or other obstruction designed to control or prevent access to any cave, even though entrance thereto may not be gained.

Any person violating a provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars, and in addition thereto, may be imprisoned in the county jail for not less than ten days nor more than six months.


It is unlawful to sell or offer for sale any speleothems in this state, or to export them for sale outside the state. A person who violates any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred fifty dollars nor more than five hundred dollars and in addition thereto, may be imprisoned in the county jail for not less than ten days nor more than six months.

§20-7A-4. Biological policy; penalties for violation.

It is unlawful to remove, kill, harm or disturb any plant or animal life found within any cave: Provided, That scientific collecting permits may be obtained from the director as provided in section fifty, article two of this chapter. Gates employed at the entrance or at any point within any cave shall be of open construction to allow free and unimpeded passage of air, insects, bats and aquatic fauna. A person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five hundred dollars and in addition thereto, may be imprisoned in the county jail for not less than fifteen days nor more than six months.

§20-7A-5. Archaeology; permits for excavation; how obtained; prohibitions; penalties.

(a) No person may excavate, remove, destroy, injure or
deface any historic or prehistoric ruins, burial grounds, archaeological or paleontological site including saltpeter workings, relics or inscriptions, fossilized footprints, bones or any other such features which may be found in any cave.

(b) Notwithstanding the provisions of subsection (a) of this section, a permit to excavate or remove archaeological, paleontological, prehistoric and historic features may be obtained from the director of natural resources. Such permit shall be issued for a period of two years and may be renewed at expiration. It is not transferable but this does not preclude persons from working under the direct supervision of the person holding the permit.

A person applying for such a permit must:

(1) Provide a detailed statement to the director of natural resources giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

(2) Provide data and results of any completed excavation, study or collection at the first of each calendar year.

(3) Obtain the prior written permission of the director of natural resources if the site of the proposed excavation is on state-owned lands and prior written permission of the owner if the site of such proposed excavation is on privately owned land.

(4) Carry the permit while exercising the privileges granted.

A person who violates any provision of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and may be imprisoned in the county jail for not less than ten days nor more than six months. A person who violates any of the provisions of subsection (b) of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, and the permit herein authorized shall be revoked.


(a) Neither the owner of a cave nor his authorized agents
acting within the scope of their authority are liable for injuries sustained by any person using such features for recreational or scientific purpose if the prior consent of the owner has been obtained and if no charge has been made for the use of such features.

(b) An owner of a commercial cave is not liable for an injury sustained by a spectator who has paid to view the cave, unless such injury is sustained as a result of such owner's negligence in connection with the providing and maintaining of trails, stairs, electrical wires or other modifications, and such negligence is the proximate cause of the injury.

CHAPTER 143
(H. B. 875—By Mr. Tompkins)

[Passed February 25, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to criminal procedure; probation and parole; and providing for suspension of sentence and release on probation of persons eligible for probation before the convicted person has been imprisoned for sixty days.

Be it enacted by the Legislature of West Virginia:

That section three, 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.

§ 62-12-3. Suspension of sentence and release on probation.

Whenever, upon the conviction of any person eligible for probation under the preceding section, it shall appear to the satisfaction of the court that the character of the offender and the circumstances of the case indicate that he
is not likely again to commit crime and that the public good does not require that he be fined or imprisoned, the court, upon application or of its own motion, may suspend the imposition or execution of sentence and release the offender on probation for such period and upon such conditions as are provided by this article; but in no case, except as provided by the following section, shall the court have authority to suspend the execution of a sentence after the convicted person has been imprisoned for sixty days under the sentence.

CHAPTER 144

(Com. Sub. for H. B. 1237—By Mrs. Pitsenberger)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the number of members of the board of dental examiners from five to six members, providing for the appointment, term and qualifications of a licensed dental hygienist to the board; providing that the dental hygienist on the board vote only on matters relating to dental hygiene; and method of appointment.

Be it enacted by the Legislature of West Virginia:

That section four, article four, 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 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-4. Board of dental examiners.

The "West Virginia Board of Dental Examiners" heretofore established shall be continued and shall be composed of six members. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until
their successors have been appointed and have qualified. Members of the board shall serve for a term of five years. In addition to the five practicing dentists appointed to the board, there shall be appointed one dental hygienist with a degree in dental hygiene from an accredited college, who shall be appointed for a term beginning on the first day of July, one thousand nine hundred seventy-seven. The member of the board who is a licensed dental hygienist may vote only on those matters which concern the prerequisites to practice dental hygiene, the licensing of dental hygienists, the revocation of licenses of dental hygienists, the promulgation or adoption of rules and regulations concerning the practice of dental hygiene or any other matter directly affecting the practice of dental hygiene. The member of the board who is a licensed dental hygienist is empowered to participate in all other transactions of the board without voting privileges.

All members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Each member of the board, at the time of his appointment and during his term as such member, shall have been a citizen of this state and shall have been either a licensed dentist or a licensed dental hygienist for a period of not less than five years immediately preceding his appointment.

No person may be eligible for appointment to the board who is connected with or interested in any dental college or dental department of any institution of learning or in a dental supply business.

Except for the dental hygienist, any member shall be eligible for reappointment for one additional consecutive term.

Each appointment of a licensed dentist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental society and each appointment of a licensed dental hygienist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental hygienists' association. In the case of an appointment for a full term such nominations shall be submitted to the governor not later than eight months prior to the date on which the
appointment shall become effective. In the case of an appointment to fill a vacancy, such nominations shall be submitted to the governor within thirty days after a request for such nominations shall have been made by the governor to the president of the West Virginia dental society or the president of the West Virginia dental hygienists' association. In the event of the failure of the society or the association to submit to the governor nominations for an appointment in accordance with the requirements of this section, the governor may make the appointment without such nominations.

Each member of the board shall receive forty dollars for each day actually spent in attending meetings of the board, or of its committees, and shall also be reimbursed for all reasonable and necessary expenses actually incurred in the discharge of his duties under the provisions of this article.

CHAPTER 145

(Com. Sub. for S. B. 557—By Mr. Savilla, Mr. Hatfield, Mr. Nelson and Mr. Jones)

[Passed April 9, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article sixteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the requirements for applicants for a license to practice chiropractic; accreditation of schools and colleges.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§30-16-4. Application for license; qualifications of applicant.

Any person wishing to practice chiropractic in this state shall apply to the secretary of the board for a license so to
practice. Each applicant shall establish the fact to the board that he has satisfied the following requirements:

(a) That he is eighteen years of age or over; (b) that he is of good moral character; (c) that he is a graduate of an accredited high school giving a four-year course or has an education equivalent to the same; (d) that he has attended for at least two academic years consisting of no less than sixty semester hours, an academic college equal in standing to the West Virginia University; (e) that he is a graduate of a chiropractic school or college approved by the West Virginia Board of Chiropractic Examiners and having status with an accrediting agency recognized by the United States department of health, education and welfare as an acceptable accrediting agency for granting accreditation in chiropractic education in a resident course of not less than four academic years of nine months each, and active attendance at the same for a minimum of four thousand hours of fifty minutes each of classroom and laboratory instruction: Provided, That this requirement shall not be construed to disqualify applicants that graduated from chiropractic schools or colleges before the passage of this article which taught a resident course of at least three academic years of eight months each or a minimum of two thousand hours of fifty minutes each and required active attendance upon the same. Attendance at the academic college as set forth in requirement (d) shall be prior to entrance into the chiropractic training as set forth in requirement (e): Provided, however, That this requirement of sequence of attendance at an academic college then chiropractic school or college shall not apply to those applicants who at the time of passage of this article have completed or are in the process of fulfilling the requirements set forth in (e) above; nor shall such requirement of sequence of attendance at an academic college then chiropractic school or college apply to such applicants who have, subsequent to the passage of this article, commenced the fulfillment of requirement (c) under the educational provisions of the Federal Servicemen's Readjustment Act now in force or as may hereafter be amended, or such federal act of similar effect, benefit or purpose as may hereafter be enacted by Congress.
AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-three, relating generally to the practice of radiologic technology and the licensing of persons engaging in the practice of radiologic technology; setting forth certain legislative findings and a declaration of purpose; defining terms; requiring the licensing of persons engaged in the practice of radiologic technology; providing prohibitions and restrictions on certain activities; creating the West Virginia radiologic technology board of examiners; relating to the appointment, qualifications, terms of office, oath, removal and expenses of members of the board; relating to the officers, meetings and quorum of the board; relating to vacancies on the board; specifying powers and duties of the board; relating to the receipt and disbursement of funds; establishing qualifications of applicants for license; providing for reciprocal licensing of certain radiologic technologists; exempting certain persons from license requirements; authorizing issuance of license to persons who have practiced radiologic technology at least one of the last five years under certain circumstances, without examination and without meeting certain educational requirements; relating to applications and fees; providing for the issuance of license, renewal thereof and fees in connection therewith; relating to the issuance of a temporary permit to practice radiologic technology; authorizing the board to suspend or revoke license or temporary permit and establishing the grounds therefor; authorizing board to conduct investigations and hold hearings; relating to hearing procedures; providing a time and place for such hearings; specifically making chapter twenty-nine-a of the code applicable; authorizing the board to issue subpoenas and subpoenas duces tecum; providing automatic stay or suspension of certain orders of board pending hearing; re-
lating to the cost of any such hearing; providing for judicial review of decisions of the board entered following hearing; providing for appeals to the supreme court of appeals; providing legal representation for the board; providing for injunctive relief; and establishing criminal offenses and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-1. Legislative findings and declarations of public policy.

§30-23-2. Definitions.

§30-23-3. License required.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

§30-23-5. Board of examiners; powers and duties; funds of board.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

§30-23-7. Issuance of license; renewal of license; renewal fee.

§30-23-8. Temporary permits.

§30-23-9. Suspension or revocation of license or temporary permit.


§30-23-12. Actions to enjoin violations.


§30-23-1. Legislative findings and declarations of public policy.

1 The Legislature finds and declares that in the interest of public health, the people of this state should be protected from excessive and improper exposure to ionizing radiation. It is the purpose of this article to establish minimum standards of education, training and experience for radiologic technologists and to prescribe means for assuring that these standards are met.

§30-23-2. Definitions.

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

3 (a) "Board" means the West Virginia radiologic technology board of examiners.
(b) "License" means a license granted and issued by the board for the practice of radiologic technology.

(c) "Licensed practitioner" means a person licensed to practice medicine, chiropractic, podiatry, osteopathy or dentistry.

(d) "Licensee" means any person holding a license or a temporary permit issued under the provisions of this article.

(e) "Radiologic technologist" means a person, other than a licensed practitioner who applies X rays or assists in the application of X rays to human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

(f) "Radiologic technology" means the application of X rays or assisting in the application of X rays to human beings for diagnostic or therapeutic purposes under the supervision of a licensed practitioner.

(g) "Radiologist" means a licensed practitioner who specializes in the use of ionizing radiation for the diagnosis or treatment of disease.

(h) "Radiology resident" means a licensed practitioner who is in training to become a radiologist and who uses ionizing radiation in the diagnosis or treatment of disease, under the supervision of a radiologist.

(i) "Supervision" means responsibility for and control of quality, radiation safety and technical aspects in the application of ionizing radiation of human beings for diagnostic or therapeutic purposes.

(j) "Technology" hereinafter relates to radiologic technology.

§30-23-3. License required.

(a) No person may engage in, offer to engage in, or hold himself out to the public as being engaged in, the practice of radiologic technology in this state, nor may any person use in connection with any trade, business, profession or occupation, except in those instances specifically provided in subdivisions (1), (2), (3) and
(4), subsection (c), section six of this article, the word radiologic technologist or any other title, word or abbreviation which induces or tends to induce the belief that such person is qualified to engage or is engaged in the practice of radiologic technology, unless and until he first obtains a license or temporary permit to engage in the practice of radiologic technology in accordance with the provisions of this article, which license or temporary permit remains unexpired, unsuspended and unrevoked: Provided, That no such license or temporary permit may be required for a radiologic technologist who is not a resident of this state, who is the holder of a license or certificate to engage in the practice of radiologic technology issued by a state with licensing or certification requirements determined by the board to be at least equal to those provided in this article, who has no regular place of practice in this state and who engages in the practice of radiologic technology in this state for a period of not more than ten days in any calendar year.

(b) No firm, association or corporation may, 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 radiologic technology.

§30-23-4. Creation of board of examiners of radiologic technologists; members; appointment by governor; qualifications; terms; vacancies; officers; oath; compensation; general provisions.

There is hereby created a West Virginia radiologic technology board of examiners, hereinafter called the board. The governor shall appoint the members of such board, by and with the advice and consent of the Senate. The board shall consist of seven members, composed of one member from the division of radiologic health of the West Virginia state department of health, three licensed practitioners, two of whom shall be radiologists, and three radiologic technologists who are licensed hereunder, or, in the case of the members first appointed,
are eligible for a license hereunder without passing a proficiency examination if such person has a total of three years' experience as a radiologic technologist immediately prior to the effective date of this article.

Each member shall be appointed for a term of three years and shall serve until a successor has been appointed and has qualified: Provided, That of the first appointees, a licensed practitioner and a radiologic technologist shall each be appointed for a term of one year, a licensed practitioner and a radiologic technologist shall each be appointed for a term of two years and a licensed practitioner, a radiologic technologist and a representative from the division of radiologic health, West Virginia state department of health shall each be appointed for a term of three years. All members of the board shall be residents of West Virginia. A member may succeed himself. Vacancies shall be filled by appointment by the governor for the unexpired term. Before entering upon the performance of his duties, each member shall take and subscribe to the oath required by section five, article four of the constitution of this state.

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 constitutes 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 twice annually to conduct the examination hereinafter provided for and to transact such other business as may come before it. The board shall hold its first meeting within thirty days after the appointment of the members. The members of the board shall receive no compensation for their services as members, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties under this article. Any member may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.
§30-23-5. Board of examiners; powers and duties; funds of board.

1 (a) The board shall:

2 (1) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby and such reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

3 (2) Examine applicants and determine their eligibility for a license or temporary permit to practice radiologic technology;

4 (3) Prepare, conduct and grade an examination of applicants for a license and determine the satisfactory passing score thereon;

5 (4) Issue, renew, deny, suspend or revoke licenses and temporary permits to engage in the practice of radiologic technology in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, review, affirm, reverse, vacate or modify its order with respect to any such denial, suspension or revocation;

6 (5) Investigate alleged violations of provisions of this article, reasonable rules and regulations promulgated hereunder and orders and final decisions of the board and take appropriate disciplinary action against any licensee for the violation thereof or institute appropriate legal action for the enforcement of the provisions of this article, rules and regulations promulgated hereunder and orders and final decisions of the board;

7 (6) Employ, direct, discharge and define the duties of full or part-time professional, clerical or other personnel necessary to effectuate the provisions of this article;

8 (7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;
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36  (8) Provide standards for approved schools of
37  technology, procedures for obtaining and maintaining
38  approval, and procedures of revocation of approval
39  where standards are not maintained: Provided, That such
40  standards for approved schools meet at least the minimal
41  requirements of the American society of radiologic tech-
42  nologists;
43
44  (9) Whenever it deems it appropriate, confer with the
45  attorney general or his assistants in connection with all
46  legal matters and questions; and
47
48  (10) Take such other action as may be reasonably
49  necessary or appropriate to effectuate the provisions of
50  this article.
51
52  (b) All moneys paid to the board shall be accepted
53  by a person designated by the board and deposited by
54  him with the treasurer of the state and credited to an
55  account to be known as the “board of examiners of radio-
56  logic technologist fund.” The reimbursement of all rea-
57  sonable and necessary expenses actually incurred by
58  members of the board and all other costs and expenses
59  incurred by the board in the administration of this article
60  shall be paid from such fund, and no part of the state’s
61  general revenue fund shall be expended for this purpose.

§30-23-6. Qualifications of applicants; exceptions; applications; fee.

1  (a) To be eligible for a license to practice radiologic
2  technology the applicant must:
3
4  (1) Be of good moral character;
5
6  (2) Have completed four years of high school educa-
7  tion or its equivalent;
8
9  (3) Have successfully completed a minimum twenty-
10  four-month course in radiologic study in a school of
11  radiologic technology approved by the board;
12
13  (4) Have passed the examination prescribed by the
14  board, which examination shall cover the basic subject
15  matter of radiologic technology, skills and techniques;
(5) Not have been convicted of a felony in any court in this state or any federal court in this or any other state within ten years preceding the date of application for registration, which conviction remains unreversed; and not have been convicted of a felony in any court in this state or any federal court in this or any other state at any time if the offense for which he was convicted related to the practice of radiologic technology, which conviction remains unreversed.

(b) Any person who holds a license or certificate, including the American Registry of Radiologic Technologists, to practice radiologic technology issued by any other state, the requirements for which license or certificate are found by the board to be at least equal to those provided in this article, shall be eligible for a license to practice radiologic technology in this state without examination.

(c) The following persons are not required to obtain a license in accordance with the provisions of this article:

(1) A technology student enrolled in or attending an approved school of technology who as part of his course of study applies ionizing radiation to a human being under the supervision of a licensed practitioner;

(2) A person acting as a dental assistant who under the supervision of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography;

(3) A person engaged in performing the duties of a technologist in his employment by an agency, bureau or division of the government of the United States; and

(4) Any licensed practitioner, radiologist or radiology resident.

(d) Any person who has engaged in the practice of radiologic technology in this state for a period of three years or more within the last five years as of the effective date of this article is eligible for a license to engage in the practice of radiologic technology without examination and without meeting the requirements of
subdivision (3), subsection (a) of this section, if application for such license is made within twelve months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2) and (5), subsection (a) of this section.

(e) Any person who has been engaged as a radiologic technologist for at least one of the three years immediately prior to the effective date of this article and passes a proficiency examination prepared by the board is eligible for a license to engage in the practice of radiologic technology without further examination and without meeting the requirements of subdivision (3), subsection (a) of this section, if application for such license is made within twelve months after the effective date of this article and if such person meets the requirements of subdivisions (1), (2) and (5), subsection (a) of this section.

(f) Any applicant for any such license shall submit an application therefor at such time (subject to the time limitation set forth in subsection (d) of this section), in such manner, on such forms and containing such information as the board may from time to time by reasonable rule and regulation prescribe, and pay to the board a license fee of thirty dollars, which fee shall be returned to the applicant if he is denied a license.

§30-23-7. Issuance of license; renewal of license; renewal fee. Whenever the board finds that an applicant meets all the requirements of this article for a license to engage in the practice of radiologic technology, it shall forthwith issue to him such license; and otherwise the board shall deny the same. The license is valid for a period of two years from the date issued and shall be renewed every two years without examination upon application for renewal on a form prescribed by the board and payment to the board of a renewal fee of twenty dollars: Provided, That the board may deny an application for renewal for any reason which would justify the denial of an original application for a license.
§30-23-8. Temporary permits.
1. Upon proper application the board may issue a temporary permit to engage in the practice of radiologic technology in this state to an applicant who meets the qualifications of subdivisions (1), (2), (3) and (5), subsection (a), section six of this article, pending examination of such applicant, which temporary permit shall expire thirty days after the board gives written notice of the results of the examination held following the issuance of such temporary permit, and such permit may not be renewed or another thereof issued to the same person.

§30-23-9. Suspension or revocation of license or temporary permit.
1. (a) The board may at any time upon its own motion and shall upon the verified written complaint of any person conduct an investigation to determine whether there are grounds for suspension or revocation of a license or a temporary permit issued under the provisions of this article.

2. (b) The board shall suspend or revoke any license or temporary permit when it finds the holder thereof has:

1. Been convicted of a felony in any court in this state or any federal court in this or any other state within ten years preceding the date of the motion or complaint, which conviction remains unreversed; or been convicted of a felony in any court in this state or any federal court in this or any other state at any time if the offense for which he was convicted related to the practice of radiologic technology, which conviction remains unreversed;

2. Obtained a license or temporary permit by means of fraud or deceit;

3. Been incompetent, grossly negligent, or guilty of other malpractice as defined by the board by reasonable rules and regulations;

4. Failed or refused to comply with the provisions of this article or any reasonable rule and regulation promulgated by the board hereunder or any order or final decision of the board; or
(5) Except in emergency situations, failed to obtain written authorization from the attending licensed practitioner or from the patient, and if the patient is a minor, from a parent or a person having custody of the minor.

(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 such license or temporary permit if application were then being made for it.


(a) Whenever the board denies an application for any original or renewal license or denies an application for a temporary permit or suspends or revokes any license or temporary permit, it shall make an interim 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 is entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" as set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or temporary permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the cost thereof and if such person does not substantially prevail at such hearing such cost shall be assessed against him and may be collected by 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 and not more than thirty days thereafter.
Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all 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 is final unless reversed, vacated or modified upon judicial review thereof in
accordance with the provisions of section eleven of this article.


Any person adversely affected by a decision of the board rendered after a hearing held in accordance with the provisions of section ten of this article is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code 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 is final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§30-23-12. Actions to enjoin violations.

Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violation or violations or any part thereof has occurred, is occurring or is about to occur, for an injunction against any such person and any such other persons who have been, are or are about to be, involved in any practice, 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 hereunder and all orders and final decisions of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed.

The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

The board shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit court by the prosecuting attorneys of the several counties as well, all without additional compensation.


Any person who violates any provisions of this article, any of the reasonable rules and regulations promulgated hereunder or any order or any final decision of the board shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

CHAPTER 147
(Com. Sub. for H. B. 838—By Mr. Sattes)

[Passed April 1, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter twenty-nine-b, relating to public access to and inspection of public records; declaration of policy; definitions of terms; inspection and copying of public records
and exemptions therefrom; rules and regulations for the protec-
tion of the records; enforcement of right of inspection; viola-
tions of article and penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-1. Declaration of policy.

§29B-1-2. Definitions.

§29B-1-3. Inspection and copying.

§29B-1-4. Exemptions.

§29B-1-5. Enforcement.

§29B-1-6. Violation of article; penalties.

§29B-1-1. Declaration of policy.

Pursuant to the fundamental philosophy of the American 
constitutional form of representative government which holds to 
the principle that government is the servant of the people, and 
not the master of them, it is hereby declared to be the public 
policy of the state of West Virginia that all persons are, unless 
otherwise expressly provided by law, entitled to full and com-
plete information regarding the affairs of government and the 
oficial acts of those who represent them as public officials 
and employees. The people, in delegating authority, do not 
give their public servants the right to decide what is good for 
the people to know and what is not good for them to know. 
The people insist on remaining informed so that they may 
retain control over the instruments of government they have 
created. To that end, the provisions of this article shall be 
liberally construed with the view of carrying out the above 
declaration of public policy.

§29B-1-2. Definitions.

As used in this article:

(1) "Custodian" means the elected or appointed official 
charged with administering a public body.
4 (2) "Person" includes any natural person, corporation, partnership, firm or association.

6 (3) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.

14 (4) "Public record" includes any writing containing information relating to the conduct of the public's business, prepared, owned and retained by a public body.

17 (5) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

§29B-1.3. Inspection and copying.

1 (1) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

4 (2) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

7 (3) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his duties.

16 (4) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:
(a) Furnish copies of the requested information;
(b) Advise the person making the request of the time and place at which he may inspect and copy the materials; or
(c) Deny the request stating in writing the reasons for such denial.

Such a denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(5) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of such records.

§29B-1-4. Exemptions.

The following categories of information are specifically exempt from disclosure under the provisions of this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his own personal, medical or similar file;

(3) Test questions, scoring keys and other examination
data used to administer a licensing examination, examination
for employment or academic examination;

(4) Records of law-enforcement agencies that deal with
the detection and investigation of crime and the internal
records and notations of such law-enforcement agencies which
are maintained for internal use in matters relating to law
enforcement;

(5) Information specifically exempted from disclosure by
statute;

(6) Records, archives, documents or manuscripts describ-
ing the location of undeveloped historic, prehistoric, archaeo-
logical, paleontological and battlefield sites or constituting gifts
to any public body upon which the donor has attached restric-
tions on usage or the handling of which could irreparably
damage such record, archive, document or manuscript;

(7) Information contained in or related to examination,
operating or condition reports prepared by, or on behalf of, or
for the use of any agency responsible for the regulation or
supervision of financial institutions, except those reports
which are by law required to be published in newspapers; and

(8) Internal memoranda or letters received or prepared by
any public body.

§29B-1.5. Enforcement.

(1) Any person denied the right to inspect the public
record of a public body may institute proceedings for in-
junctive or declaratory relief in the circuit court in the county
where the public record is kept.

(2) In any suit filed under subsection one of this section,
the court has jurisdiction to enjoin the custodian or public body
from withholding records and to order the production of any
records improperly withheld from the person seeking disclosure.
The court shall determine the matter de novo and the burden
is on the public body to sustain its action. The court, on its
own motion, may view the documents in controversy in
camera before reaching a decision. Any custodian of any
public records of the public body found to be in noncompli-
ance with the order of the court to produce the documents
or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

§29B-1-6. Violation of article; penalties.

Any custodian of any public records who shall willfully violate the provisions of this article shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than ten days, or, in the discretion of the court, by both such fine and imprisonment.

AN ACT to amend article one-b, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-one, relating to payment of tuition and fees of members of the national guard attending institutions of higher education.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

Any member of the national guard who is enrolled in a
course of undergraduate study at and is attending any
accredited college, university, business or trade school
located in West Virginia, shall be entitled to payment of
tuitions and fees at such college, university, business or
trade school during the period of his service in the na-
tional guard: Provided, That such payment shall be con-
tingent upon appropriations being made by the Legisla-
ture for this express purpose.

The amount of such payment for members attending
a state-supported school shall be the actual amount of
such tuitions and fees at such school. The amount of such
payment for members attending a private school shall be
determined by the adjutant general, but in no event shall
exceed the highest amounts payable at any state-supported
school.

The adjutant general is charged with the administra-
tion of tuition and fee payments under this section and
shall promulgate rules and regulations for the same.

CHAPTER 149
(Com. Sub. for H. B. 1008—By Mrs. Neal and Mr. Stacy)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]
and selection of board members by lot; providing for establishment of a cadet selection board; appointment and qualifications for membership; providing for equal employment opportunity; providing for employment of civilian employees; providing for appointment of chaplains; promotions and promotion evaluation board; uniforms, provision of authorized weapons and equipment, and group insurance; territorial jurisdiction of department; establishing mission and purpose of department of public safety; powers of superintendent and members; providing limitations upon members; prescribing oath for superintendent and members; disposition of prisoners; prohibiting interference with members and giving false or misleading information to officers and providing a penalty therefor; prohibiting unauthorized use of uniform or insignia or impersonation of a member and providing a penalty therefor; proscribing members from performing duties for private persons and providing a penalty therefor; making it unlawful to bribe members, etc., and providing a penalty therefor; authorized transfers, prohibiting transfers for disciplinary purposes and notice and expenses in transfers; discipline of members, suspension, demotion, discharge and right to appeal; assignment of assistant attorney general and employment of legal counsel; duty of department to maintain statistics as to aliens, etc.; criminal identification bureau; rules and regulations generally; carrying weapons; retirement and continuation of death, disability and retirement fund; retirement awards and benefits for disability incurred in performance of duty and otherwise; physical examination; recall to duty and termination; awards and benefits to dependents for death in performance of duty and otherwise; awards and benefits when member dies after retirement or after serving twenty years; termination of benefits to dependents; refunds to members upon discharge or resignation; refunds to dependents and use of the term "dependent child or children"; removing penalty for resignation without consent of superintendent; removing provisions permitting governor to discharge a company; removing requirement of governor's consent for disciplined member to be reappointed; and removing requirement for common carriers to provide transportation to members at no cost.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-2. Superintendent; departmental headquarters.
§15-2-3. Companies, districts and detachments; how established.
§15-2-4. Appointment of commissioned officers, noncommissioned officers,
other members; temporary and permanent positions.
§15-2-5. Salaries; bond; leave time for members called to duty in national
guard or reserves.
§15-2-6. Departmental appeals boards; appeal procedures.
§15-2-7. Cadet selection board; qualifications for and appointment to
membership in department; civilian employees.
§15-2-9. Promotions; promotion evaluation board to be established.
§15-2-10. Uniforms; authorized equipment, weapons and supplies; local head-
quarters; quarters for members; life insurance; medical and hos-
pital fees for injuries and illnesses of members incurred in line
of duty.
§15-2-12. Mission of the department; powers of superintendent, officers and
members; patrol of turnpike.
§15-2-13. Limitations upon members.
§15-2-16. Interference with officers or members; false information; penalty.
§15-2-17. Unauthorized used of uniform, badge or other insignia; imper-
sion of member; penalty.
§15-2-18. Officers or members performing duties for private persons; general
penalty.
§15-2-19. Bribing, etc., officers or members; penalty.
§15-2-20. Transfer authorized; use for disciplinary purposes prohibited;
notice required under certain circumstances; relocation expense;
regulation of member's residence.
§15-2-21. Suspension, demotion or discharge of members; right of appeal.
§15-2-22. Assignment of assistant attorney general; employment of legal
counsel.
§15-2-23. Duties of superintendent as to statistics, aliens and labor con-
ditions.
§15-2-24. Criminal identification bureau; establishment; supervision; pur-
pose; fingerprints, photographs, records and other information;
reports by courts and prosecuting attorneys; offenses and
penalties.
§15-2-26. Continuation of death, disability and retirement fund; retirement
board.
§15-2-27. Retirement; awards and benefits.
§15-2-28. Credit toward retirement for member's prior military service;
credit toward retirement when member has joined armed forces
in time of armed conflict.
§15-2-29. Awards and benefits for disability—Incurred in performance of
duty.
§15-2-30. Same—Due to other causes.
§15-2-31. Same—Physical examinations; recall to active duty; termination.
§15-2-32. Retired member not to exercise police authority; retention of group insurance.
§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.
§15-2-34. Same—When member dies from nonservice-connected causes.
§15-2-35. Same—When member dies after retirement or after serving twenty years.
§15-2-36. Same—Termination.
§15-2-37. Refunds to certain members upon discharge or resignation.
§15-2-38. Refund to dependents upon death of member not eligible for benefits.


This article shall be known and may be cited as the "West Virginia Department of Public Safety Reorganization Act."

§15-2-2. Superintendent; departmental headquarters.

The department of public safety, heretofore established, shall be continued. The governor shall nominate, and by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his office, he shall execute a bond in the penalty of ten thousand dollars, payable to the state of West Virginia and conditioned upon the faithful performance of his duties. Such bond both as to form and security shall be approved as to form by the attorney general, and to sufficiency by the governor.

Before entering upon the duties of his office the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department, shall be located in Kanawha County.

§15-2-3. Companies, districts and detachments; how established.

The superintendent shall create, appoint and equip a department of public safety, which shall consist of the number of
companies, districts and detachments as are required for the proper administration of the department. Each company, district or detachment shall be composed of the number of officers and members the superintendent determines are required for the efficient operation of the department.

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.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

The superintendent shall appoint, from the enlisted membership of the department, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the department, the number of other officers and members he deems necessary to operate and maintain the executive offices, training school, scientific laboratory, keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

The ranks within the membership of the department shall be colonel, lieutenant colonel, major, captain, lieutenant, master sergeant, first sergeant, sergeant, corporal, trooper first class or trooper. Each such member while in uniform shall wear the insignia of rank as provided by law and departmental regulations.

The superintendent may appoint from the membership of the department eleven principal supervisors who shall receive the compensation and hold the temporary rank of lieutenant colonel, major or captain at the will and pleasure of the superintendent. Such appointments shall be exempt from any merit standards established by the promotion evaluation
board. Any person appointed to a temporary rank under the 
provisions of this article shall retain his permanent rank and 
shall remain eligible for promotion if his permanent rank is 
below that of captain. Upon the termination of a temporary 
appointment by the superintendent, the member shall be 
to the full rights and privileges of his permanent rank 
and shall remain eligible for subsequent appointment to a 
temporary rank.

§15-2-5. Salaries; bond; leave time for members called to duty in 
national guard or reserves.

1 Members of the department shall receive annual salaries 
pursuant to appropriation by the Legislature, payable at least 
monthly as follows:

4 Any lieutenant colonel shall receive an annual salary of 
nineteen thousand five hundred ninety-three dollars; any 
6 major shall receive an annual salary of seventeen thousand 
seven hundred thirty-five dollars; any captain shall receive an 
8 annual salary of sixteen thousand three hundred thirteen 
dollars; any lieutenant shall receive an annual salary of 
10 fifteen thousand, three hundred eleven dollars; any master 
11 sergeant or first sergeant shall receive an annual salary of 
12 fourteen thousand three hundred sixty-seven dollars; any 
13 sergeant shall receive an annual salary of thirteen thousand six 
hundred sixty-six dollars; any corporal shall receive an annual 
salary of twelve thousand nine hundred thirty dollars; any 
16 trooper first class shall receive an annual salary of twelve 
thousand one hundred forty dollars; and any newly enlisted 
18 trooper shall receive a salary of eight hundred seventy-nine dol-
lars monthly during the period of his basic training, and upon 
20 the satisfactory completion of such training and assignment to 
active duty each such trooper shall receive, during the remain-
der of his first year's service, a salary of nine hundred fifty dol-
lars monthly. During the second year of his service in the de-
partment each trooper shall receive an annual salary of eleven 
thousand six hundred sixty-five dollars; during the third year 
of his service each such trooper shall receive an annual salary 
of eleven thousand eight hundred thirty-seven dollars; and 
during the fourth year and fifth year of such trooper's service 
and for each year thereafter he shall receive an annual salary
of eleven thousand nine hundred ninety-five dollars. Each
member of the department whose salary is specified herein
shall receive and be entitled to an increase in salary over
that hereinbefore set forth, for grade in 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 shall receive a
salary increase of three hundred dollars to be effective during
his next three years of service and a like increase at three-
year intervals thereafter, with such increases to be cumulative.

In applying the foregoing salary schedule where salary in-
creases are provided for length of service, members of the de-
partment 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 re-
ceive under the provisions hereof.

Each member of the department, except the superintendent
and civilian employees, shall execute before entering upon the
discharge of his duties, a bond with security in the sum of five
thousand dollars payable to the state of West Virginia, condi-
tioned upon the faithful performance of his duties, and such
bond shall be approved as to form by the attorney general
and to sufficiency by the governor.

Any member of the department who is called to perform
active duty for training or inactive duty training in the national
guard or any reserve component of the armed forces of the
United States annually shall be granted upon request leave
time not to exceed thirty days for the purpose of performing
such active duty for training or inactive duty training, and the
time so granted shall not be deducted from any leave ac-
cumulated as a member of the department.

§15-2-6. Departmental appeals boards; appeal procedures.

Appeals of transfers, suspensions, demotions in rank and
discharges shall be heard by boards of appeals convened pur-
suant to the provisions of this section. The boards shall each
consist of seven members and five members shall constitute a
quorum. A new board shall be convened to hear and deter-
mine each new appeal filed by a member of the department.
There may be more than one board in existence at the same
time meeting on different appeals. A member of the retire-
ment board is eligible to serve on an appeals board.

The members of a board shall be chosen by lot by the
superintendent with one member to be so chosen from among
all the members of each of the seven ranks of trooper through
lieutenant, inclusive. No department member may serve on
an appeals board if his rank is the same, or if he is a member
of the same detachment, as the person making the appeal. If
the person making the appeal is a member of one of the
ranks of lieutenant through trooper, inclusive, then a captain
shall be chosen by lot from among all members of that rank
to serve on the board. Within ten days after he has been
notified of his selection and assignment to serve on a board,
a member may for cause request to be relieved of such
assignment. The superintendent shall determine whether the
reasons alleged by the member are sufficient cause to relieve
the member of such assignment. If such request is granted
by the superintendent, a new board member shall be selected
by lot from the same rank to replace the member who has
been relieved of such assignment.

A chairman shall be selected by the members of the board.
Each member of a board shall be reimbursed for all reason-
able and necessary expenses actually incurred in attending
meetings of a board. All expenses of a board shall be paid
from appropriations to the department.

Within fifteen days after a member of the department
has received a notice of transfer or a statement of charges
and an order of suspension, demotion in rank or discharge
by the superintendent, he may appeal the transfer or order
to an appeals board by filing a written notice of appeal with
the superintendent. The superintendent shall promptly record
and file each appeal, select a board, notify each new board
member of his selection, and furnish to each board member
a copy of the notice or order appealed from and the notice
of appeal. A hearing by an appeals board shall be held
within thirty days after the superintendent has received a
member's notice of appeal. At least fifteen days prior to the
hearing date, the board shall notify the superintendent and
the member making the appeal of the date, time and place
of the hearing.
Any member of the department who makes such appeal, as aforesaid, may be represented by an attorney or by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund. The superintendent may be represented by counsel of his choice. In the appeal of a transfer, the member has the burden of proof that the transfer is not for the purpose of the operational needs of the department. In any other appeal the superintendent has the burden of proof as to the charges alleged. The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses.

The board shall designate a reporter for any such hearing who shall record and transcribe all of the proceedings. Upon his demand, the member making the appeal shall have a public hearing on the charges, and in the absence of such demand, the board may determine whether or not the hearing should be public. Any hearing may be continued, recessed or adjourned by the board.

The superintendent shall provide reasonable space for the conduct of hearings. The charges of the reporter shall be paid by the superintendent from available appropriations. At the conclusion of the hearing, the board shall determine whether or not the superintendent's order shall be sustained. The board's decision shall be issued in writing, with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. A hearing shall be conducted by at least five members of the board and the decision of the board shall be made by a majority vote of all the members of the board.

Either party aggrieved by a decision of a board of appeals may appeal the decision to the circuit court of Kanawha County within sixty days of receipt of a copy of the board's decision.

The court shall hear the appeal upon the record and determine all questions submitted to it on appeal.
In the event any decision sustaining the superintendent’s order or notice is reversed upon judicial review, which reversal is final, the superintendent shall return the member to his status prior to the superintendent’s order or notice, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order or notice and the date of the final judicial decision reversing the decision of the board.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in department; civilian employees.

(a) The superintendent shall establish within the department of public safety a cadet selection board which shall be representative of commissioned and noncommissioned officers within the department.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one nor more than thirty years of age, of sound constitution and good moral character; shall be required to pass such mental examination and meet other requirements as may be provided for in regulations promulgated by the cadet selection board; and shall be required to pass such physical examination as may be provided for in regulations promulgated by the retirement board: Provided, That a former member may, at the discretion of the superintendent, be reenlisted if the period of his former service subtracted from his age does not exceed thirty years.

(d) No person may be barred from becoming a member of the department because of his religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code, and shall take positive steps to
encourage applications for department membership from females and minority groups within the state.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the department at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint such civilian employees as may be necessary, and all such employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.


The superintendent may also appoint for each company not more than two chaplains, residing within the state of West Virginia, who shall serve without pay, and who may not be required to perform any duties of members of the department, nor shall any bond be required. The superintendent is authorized to furnish each such chaplain one official uniform, with proper chaplain insignia, to be worn at any ceremonial occasion conducted officially by the department where the presence of a member of the clergy is customary. Such chaplains may be reimbursed by the superintendent for all reasonable and necessary expenses actually incurred in attending such ceremonies.

§15-2-9. Promotions; promotion evaluation board to be established.

The superintendent shall establish within the department of public safety a promotion evaluation board, which shall be representative of commissioned and noncommissioned officers within the department. The promotion evaluation board shall prescribe merit standards for promotion and maintain lists of eligible candidates.

The superintendent shall promote a member to the permanent rank of trooper first class, corporal, sergeant, first sergeant, master sergeant or lieutenant from among the top three names on the current list of eligible candidates established by the promotion evaluation board for each rank.
§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

(a) The standard uniform to be used by the department of public safety after the effective date of this article shall be as follows: Forestry green blouse with West Virginia state police emblem on sleeve; black shoulder strap, one-inch black stripe around sleeve, four inches from end of sleeve; forestry green breeches with one-inch black stripe down the side; trousers (slacks) with one-inch black stripe down the side for officers and clerks regularly enlisted in the department; forestry green shirts with West Virginia state police emblem on sleeve; black shoulder straps; forestry green mackinaw with West Virginia state police emblem on sleeve; black shoulder straps; one-inch black stripe around sleeve four inches from end of sleeve; campaign hat of olive drab color; black Sam Browne belt with holster; black leggings and shoes; the officer's uniform will have one and one-quarter inch black stripe around the sleeve of blouse and mackinaw four inches from end of sleeve circumposed with one-half inch gold braid, also black collars on blouse, with two silver shoulder bars for captains, one silver shoulder bar for first lieutenant. For noncommissioned officers the uniform blouse and shirt will have thereon black chevrons of the appropriate rank.

(b) The superintendent shall establish the weapons and enforcement equipment which shall be authorized for use by members of the department, and shall provide for periodic inspection of such weapons and equipment. He shall provide for the discipline of members using other than authorized weapons and enforcement equipment.

(c) The superintendent shall provide the members of the department with suitable arms and weapons, and, when he deems it necessary, with suitably equipped automobiles, motorcycles, watercraft, airplanes and other means of conveyance, to be used by the department of public safety, the governor, and other officers and executives in the discretion of the governor, in times of flood, disaster, and other emergencies,
for traffic study and control, criminal and safety work, and in
other matters of official business. He shall also provide the
standard uniforms for all members of the department, for
officers, noncommissioned officers and troopers herein provided
for. All uniforms and all arms, weapons and other property
furnished the members of the department by the state of
West Virginia shall be and remain the property of the state.

(d) The superintendent is authorized to purchase and
maintain on behalf of members group life insurance not to
exceed the amount of five thousand dollars on behalf of each
member.

(e) The superintendent is authorized to contract and fur-
nish at department expense medical and hospital services
for treatment of illness or injury of a member which shall be
determined by the superintendent to have been incurred by
such member while engaged in the performance of duty and
from causes beyond control of such members.

(f) The superintendent shall establish and maintain local
headquarters at such places in West Virginia as are in his
judgment suitable and proper to render the department of
public safety most efficient for the purpose of preserving the
peace, protecting property, preventing crime, apprehending
criminals and carrying into effect all other provisions of this
article. The superintendent shall provide, by lease or o'ther-
wise, for housing and quarters for the accommodation of the
members of the department of public safety, and shall provide
all equipment and supplies necessary for them to perform their
duties.


1 The jurisdiction of the department shall extend anywhere in
the state of West Virginia.

§15-2-12. Mission of the department; powers of superintendent, of-
ficers and members; patrol of turnpike.

(a) The West Virginia department of public safety shall
have the mission of statewide enforcement of criminal and
traffic laws with emphasis on providing basic enforcement
and citizen protection from criminal depredation throughout
the state and maintaining the safety of the state's public streets, roads and highways.

(b) The superintendent and each of the officers and members of the department are hereby empowered:

(1) To make arrests anywhere within the state of any persons charged with the violation of any law of this state, or of the United States, and when a witness to the perpetration of any offense or crime, or to the violation of any law of this state, or of the United States, may arrest without warrant; to arrest and detain any persons suspected of the commission of any felony or misdemeanor whenever complaint is made and warrant is issued thereon for such arrest, and any person so arrested shall be forthwith brought before the proper tribunal for examination and trial in the county where the offense for which any such arrest has been made was committed;

(2) To serve criminal process issued by any court or magistrate anywhere within this state (they shall not serve civil process); and

(3) To cooperate with local authorities in detecting crime and in apprehending any person or persons engaged in or suspected of the commission of any crime, misdemeanor or offense against the law of this state, or of the United States, or of any ordinance of any municipality in this state; and to take affidavits in connection with any application to the department of highways, department of motor vehicles and department of public safety of West Virginia for any license, permit or certificate that may be lawfully issued by these departments of state government.

(c) Members of the department of public safety are hereby created forest patrolmen and game and fish wardens throughout the state to do and perform any duties and exercise any powers of such officers, and may apprehend and bring before any court or magistrate having jurisdiction of such matters, anyone violating any of the provisions of chapters twenty, sixty and sixty-one of this code, and the department of public safety shall at any time be subject to the call of the West Virginia alcohol beverage control com-
missioner to aid in apprehending any person violating any of the provisions of said chapter sixty of this code. They shall serve and execute warrants for the arrest of any person and warrants for the search of any premises issued by any properly constituted authority, and shall exercise all of the powers conferred by law upon a sheriff. They shall not serve any civil process or exercise any of the powers of such officer in civil matters.

(d) Any member of the department of public safety knowing or having reason to believe that anyone has violated the law may make complaint in writing before any court or officer having jurisdiction and procure a warrant for such offender, execute the same and bring such person before the proper tribunal having jurisdiction. He shall make return on all such warrants to such tribunals and his official title shall be "member of the department of public safety." Members of the department of public safety may execute any summons or process issued by any tribunal having jurisdiction requiring the attendance of any person as a witness before such tribunal and make return thereon as provided by law, and any return by a member of the department of public safety showing the manner of executing such warrant or process shall have the same force and effect as if made by a sheriff.

(e) Each member of the department of public safety, when called by the sheriff of any county, or when the governor by proclamation so directs, shall have full power and authority within such county, or within the territory defined by the governor, to direct and command absolutely the assistance of any sheriff, deputy sheriff, chief of police, policeman, game and fish warden, and peace officer of the state, or of any county or municipality therein, or of any able-bodied citizen of the United States, to assist and aid in accomplishing the purposes expressed in this article. When so called, any officer or person shall, during the time his assistance is required, be for all purposes, a member of the department of public safety and subject to all the provisions of this article.

(f) The superintendent may also assign members of the department to perform police duties on any turnpike or toll road,
or any section thereof, operated by the West Virginia turnpike commission: Provided, That such turnpike commission shall reimburse the department of public safety for salaries paid to such members, and shall either pay directly or reimburse the department for all other expenses of such group of members in accordance with actual or estimated costs determined by the superintendent.

§15-2-13. Limitations upon members.

1. No member of the department of public safety may in any way interfere with the rights or property of any person except for the prevention of crime.

2. No member of the department of public safety may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, primary, assembly or convention, or in any general or special election, except to cast his ballot.

3. No member of the department of public safety may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of such election or convention; nor shall any member thereof remain in, about or near such voting precinct or place of convention, except to cast his vote. After voting he shall forthwith retire from such voting precinct. No member of the department may act as an election official. If any member of the department of public safety is found guilty of violating any of the provisions of this section he shall be dismissed from the department by the superintendent as hereinafter provided.

4. No officer or member of the department of public safety may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in such cases see that the statutes and laws of this state are enforced in a legal way and manner.


1. The superintendent and each of the other members of the department of public safety, before entering upon the discharge of his duties, shall take and subscribe to an oath which shall be in form and effect as follows, to wit: State of West Virginia,
5 County of ________________, to wit:

6 I, ________________, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of West Virginia, and I will honestly and faithfully perform the duties imposed upon me under the provisions of law as a member of the Department of Public Safety to the best of my skill and judgment.

12

13 Taken, subscribed and sworn to before me, this the ___ day of ________________.

15

16 All such oaths, except that of the superintendent, shall be filed and preserved in the office of the department of public safety.


1 It shall be the duty of all officers of the state, or of any county or municipality thereof, or jailers having the charge and custody of any jail or place of detention, to receive any prisoners arrested by any officer or member of the department of public safety and to detain them in custody until ordered released by a tribunal of competent jurisdiction, and any such officer, jailer or person having custody of any jail or place of detention who shall fail or refuse so to receive and detain such prisoner shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for not more than sixty days, or both fined and imprisoned.

§15-2-16. Interference with officers or members; false information; penalty.

1 Any person who shall at any time intercept, molest or interfere with any officer or member of the department of public safety while on duty, or any state, county or municipal officer or person then under the charge and direction of some officer or member of the department of public safety while on duty, or who knowingly gives false or misleading information to a member of the department, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than twenty-five dollars nor more than two hundred
dollars, or imprisoned in the county jail for not more than
sixty days, or both fined and imprisoned.

§15-2-17. Unauthorized use of uniform, badge or other insignia;
impersonation of member; penalty.

Every person who is not a member of the department is
hereby forbidden to wear, use, order to be used or worn, copy
or imitate in any respect or manner the uniform prescribed for
members of the department of public safety, and any person
who shall violate the provisions of this article, for which no
other penalty is expressly provided, and any person who shall
falsely represent himself to be an officer or member of the
department of public safety, or to be under the order or
direction of any officer or member of said department, or
who shall, unless an officer or member thereof, wear the uni-
form prescribed for members of said department, or the
badge or other insignia adopted or used by said department,
shall be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than two hundred dollars, or impris-
soned in the county jail for not more than six months, or both
fined and imprisoned.

§15-2-18. Officers or members performing duties for private per-
sons; general penalty.

If any officer or member of the department of public safety
 hires himself to any person, firm or corporation to guard his
private property, or demands or receives from any person, firm
or corporation any money or other thing of value as a consider-
ation for the performance of, or the failure to perform, his
duties under the regulations of the superintendent and the
provisions of this article, shall be guilty of a felony, and, upon
conviction thereof, he shall be confined in the penitentiary for
not less than one nor more than five years, and any such of-
 ficer or member of the department of public safety who vio-
lates any other provisions of this article, for which no other
penalty is expressly provided, shall be guilty of a misdemeanor,
and, upon conviction thereof, shall be fined not less than
twenty-five dollars nor more than two hundred dollars, or im-
prisoned in the county jail for not more than four months, or both fined and imprisoned.

§15-2-19. Bribing, etc., officers or members; penalty.

If any person, firm or corporation shall give or offer to give any money or other thing of value to any officer or member of the department of public safety as a consideration for the performance of, or the failure to perform, any duty of such officer or member of the department of public safety under the rules and regulations of the superintendent and the provisions of this article, he or it shall be guilty of a felony, and if a person, upon conviction thereof, shall be confined in the penitentiary for a term of not less than one year nor more than five years, and if a firm or corporation, shall be fined not less than three thousand dollars nor more than ten thousand dollars.

§15-2-20. Transfer authorized; use for disciplinary purposes prohibited; notice required under certain circumstances; relocation expense; regulation of member’s residence.

The superintendent may transfer members to meet the operational needs of the department. A transfer may not be made as a disciplinary measure.

Whenever any member of the department is to be transferred from one station to another station, for a period of time in excess of sixty days, the superintendent shall give written notice of such proposed transfer to such member at least fifteen days in advance of such transfer. The superintendent shall not, however, be required to give such notice in the event the transfer is at the request of the member who is to be transferred. In the event that a member appeals a transfer in accordance with section six of this article, the transfer shall not take effect pending the appeal before the board. If the board upholds the transfer, such transfer shall be effective upon the issuance of the board’s decision and shall remain in effect pending any appeal of such decision by the member.

Whenever any member of the department is transferred from one station to another station, for a period of time in excess of sixty days, all reasonable and necessary transportation expenses actually incurred in moving the household furniture and effects
of such member and of his immediate family from his former
station to his new station shall be paid by the department: Pro-
vided, That if any such member owns and resides in a mobile
home, the department shall pay all reasonable and necessary
transportation expenses actually incurred in moving such
mobile home from such member's former station to his new
station, but the department may not pay transportation ex-
penses for moving such mobile home in excess of the amount
which would have been paid for moving an equivalent amount
of household furniture and effects had such member not owned
such mobile home.

A member transferred shall also be given a relocation ex-
 pense of three hundred dollars if the transfer necessitated re-
location of the member's family.

The superintendent shall not restrict a member from residing
in a county other than that in which the member is stationed,
except that the superintendent may promulgate by appropriate
written regulation to be applied uniformly throughout the de-
partment a restriction as to either: (1) The number of miles
distant from his station which a member may reside, or (2) the
time necessary under ordinary traffic conditions for a member
to travel between his residence and station.

The member may appeal the superintendent's order of trans-
fer to the board of appeals created for such purpose or to the
circuit court of Kanawha County in accordance with the pro-
visions of section six of this article and all of the original papers
in such cases shall be delivered to the appeals board or the
circuit court, as the case may be. The right of a member to
appeal a transfer shall not apply until the member has com-
pleted the eighteen-month probationary period with the de-
partment.

§15-2-21. Suspension, demotion or discharge of members; right of
appeal.

The superintendent may suspend, demote in rank or dis-
charge from the service any member of the department of
public safety for any of the following causes: Refusing to
obey the lawful orders of his superior officer, neglect of duty,
drunkenness, immorality, inefficiency, abuse of his authority,
interference with the lawful right of any person, participation in political activities, primaries, conventions or elections, conviction for a crime or any action proscribed under this article. The superintendent shall cause an investigation to be made when notice of any one or more of such causes is brought to his attention and shall determine whether or not the member should be suspended, demoted in rank or discharged. If the superintendent orders the member suspended, demoted in rank or discharged, a written statement of the charges and a written order of suspension, demotion in rank or discharge shall be delivered personally to the member by his commanding officer, or next in command in the absence of his commanding officer. The superintendent shall explicitly set forth in any such written statement of charges the details giving rise to the cause or causes upon which he ordered such suspension, demotion in rank or discharge. The member may appeal the superintendent's order to the board of appeals created for such purpose or to the circuit court of Kanawha County in accordance with the provisions of section six of this article and all of the original papers in such cases shall be delivered to the appeals board or the circuit court, as the case may be.

The right to appeal a suspension or discharge shall not apply to members until they have completed their probationary period with the department, which shall be for a period of eighteen months.

§15-2-22. Assignment of assistant attorney general; employment of legal counsel.

(a) The attorney general may, upon request of the superintendent, assign an assistant attorney general to the department.

(b) Notwithstanding the provisions of section one, article three, chapter five of this code, the superintendent may authorize any member of the department to employ an attorney of such member's choice to act in proceedings wherein criminal charges are brought against such member because of action in line of duty. For such attorney's services an amount determined by the judge in whose court the action is pending, not to exceed one thousand dollars, may be expended in any one case.
§15-2-23. Duties of superintendent as to statistics, aliens and labor conditions.

The superintendent of the department of public safety is authorized from time to time to collect statistics and distribute information throughout the state, and in this to cooperate with the state superintendent of public schools and other educational agencies of the state, to secure the naturalization and Americanization of all foreign-born inhabitants; to employ all agencies in his power to secure a harmonious feeling and understanding between the employers of labor and their employees; and to secure this end he may call upon the educational and other state institutions for public speakers, and is authorized to hold public meetings at any point in the state where, in his judgment, such meetings will be of advantage to carry out the spirit of this law.

§15-2-24. Criminal identification bureau; establishment; supervision; purpose; fingerprints, photographs, records and other information; reports by courts and prosecuting attorneys; offenses and penalties.

(a) The superintendent of the department shall establish, equip and maintain at the departmental headquarters a criminal identification bureau, for the purpose of receiving and filing fingerprints, photographs, records and other information pertaining to the investigation of crime and the apprehension of criminals, as hereinafter provided. The superintendent shall appoint or designate a supervisor to be in charge of the criminal identification bureau and such supervisor shall be responsible to the superintendent for the affairs of the bureau. Members of the department assigned to the criminal identification bureau shall carry out their duties and assignments in accordance with internal management rules and regulations pertaining thereto promulgated by the superintendent.

(b) The criminal identification bureau shall cooperate with identification bureaus of other states and of the United States to develop and carry on a complete interstate, national and international system of criminal identification.

(c) The criminal identification bureau may furnish finger-
prints, photographs, records or other information to authorized
law-enforcement and governmental agencies of the United
States and its territories, of foreign countries duly authorized
to receive the same, of other states within the United States
and of the state of West Virginia upon proper request stating
that the fingerprints, photographs, records or other informa-
tion requested are necessary in the interest of and will be
used solely in the administration of official duties and the
criminal laws.

(d) The criminal identification bureau may furnish, with
the approval of the superintendent, fingerprints, photographs,
records or other information to any private or public agency,
person, firm, association, corporation or other organization,
other than a law-enforcement or governmental agency as to
which the provisions of subsection (c) of this section shall
govern and control, but all requests under the provisions of
this subsection (d) for such fingerprints, photographs, records
or other information must be accompanied by a written
authorization signed and acknowledged by the person whose
fingerprints, photographs, records or other information is to
be released.

(e) The criminal identification bureau may furnish finger-
prints, photographs, records and other information of persons
arrested or sought to be arrested in this state to the identifica-
tion bureau of the United States government and to other
states for the purpose of aiding law enforcement.

(f) Persons in charge of any penal or correctional institu-
tion, including any city or county jail in this state, shall take,
or cause to be taken, the fingerprints and description of all
persons lawfully committed thereto or confined therein and
furnish the same in duplicate to the criminal identification
bureau, department of public safety. Such fingerprints shall
be taken on forms approved by the superintendent of the
department of public safety. All such officials as herein named
may, when possible to do so, furnish photographs to the crim-
inal identification bureau of such persons so fingerprinted.

(g) Members of the department of public safety, and all
other state law-enforcement officials, sheriffs, deputy sheriffs,
and each and every peace officer in this state, shall take or
cause to be taken the fingerprints and description of all persons
arrested or detained by them, charged with any crime or offense
in this state, in which the penalty provided therefor is confine-
ment in any penal or correctional institution, or of any person
who they have reason to believe is a fugitive from justice or an
habitual criminal, and furnish the same in duplicate to the crim-
inal identification bureau of the department of public safety on
forms approved by the superintendent of said department.

All such officials as herein named may, when possible to do
so, furnish to the criminal identification bureau, photographs
of such persons so fingerprinted. For the purpose of obtaining
data for the preparation and submission to the governor and
the Legislature by the department of public safety of an annual
statistical report on crime conditions in the state, the clerk of
any court of record, the magistrate of any magistrate court and
the mayor or clerk of any municipal court before which a
person appears on any criminal charge shall report to the
criminal identification bureau the sentence of the court or
other disposition of the charge and the prosecuting attorney
of every county shall report to the criminal identification
bureau such additional information as the bureau may require
for such purpose, and all such reports shall be on forms
prepared and distributed by the department of public safety,
shall be submitted monthly and shall cover the period of the
preceding month.

(h) All persons arrested or detained pursuant to the re-
quirements of this article shall give fingerprints and information
required by subsections (f) and (g) of this section. Any person
who has been fingerprinted or photographed in accordance with
the provisions of this section, who is acquitted of the charges
upon which he or she was arrested, and who has no previous
criminal record, may, upon the presentation of satisfactory
proof to the department, have such fingerprints or photographs,
or both, returned to them.

(i) All state, county and municipal law-enforcement agen-
cies shall submit to the bureau uniform crime reports setting
forth their activities in connection with law enforcement. It
shall be the duty of the bureau to adopt and promulgate rules
and regulations prescribing the form, general content, time and
manner of submission of such uniform crime reports. Willful
or repeated failure by any state, county or municipal law-
enforcement official to submit the uniform crime reports re-
quired by this article shall constitute neglect of duty in public
office. The bureau shall correlate the reports submitted to it
and shall compile and submit to the governor and the Legisla-
ture semiannual reports based on such reports. A copy of such
reports shall be furnished to all prosecuting attorneys and law-
forcement agencies.

(j) Neglect or refusal of any person mentioned in this sec-
tion to make the report required herein, or to do or perform
any act on his or her part to be done or performed in connec-
tion with the operation of this section, shall constitute a misde-
meanor, and such person shall, upon conviction thereof, be
punished by a fine of not less than twenty-five dollars nor more
than two hundred dollars, or by imprisonment in the county jail
for a period of not more than sixty days, or both. Such neglect
shall constitute misfeasance in office and subject such persons
to removal from office. Any person who willfully removes,
destroys or mutilates any of the fingerprints, photographs,
records or other information of the department of public safety,
shall be guilty of a misdemeanor, and such person shall, upon
conviction thereof, be punished by a fine of not more than one
hundred dollars, or by imprisonment in the county jail for a
period of not more than six months, or both.


Subject to the written approval of the governor and the
provisions of this article, the superintendent may make and
promulgate proper rules and regulations for the government,
discipline and control of the department of public safety, and
shall also cause to be established proper rules and regulations
for the examinations of all applicants for appointment thereto.
The members of the department of public safety shall be per-
mitted to carry arms and weapons, and no license shall be re-
quired for such privilege.

§15-2-26. Continuation of death, disability and retirement fund;
retirement board.

There shall be continued the death, disability and retirement
fund heretofore created for the benefit of members of the de-
partment of public safety and any dependent of a retired or
deceased member thereof.

There shall be deducted from the monthly payroll of each
member of the department of public safety and paid into such
fund six percent of the amount of his salary, and an additional
twelve percent of the monthly salary of each member of said
department shall be paid by the state of West Virginia monthly
into such fund out of the annual appropriation for said depart-
ment. All moneys payable into such fund shall be deposited in
the state treasury, and the treasurer and auditor shall keep a
separate account thereof on their respective books.

The moneys in this fund, and the right of a member to a
retirement allowance, to the return of contributions, or to
any benefit under the provisions of this article, are hereby
exempt from any state or municipal tax; shall not be subject
to the execution, garnishment, attachment or any other process
whatsoever; and shall be unassignable except as is provided
in this article.

The death, disability and retirement fund shall be adminis-
tered by a retirement board which shall consist of the attorney
general, state treasurer, the superintendent and two members in
active service of the department: Provided, That members of
said retirement board shall not be entitled to receive any com-
penation in addition to the salary of their respective offices
for any service rendered as a member of said retirement board:
Provided, however, That the superintendent may pay out of
funds appropriated for operation of said department the rea-
sonable expenses of members of said board necessarily incurred
in connection with dispatch of any business properly before
such board. The two members of said department shall be
elected to membership on the retirement board by vote of the
members of the department of public safety; such election to be
held on the first Tuesday in June next following the passage of
this article and on the first Tuesday in June each two years
thereafter. The attorney general, state treasurer and the
superintendent of the department of public safety shall pro-
mulgate any and all necessary rules and regulations for holding
in a fair and impartial manner the election on the first Tuesday
in June next following the passage of this article and thereafter
the retirement board consisting of the attorney general, state treasurer, superintendent and the two duly elected members of said department shall have authority to promulgate and, from time to time, revise rules and regulations for holding all subsequent elections in a fair and impartial manner. All elections shall be held under the direction of the superintendent of said department in accordance with said rules and regulations. The members of the department chosen to serve on said retirement board shall hold office for a period of two years commencing on the first day of July next following the date of such election. When any member elected to the retirement board shall die, resign from the board, resign or be discharged from service in the department, make application for retirement, be retired, or become disabled, the office of such member of the retirement board shall be declared vacant by the superintendent of said department, and said superintendent, to fill such vacancy, shall appoint the member in active service of said department who as an unsuccessful candidate at the preceding election of members to said retirement board received the greatest number of votes. No member of the retirement board shall participate in any hearing at which his own petition for retirement or the petition of any member of said department who is related to him by blood or marriage shall be presented for consideration.

At its first meeting following each election of members to the retirement board said board shall elect one of its members to serve as chairman and a second member to serve as secretary thereof. The retirement board shall have the power to make rules and regulations, not inconsistent with the provisions hereof, governing procedure and order and manner of business by and before such board. The retirement board shall have the power to make awards and to revise and terminate awards previously made for such times and under such terms and conditions as are hereinafter provided. The votes of a majority of the five members of the board shall be necessary to decision of any matter by the board. Decisions made by the board shall be supreme and final and there shall be no appeal therefrom.

It shall be the duty of the retirement board on or before the first day of July of each year to cause all future awards from such fund to be valued and, to the extent that moneys
shall be available, reserves based on sound actuarial principles for payment thereof to be carried on the funds account as a liability against the reserve fund. The board shall have the authority to employ an actuary for such purpose. The board shall cause a system of accounting to be installed and maintained to reflect currently and truly all transactions or developments pertaining to age of members and eligible dependents surviving deceased members, periods of service and aggregate earnings of all members eligible to participate in said fund and any other matter relating to maintenance of said fund or administration thereof, and each year to cause to be made and submitted to each member of said department a statement of the condition of said fund. Costs and expenses incurred in making actuarial studies, audits and installations and maintenance of such accounting system shall be paid by the superintendent from funds appropriated for operation of the department of public safety.

All moneys paid into and accumulated in said death, disability and retirement fund, except such amounts as shall be designated or set aside by the retirement board for payments of death, disability and retirement benefits and awards, shall be invested by the state board of investments as provided by law.

§15-2-27. Retirement; awards and benefits.

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 the provisions of section twenty-eight of this article.

(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. (1) Has or shall have completed twenty-five years of service as a member of the department (including military service credit granted under the provisions of section twenty-eight 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 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 depart-
ment (excluding military service credit granted under section
twenty-eight of this article).

(c) When the retirement board retires any member under
any of the following 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:

(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.

§15-2-28. 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 mili-
tary 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 received no compensation during the period of such duty from any person other than the armed forces.

(b) Any member of the department 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, subject 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 retirement system for his active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty 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 appropriated 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 was commissioned, 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; and

(3) That he has made no voluntary act, whether by reenlist-
ment, waiver of discharge, acceptance of commission or other-
wise, to extend or participate in extension of the period of ser-
vice with the armed forces beyond the period of service for
which he was originally commissioned, enlisted, inducted or
called.

That 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-
tirement fund from moneys appropriated for the department a
sum equal to eighteen percent of the aggregate of salary which
all such members would have been entitled to receive had they
continued in the active service of the department during a
period coextensive with the time such members served with the
armed forces pursuant to the commission, induction, enlistment
or call: Provided, That the total amount of military service
credit allowable under this section shall not exceed five years.


Any member of said department who has been or shall
become physically or mentally permanently disabled by injury,
ilness 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 retire-
ment 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 during twenty-five years of
service in said department based on the average earnings
of such member while employed as a member of said depart-
ment. 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 such member during twenty-five
years of service in said department based on the average
earnings of such member while employed as a member of
said department.

The superintendent is authorized to expend moneys from
funds appropriated for the department 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 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.

§15-2-30. Same—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 during twenty-five years of service in said department based on the average earnings of such member 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, dis-
ability 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 dur-
ing 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 retirement has, or shall have served as a member
of said department, whichever shall be the greater, to be deter-
mined in the manner provided by subdivisions (1) and (2),
subsection (c), section twenty-seven of this article.

§15-2-31. Same—Physical examinations; recall to active duty; ter-
mination.

1 The superintendent may require any member who has been
or who shall be retired with compensation on account of dis-
ability to submit to a physical and/or mental examination by
a physician or physicians selected or approved by the retire-
ment board and cause all costs incident to such examination
including hospital, laboratory, X ray, medical and physicians'
fees to be paid out of funds appropriated to defray the cur-
rent expense of said department, and a report of the findings
of such physician or physicians shall be submitted in writing
to the retirement board for its consideration. If from such
report or from such report and hearing thereon the retirement
board shall be of opinion and find that such disabled member
shall have recovered from such disability to the extent that he
is able to perform adequately the duties of a member of said
department, the superintendent shall order such member to
reassume active duty as a member of said department and
thereupon all payments from the death, disability and retire-
ment fund shall be terminated.

§15-2-32. Retired member not to exercise police authority; reten-
tion of group insurance.

1 A member who has been or shall be retired shall not
while in retirement status exercise any of the powers con-
ferred upon active members by section twelve of this article;
but shall be entitled to receive free of cost to such member
and retain as his separate property one complete standard uniform prescribed by section nine of this article: Provided, that such uniform may be worn by a member in retirement status only on such occasions as shall be prescribed by the superintendent. The superintendent is authorized to maintain at public expense for the benefit of all members in retirement status that group life insurance mentioned in section ten of this article. The superintendent when he shall be of opinion that the public safety shall require, may recall to active duty during such period as the superintendent shall determine any member who shall be retired under the provisions of section twenty-seven of this article, provided the consent of such member to reassume duties of active membership shall first be had and obtained. When any member in retirement shall reassume status of active membership such member, during the period such member shall remain in active status, shall not be entitled to receive retirement pay or benefits but in lieu thereof shall be entitled to receive that rate of salary and allowance pertinent to the rank or grade held by such member when retired. When such member shall be released from active duty he shall reassume the status of retirement and shall thereupon be entitled to receive appropriate benefits as provided by this article: Provided, That the amount of such benefits shall in no event be less than the amount determined by the order of the retirement board previously made in his behalf.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

The surviving spouse 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-nine of this article, shall be entitled to receive and shall be paid from the death, disability and retirement fund benefits as follows: To the surviving
spouse annually, in equal monthly installments during his or her lifetime or until his or 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 the average earnings of such member while employed as a member of said department; or

(2) The sum of three thousand dollars.

In addition thereto such surviving spouse shall be entitled to receive and there shall be paid to such person one hundred dollars monthly for each dependent child or children. If such surviving spouse shall die or remarry or if there be no surviving spouse there shall be paid monthly to such dependent child or children from the death, disability and retirement fund the sum of one hundred dollars each. If there be no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, 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.

§15-2-34. Same—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 this article and not due to vicious habits, intemperance or willful misconduct on his part, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the surviving spouse of such member during his or her natural lifetime or until such time said surviving spouse 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 or her
average earnings while employed as a member of said depart-
ment. If there be no surviving spouse there shall be paid from
said fund to each dependent child or children of said deceased
member the sum of one hundred dollars monthly. If there be
no surviving spouse 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 surviv-
ing spouse 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 receive during his
or her lifetime one half the amount which both parents, if
living, would have been entitled to receive.

§15-2-35. Same—When member dies after retirement or after serv-
ing twenty years.

When any member of said department has heretofore com-
pleted 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
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 this article, there shall be paid an-
ually in equal monthly installments from said fund to the
surviving spouse of said member, commencing on the date of
the death of said member and continuing during the lifetime or
until remarriage of said surviving spouse 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 this article immediately
prior to the time of his death; and in addition thereto said
surviving spouse shall be entitled to receive and there shall be
paid to such surviving spouse from said fund the sum of one
hundred dollars monthly for each dependent child or children.
If such surviving spouse die or remarry, or if there be no
surviving spouse there shall be paid monthly from said fund
to each dependent child or children of said deceased member
the sum of one hundred dollars. If there be no surviving
spouse or no surviving spouse 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 surviving spouse 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.

§15-2-36. Same—Termination.

When any surviving spouse of a member shall die or remarry
while receiving or being entitled to receive any benefits under
this article, such surviving spouse shall not from the date of
such remarriage, nor shall the estate from the date of the
death of such surviving spouse, be entitled to receive any bene-
fits hereunder whatsoever: Provided, That in any case where
under the terms of this article benefits are provided for a
child or children surviving the death or remarriage of such
surviving spouse, payment of such benefits to such child or
children shall be calculated for payment from the date such
surviving spouse shall die or remarry.

§15-2-37. Refunds to certain members upon discharge or resigna-
tion.

Any member who shall be discharged by order of the
superintendent after such member has or shall have served
two full years or more as a member of said department shall,
at the request of such member, be entitled to receive from
said fund a sum equal to the aggregate of the principal
amount of moneys deducted from the salary of such member
and paid into said death, disability and retirement fund as
provided and required by this article: Provided, That the
superintendent shall forthwith refund to any member who has
or shall have served more than two but less than twenty
years as a member of said department and has resigned
or shall resign or who has been or shall be discharged from
the service for cause, a sum equal to the aggregate of the
principal amount of all moneys deducted from the salary
of such member and paid into said fund as aforesaid: Pro-
vided further, That if any such refund shall be made to any
member, such member shall not be entitled to any benefits pro-
vided by this article, and should any such member thereafter be
again enlisted as a member of said department no credit or any
period of service required of a member as a condition of retire-
ment shall be allowed to such member on account of such
former service, unless following such reenlistment such member
shall redeposit in said fund the amount of the refund, together
with interest thereon at the rate of four percent per annum from
the date of withdrawal to the date of redeposit, in which
case he shall receive the same credit on account of his former
service as if no refund had been made. When any member
has or shall have served as a member of said department
during twenty years or longer and shall, in the opinion of the
superintendent, become unfit for any reason for further active
service such member shall, in lieu of being discharged, be
retired by the retirement board under the provision or provi-
sions of this article most favorable to such member.

§15-2-38. Refund to dependents upon death of member not eligible
for benefits.

If any member while in active status shall die after having
served two full years or longer as a member of said depart-
ment and the retirement board shall be of opinion after
hearing thereon that the dependent or dependents of said
member are ineligible under the provisions of this article to
receive any of the benefits provided herein, the superintendent
shall refund to the spouse, if surviving, but if not surviving,
to the children of such member, and if there be no surviving
spouse or children, to the dependent parents, a sum equal to
the aggregate of the principal amount of all moneys deducted
from the salary of such member and paid into such fund as
aforesaid, and if there be no surviving spouse or children or
dependent parent or parents, then the same shall remain in
the fund. Whenever any such refund shall be made the
surviving spouse or other dependents of such deceased member

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 under the age of eighteen or where such child or children after reaching eighteen years of age continues as a full-time student in an accredited 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 150

(S. B. 495—By Mr. Palumbo)

[Passed March 25, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver of the jurisdiction of the public service commission to permit certain areas to be served by out-of-state utilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission.

The jurisdiction of the commission shall extend to all
public utilities in this state, and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; mass transit authorities; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; and any other public service.

The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the state of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial.

The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction.

The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.
AN ACT to amend and reenact sections nine and ten, 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 and to the authorization of the pari-mutuel system of wagering; to commissions deducted by licensee from pari-mutuel pools; to the retention of breakage from pari-mutuel pools; to the auditing of records of horse and dog racetracks; to wagering by minors; and to daily license tax and pari-mutuel pools tax of racetracks.

Be it enacted by the Legislature of West Virginia:

That sections nine and ten, 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 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.

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.

1 (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, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of three or more winning horses, shall not exceed seventeen and one-fourth percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this paragraph, the licensee shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, shall make a deposit 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, which deposits out of pari-mutuel pools for each day during the months of January, February, November and December shall be six and seventy-five one hundredths percent of such pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be five and seventy-five one hundredths percent of such pari-mutuel pools, 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.
The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of three or more winning horses, shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of such commission, as is mentioned in this paragraph, the licensee (i) shall pay the pari-mutuel pools tax provided for in subsection (b), section ten of this article, (ii) shall make a deposit 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, which deposits out of pari-mutuel pools for each day during the months of January, February, November and December shall be ten and seventy-five one hundredths percent of such pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be nine and seventy-five one hundredths percent of such pari-mutuel pools, and (iii) 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 and one-fourth percent of the total of such pari-mutuel
83 pools for the day. Out of such commission, the licensee
84 shall pay the pari-mutuel pools tax provided for in sub-
85 section (d), section ten of this article. The remain-
86 der of the commission shall be retained by the licensee.

87 (c) In addition to any such commission, a licensee of
88 horse race or dog race meetings shall also be entitled to
89 retain the legitimate breakage, which shall be made and
90 calculated to the dime.

91 (d) The director of audit, and any other auditors em-
92 ployed by the racing commission who shall also be certi-
93 fied public accountants or experienced public accountants,
94 shall have free access to the space or enclosure where the
95 pari-mutuel system of wagering is conducted or cal-
96 culated at any horse or dog race meeting for the purpose
97 of ascertaining whether or not the licensee is deduct-
98 ing and retaining only a commission as provided in this
99 section and is otherwise complying with the provisions of
100 this section. They shall also, for the same purposes only,
101 have full and free access to all records and papers per-
102 taining to such pari-mutuel system of wagering, and shall
103 report to the racing commission in writing, under oath,
104 whether or not the licensee has deducted and retained any
105 commission in excess of that permitted under the pro-
106 visions of this section or has otherwise failed to comply
107 with the provisions of this section.

108 (e) No licensee shall permit or allow any individual
109 under the age of eighteen years to wager at any horse or
110 dog racetrack, knowing or having reason to believe that
111 such individual is under the age of eighteen years.

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.

1 (a) Any racing association conducting thoroughbred
2 racing at any horse racetrack in this state shall pay each
3 day upon which horse races are run a daily license tax
4 of two hundred fifty dollars. Any racing association con-
5 ducting 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 a tax calculated on the total daily contribution of 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, which tax, on the pari-mutuel pools conducted or made each day during the months of January, February, November and December shall be calculated at five and twenty-five one hundredths percent of such pools, and, on the pari-mutuel pools conducted or made each day during all other months, shall be calculated at five and seventy-five one hundredths percent of such pools: 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 pari-mutuel pool tax, calculated as hereinbefore in this subsection provided, 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 ex-
ceeding one hundred fifty thousand dollars the daily pari-
mutuel pool tax shall be four thousand dollars plus five
and three-fourths percent of the daily pari-mutuel pool, if any, in excess of one hundred fifty thousand dollars.

(c) Any racing association licensed by the racing com-
mission 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 com-
misison deducted each day by the licensee from the pari-
mutuel pools on harness racing, as a tax, three percent
of the first one hundred thousand dollars wagered, or
any part thereof; four percent of the next one hundred
fifty thousand dollars; and five and three-fourths percent
of all over that amount wagered each day in all such
pari-mutuel pools conducted or made at any and every
harness race meeting of the licensee licensed under the
provisions of this article.

(d) Any racing association licensed by the racing com-
mission to conduct dog racing and permitting and con-
ducting 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 com-
misison 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 pay-
ments 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 meeting,
and the pari-mutuel pools tax payments shall be made
from all contributions to all pari-mutuel pools to each
and every race of the day.
AN ACT authorizing the issuance and sale by the governor of bonds of the state of West Virginia, under authority of the Better Highways Amendment of 1973, in an amount not exceeding one hundred fifty million dollars and in several issuances, none of which may exceed fifty million dollars, during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven or thereafter, for the sole purpose of raising funds for the building, construction, reconstruction, improving, upgrading and completion of state roads and highways and for the replacement and improvement of bridges as provided for by the constitution and the laws enacted thereunder; requiring notification and report to be given to the president of the Senate and the speaker of the House of Delegates of specific projects and amounts thereof awarded; specifying the powers of and limitations upon the governor in the issuance and sale of such bonds; allocating proceeds in certain amounts; permitting the commissioner of the department of highways to determine the uses of the total proceeds from bonds issued; prescribing the duties of the auditor and treasurer with respect to such bonds; providing for transfer and registration fees with respect to registered bonds and the disposition of such fees; providing for places of payment of principal and interest on such bonds; exempting such bonds from taxation by the state, or by any county, district or municipality thereof; setting forth the form of coupon and registered bonds and coupons; stating what moneys shall be paid into the state road fund; providing for the disposition and investment of the state road fund; providing a covenant between the state and the bondholders; providing that the proceeds from the sale of bonds shall be paid into a separate and distinct account in the state road fund and for expenditures from such account; providing for annual accountability status report; providing that the plates, etc., from which the bonds are produced or made shall be the property of the state; providing for interim certificates in lieu of permanent bonds; pro-
Be it enacted by the Legislature of West Virginia:

ISSUANCE AND SALE OF ROAD BONDS.

§ 1. Road bonds; amount; purposes; when may issue.

§ 2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

§ 3. Form of bond.

§ 4. Form of coupon.

§ 5. Listing by auditor.

§ 6. State road fund sources used to pay bonds and interest; investment of remainder.

§ 7. Covenants of state.

§ 8. Sale by governor; minimum price.

§ 9. Proceeds paid into separate account in state road fund; expenditures; investment; annual accountability status report.

§ 10. Plates, etc., property of state.

§ 11. Auditor to be custodian of unsold bonds.

§ 12. Interim certificates.

§ 13. State treasurer to be financial advisor.

§ 14. Attorney general or his duly appointed legal representative to serve as bond counsel.

§ 15. Approval and payment of all necessary expenses.

§ 1. Road bonds; amount; purposes; when may issue.

1 Bonds of the state of West Virginia, under authority of the Better Highways Amendment of 1973, of the par value not to exceed one hundred fifty million dollars during the fiscal year ending the thirtieth day of June, one thousand nine hundred seventy-seven or thereafter, are hereby authorized to be issued and sold for the sole purpose of raising funds for the building, construction, reconstruction, improving, upgrading and completion of state roads and highways and for the replacement and improvement of bridges as provided for by the constitution and the laws enacted thereunder and and such funds shall be designated for the following purposes in the following amounts:
13 (1) Bridge replacement and improvement program—not to exceed thirty-nine million dollars;

15 (2) Appalachian highway system—not to exceed sixteen million dollars;

17 (3) Upgrading sections of trunkline and feeder systems—not to exceed ten million dollars;

19 (4) Upgrading West Virginia State Route 2—not to exceed eighteen million dollars;

21 (5) Upgrading state local service roads—not to exceed forty million dollars;

23 (6) Construction, reconstruction, improving and upgrading of U. S. Route 52 between Huntington and Bluefield, West Virginia—not to exceed twenty-seven million dollars.

No later than ten days after the close of each month, the commissioner of the department of highways shall submit to the president of the Senate and the speaker of the House of Delegates of the Legislature of West Virginia a report of the specific projects and amount thereof awarded by the department of highways and for which such bond proceed moneys have been obligated or expended.

Such bonds may be issued by the governor in such amounts, in coupon or registered form, in such denominations, at such time, bearing such date or dates, as the governor may determine, based upon an examination of the West Virginia department of highways' yearly program which justified the issuance by the governor of said bonds, and shall become due and payable serially, annually or semiannually, in such amounts and mature in such years as the governor may determine: Provided, That such bonds shall be sold in increments not to exceed fifty million dollars: Provided, however, That all bonds authorized to be issued and sold under this act shall mature within and not exceeding twenty-five years from their date: Provided further, That the governor must offer said bonds for competitive bids from recognized financial investment institutions before said bonds may be sold.
§2. Transfer fee; registration fee; where payable; interest rate; tax exempt.

The auditor and the treasurer are hereby authorized to arrange for the transfer of registered bonds and for each such transfer a fee of one dollar shall be charged by and paid to the state of West Virginia, to the credit of the state road fund. Bonds taken in exchange shall be canceled by the auditor and treasurer and be carefully preserved by the treasurer. The treasurer shall make provisions for registering "payable to bearer" bonds, and for each bond registered a fee of one dollar shall likewise be charged by and paid to the state of West Virginia, to the credit of the state road fund. All such bonds shall be payable at the office of the treasurer of the state of West Virginia, or, at the option of the holder, at a bank in the city of New York to be designated by the governor, or, at the option of the holder at such other bank or banks, within the state as may be designated or approved by the governor. The bonds shall bear interest, payable semiannually, to bearer, at the office of the treasurer of the state of West Virginia, at the capitol of the state, or at the banks designated and approved by the governor, upon presentation and surrender of interest coupons then due, in the case of coupon bonds. For the payment of interest on registered bonds, the treasurer of the state of West Virginia shall requisition a warrant from the auditor of the state to be drawn on the state treasurer, and shall mail such warrant to the registered owner at the address as shown by the record of registration. Both the principal and interest of the bonds shall be payable in lawful money of the United States of America and the bonds shall be exempt from taxation by the state of West Virginia, or by any county, district or municipality thereof, which facts shall appear on the face of the bonds as part of the contract with the holder thereof.

§3. Form of bond.

The bonds shall be executed on behalf of the state of West Virginia, by the manual or facsimile signature of the treasurer thereof, under the great seal of the state or a facsimile thereof, and countersigned by the manual or facsimile signature of the auditor of the state: Provided, That one
of said signatures on said bonds shall be a manual signature
and said bonds shall be in the following form or to the
following effect, as nearly as may be, namely:

COUPON ROAD BOND

(Or registered road bond, as the case may be)

OF THE

STATE OF WEST VIRGINIA

$___________________ No. ________________

The state of West Virginia, under and by virtue of authority
of an amendment to the constitution, which was proposed by
Senate Joint Resolution No. 17, adopted the thirteenth day of
April, one thousand nine hundred seventy-three, and was
ratified by a vote of the people at the special election on the
sixth day of November, one thousand nine hundred seventy-
three, which is hereby made a part hereof as fully as if set
forth at length herein, acknowledges itself to be indebted to
and hereby promises to pay to the bearer hereof (in case of
a coupon bond) or to _______________________ or assigns (the
owner of record, in case of registered bonds) on the ________
date of __________________, in lawful money of the United
States of America at the office of the treasurer of the state
of West Virginia at the capitol of said state, or, at ____________
bank in the city of New York, or, at _____________ bank,
within the state, at the option of the holder, the sum of
_________________ dollars, with interest thereon at ______%
percent a year from the date, payable semiannually in like
lawful money of the United States of America at the treasurer's
office or banks aforesaid, on the first day of ________________ ,
and the first day of ________________ of each year (and in the
case of coupon bonds) according to the tenor of the annexed
coupons bearing the facsimile signature of the treasurer of
the state of West Virginia upon surrender of such coupons.
This bond (in case of a coupon bond) may be exchanged for
a registered bond of like tenor upon application to the trea-
surer of the state of West Virginia. (Redemption provisions, if
any, to be inserted here.)

To secure the payment of the principal and interest of
this bond, the state of West Virginia convenants and agrees with the holder as follows: (1) That this bond shall consti-
tute a direct and general obligation of the state of West Virginia; (2) that the full faith and credit of the state is pledged to secure the payment of the principal and interest of this bond; (3) that an annual state tax shall be collected in an amount sufficient to pay as it may accrue the interest on this bond and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of this bond becoming due and payable in such year are insufficient therefor.

This bond is hereby made exempt from any taxation by the state of West Virginia, or by any county, district or municipal corporation thereof.

In testimony whereof, witness the manual or facsimile signature of the treasurer of the state of West Virginia, and the manual or facsimile countersignature of the auditor of the state, hereto affixed according to law, dated the day of one thousand nine hundred

Treasurer of the State of West Virginia

(SEAL)

Countersigned:

Auditor of the State of West Virginia.

§4. Form of coupon.

The form of coupon shall be substantially as follows, to wit:

STATE OF WEST VIRGINIA

Bond No. Coupon No.

On the first day of , 19

the state of West Virginia will pay to the bearer, in lawful money of the United States of America, at the office of the
§5. **Listing by auditor.**

All coupons and registered bonds issued under this act shall be separately listed by the auditor of the state in books provided for the purpose, in each case giving the date, number, character and amount of obligations issued, and in case of registered bonds, the name and post-office address of the person, firm or corporation registered as the owner thereof.

§6. **State road fund sources used to pay bonds and interest; investment of remainder.**

Into the state road fund there shall be paid all money from any and all appropriations made by the state from the state road fund for the purpose of paying the interest on such bonds or paying off and retiring the bonds, from transfer and registration fees as herein provided, and from any other source whatsoever which is made liable by law for the payment of the principal of such bonds or the interest thereon.

All such funds shall be kept by the treasurer in a separate account, under the designation aforesaid, and all moneys belonging to the fund shall be deposited in the state treasury to the credit thereof.

Such fund shall be applied by the treasurer of the state...
first to the payment of the semiannual interest on such bonds
as it shall become due as herein provided. The remainder of
the fund shall be invested by the state treasurer in obligations
of the government of the United States of America, bonds of
the state of West Virginia, or any political subdivision there-
of: Provided, That bonds or other obligations so purchased by
the state treasurer shall mature so as to provide sufficient
money to pay off all bonds herein provided to be issued as they
become due; and the money so paid into the state road fund
under the provisions of this act shall be expended for the
purpose of paying the interest and principal of the bonds
hereby provided for as they severally become due and payable.

§7. Covenants of state.

The state of West Virginia covenants and agrees with the
holders of the bonds issued pursuant hereto as follows:
(1) That such bonds shall constitute a direct and general
obligation of the state of West Virginia; (2) that the full
faith and credit of the state is hereby pledged to secure
the payment of the principal and interest of such bonds;
(3) that an annual state tax shall be collected in an amount
sufficient to pay as it may accrue the interest on such bonds
and the principal thereof; and (4) that such tax shall be
levied in any year only to the extent that the moneys in
the state road fund irrevocably set aside and appropriated
for and applied to the payment of the interest on and
principal of said bonds becoming due and payable in such
year are insufficient therefor.

§8. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such
time or times as he may determine necessary to provide funds
for the building, construction, reconstruction, improving, up-
grading and completion of state roads and highways, and for
bridge replacement and improvement, as herein provided,
upon the recommendation of the West Virginia commissioner
of highways, and after reviewing the program of the West
Virginia department of highways and subject to the limitations
contained in this bill. All sales shall be at not less than par
and accrued interest. All interest coupons becoming payable
 prior to the sale date shall be canceled by the treasurer and
rendered ineffective before the delivery of the bonds so sold.

§9. Procedes paid into separate account in state road fund; expenditures; investment; annual accountability status report.

The proceeds of all sales of bonds herein authorized shall
be paid into a separate and distinct account in the state road
fund and shall be used and appropriated solely for the building,
construction, reconstruction, improving, upgrading and com-
pletion of state roads and highways and for bridge replace-
ment and improvement as provided for by the state consti-
tution and the laws enacted thereunder.

Except for such sums necessary for current operating
balances, such account shall be invested by the state treasurer
in obligations of the government of the United States, bonds
of the state of West Virginia, or any political subdivision
thereof: Provided, That no such investment may adversely
affect the current operating balances of such fund: Provided,
however, That all interest accruing from such investment shall
be paid into the state road fund for debt service on the bonds
issued.

On or before the thirty-first day of January of each year,
the commissioner of the department of highways shall submit
to the legislative auditor an accountability status report of all
moneys received or expended within the state road fund, here-
in provided and any other information required to fully account
in respect to the handling of bonds issued and moneys expend-
ed under the authority of the Better Highways Amendment of
1973. No moneys shall be expended by the commissioner
other than as authorized in said amendment.

§10. Plates, etc., property of state.

The plates, casts, dies or other forms from which the bonds
authorized by this bill are produced or made shall be the
property of the state of West Virginia.

§11. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold
bonds issued pursuant to the provisions of this bill.
§12. **Interim certificates.**

1 The governor may authorize the issuance of interim certificates to be issued to the purchasers of such bonds to be held by them in lieu of permanent bonds. When interim certificates are so issued, they shall become full and legal obligations of the state of West Virginia under all of the provisions of this bill just as fully and completely as the permanent bonds.

§13. **State treasurer to be financial advisor.**

1 The state treasurer shall serve as financial advisor to the governor and may obtain financial advisor assistance for the issuance and sale of such bonds.

§14. **Attorney general or his duly appointed legal representative to serve as bond counsel.**

1 The attorney general, or his duly appointed legal representative, shall serve as bond counsel and shall be responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds.

§15. **Approval and payment of all necessary expenses.**

1 All necessary expenses, including legal expenses approved by the attorney general, incurred in the execution of this act shall be paid out of the state road fund on warrants of the auditor of the state drawn on the state treasurer.

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**CHAPTER 153**

(Com. Sub. for H. B. 1206—By Mr. Teets and Mr. Swann)

[Passed April 8, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state sinking fund commission; continuing the commission and designating it the West Virginia municipal bond commission; providing for changes in the
composition of the commission, relating to terms of appointment, vacancies, and removal from office; providing appointment of chief administrative officer; relating to meetings; defining a quorum; providing compensation and expenses for members of commission; providing for legal representation; establishing an executive committee and providing powers and duties of executive committee; requiring bonds of officers and employees of commission; establishing powers and duties of commission; authorizing securities for investment; relating to limitations and prohibitions on purchase, sale or exchange of securities; providing for the proration of interest amount; various accounts; relating to the custody of securities; providing for the notification by issuer of bond sale; relating to the collection, deposit and accounting of funds; creating the municipal bond commission fund; relating to accounts to be kept by commission issuing annual statements and return of canceled bonds and coupons; providing for issuance of levy statements; providing methods for the destruction of canceled coupons and bonds; relating to appointment of substitute paying agents; authorizing the transfer and investment of funds; and providing for annual reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. MUNICIPAL BOND COMMISSION.

§13-3-1. Commission continued.
§13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.
§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.
§13-3-4. Executive committee; powers and duties.
§13-3-5. Officer and employee bonds.
§13-3-6. Powers and duties of commission.
§13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.
§13-3-10. Accounts of bond issues; annual statements, canceled bonds and coupons.
§13-3-11. Statement by commission to political subdivision showing levy required.
§13-3-1. Commission continued.

The state sinking fund commission is hereby continued in all respects as heretofore constituted under prior provisions of this article, but is hereby designated as the West Virginia municipal bond commission.

§13-3-2. Composition of commission; terms of appointment; vacancies; removal from office.

(a) The commission shall be composed of five members as follows: (1) The auditor of the state, by virtue of his office; (2) the treasurer of the state, by virtue of his office; (3) the state tax commissioner, by virtue of his office; and (4) two residents of the state appointed by the governor by and with the advice and consent of the Senate. Of the two appointed members, one shall be, or shall have been, the mayor of a municipality, and one shall be, or shall have been, a member of a county commission: Provided, That if such mayor or member of a county commission is not presently serving in such position, he shall have served in such position within the six years preceding the term for which such member is to be appointed. No more than one of the members appointed by the governor may belong to the same political party.

(b) The appointed members of the commission shall serve overlapping terms of four years each and until their respective successors have been appointed and qualified, except for the original appointments, one member shall be appointed for a term of four years and until his successor has been appointed and qualified, one member shall be appointed for two years and until his successor has been appointed and qualified. Each member shall take and subscribe to the oath required by section five, article four of the constitution of this state.

(c) Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and such appointment shall be made within sixty days of the occurrence of such vacancy.
(d) No member of the board appointed by the governor may be removed from office except for official misconduct, incompetency, neglect of duty or gross immorality.

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

(a) The state tax commissioner shall be chairman of the commission and the state treasurer shall be treasurer of the commission.

(b) The members of the commission shall appoint a chief administrative officer and may fix his title, duties and compensation. The commissioner is authorized to employ such other employees as may be necessary and such consultants as the commission deems advisable and fix their compensation and prescribe their duties.

(c) Appointed members of the commission shall be paid fifty dollars for each day or substantial portion thereof that they are engaged in the work of the commission. Each member of the commission may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of duties on behalf of the commission.

(d) The commission shall hold at least three meetings in each fiscal year, one of which meetings shall be held in July and shall be the annual meeting. Such meetings shall be held on such dates and at such places as the chairman may prescribe. Additional meetings may 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. Four members of the commission constitute a quorum.

(e) The attorney general shall be the legal advisor to the commission.

§13-3-4. Executive committee; powers and duties.

The state tax commissioner, the state treasurer, and the state auditor constitute the executive committee of the municipal bond commission. The executive committee is vested with all the powers of the commission when it is not in session, except that the executive committee may not
overrule, reverse or disregard any action of the full commission. Action of the executive committee shall be taken by resolution adopted by a majority of the executive committee. The chairman may call meetings of the executive committee at any time.

§13-3-5. Officer and employee bonds.

The state treasurer shall give a separate and additional bond for the faithful performance of his duties as custodian of the moneys, securities and other investments of the commission in such amount as shall, from time to time, be fixed by the commission. The chief administrative officer and the employees designated by the commission shall furnish bonds in such form and in such amounts, as the commission shall, from time to time, determine. The costs of such bonds shall be paid by the commission and such bonds shall be filed in the same office as are the bonds of state officers. The attorney general's approval of all bonds required by this section shall be obtained.

§13-3-6. Powers and duties of commission.

The commission is hereby granted, has and may exercise all powers necessary or appropriate to effectuate the purposes of this article.

§13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.

(a) Notwithstanding any provisions of this code to the contrary, the commission may invest funds under its control in the following classes of securities and not otherwise:

(1) Securities of the United States or agency thereof which are guaranteed by or for which the full faith and credit of the United States is pledged for the payment of the principal and interest;

(2) General obligations of the state or any of its agencies, boards or commissions; and
(3) General obligations of any county, municipality or school district in this state.

(b) Securities purchased or held under the provisions of this article may be sold or exchanged for other securities: Provided, That (1) no security shall be purchased, sold or exchanged without the concurrence or ratification of a majority of all members of the board, (2) no security shall be purchased at a price above, nor sold or exchanged at a price below its prevailing fair market value, (3) no security shall be purchased, sold or exchanged for the purpose of aiding any individual, firm or corporation by the payment of brokerage commissions or fees thereto, (4) no security purchased, sold or exchanged shall benefit any member or employee of the commission, and (5) no security shall be received in exchange which does not comply with the requirements of this article.

(c) The commission shall record all pertinent information related to any purchase, sale or exchange of securities and make such information available for public inspection during normal office hours of the commission.

(d) Funds from several or all accounts may be combined for investment and any interest earned shall be prorated and credited to the various contributing accounts on the basis of amount thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle: Provided, That such proration shall be calculated at least once a year or upon specific request made to the commission.

(e) All securities purchased by the commission as an investment for the funds shall remain in the custody of the state treasurer until the same are sold, exchanged, retired or mature and are paid.


Prior to the issuance of any general obligation bond or refunding bond by the state of West Virginia acting through its departments, commissions, boards or agencies or by any county, municipality or school district, the issuer shall notify the commission of any proposed bond sale. Within thirty days after issuance of bonds, the commission shall be

All interest and other funds on hand July first of each year and belonging to the counties, municipalities or school districts for the purpose of amortizing bonded indebtedness, shall be, by the treasurer or collector thereof, not later than the following September, forwarded to the commission to be deposited in the state treasury to the credit of the state.

Whenever the amount deposited for any issuer is not sufficient to meet the interest or principal due, it shall be the duty of the treasurer or collector of such issuer, upon being notified of the fact by the commission, to remit a sufficient amount of interest or principal that may be in his possession to meet the interest or principal due.

Any taxes to provide for the payment of principal, creation of a reserve or sinking fund, or for the payment of interest on bonds by any county, municipality or school district which shall be collected by any state officer, shall be paid by such officer to the commission, to be at once applied to the payment of the debt of the county, municipality or school district and the fact of such application of such fund shall be reported by the auditor to the treasurer or collector of such issuer, which report shall be a receipt for the amount therein named.

The state auditor and the state treasurer shall carry an account to be known as the municipal bond commission fund. All deposits shall be carried as a part of such fund.

The commission shall deposit all collections and receipts with the treasurer daily.

§13-3-10. Accounts of bond issues; annual statements, canceled bonds and coupons.

The commission shall keep separate accounts for each bond issue showing in detail all receipts and disbursements: Provided, That accounts of one issuer for the same purpose may be consolidated into one account. Within thirty days
after the end of the fiscal year, the commission shall submit to each issuer a statement of all receipts and disbursements of the preceding fiscal year. At the same time, the commission shall surrender to each issuer coupons and bonds which have been paid and canceled or certificates of destruction as provided for in section twelve of this article.

§13-3-11. Statement by commission to political subdivision showing levy required.

The commission shall, annually, at least thirty days before the time for making up the estimate for levy purposes, render to each political subdivision having outstanding general obligation bonds, a statement showing the levy required to pay the interest on and provide for the retirement of the subdivision's outstanding general obligation bonds.

§13-3-12. Destruction of canceled bonds and coupons.

Any canceled bonds and interest coupons of any issue for which the commission acts as fiscal agent or paying agent may be destroyed in the discretion of the commission by one of the two methods described herein below.

Method I—The commission shall maintain a permanent record for the purpose of recording the destruction of bonds and coupons, showing the following: (1) With respect to bonds, the purpose of issuance, the date of issue, serial numbers (if any), denomination, maturity date, and total principal amount; and (2) with respect to coupons, the purpose of issue and date of the bonds to which the coupons appertain, the maturity date of the coupons and, as to each maturity date, the denomination, quantity, and total amount of coupons.

After recording the specified information, the commission shall have the canceled bonds and coupons destroyed by either burning or shredding, in the presence of the chairman of the commission and any three commission members, each of whom shall certify that he saw the canceled bonds and coupons destroyed. Such certificates shall be made a part of the permanent record. Canceled bonds or coupons shall not be destroyed until after one year from the date of payment.
Method II—The commission may contract with any bank or trust company acting as paying agent or co-paying agent for a bond issue for the destruction of bonds and interest coupons which have been canceled by the paying agent. The contract shall require that the paying agent give the commission a written certificate containing the same information required by Method I. The certificates shall be made part of the permanent record book of the commission. Each contract shall also require that the paying agent be responsible for proper payment and disposition of all bonds and coupons, and for any duplicate payments to unauthorized persons and nonpayment to authorized persons occurring as a result of destruction of bonds or coupons under this section. In addition, the commission may require the paying agent to submit an indemnity bond, in an amount to be determined by the commission, to assure performance of the duties specified in this section. Canceled bonds or coupons may not be destroyed until one year from the date of payment.


The commission may appoint a new paying agent on any issue for which the commission acts as fiscal agent, in the event of the insolvency, threat of insolvency, malfeasance, misfeasance, incompetence, or discontinuance from business of the paying agent or in the case of discontinuance of the place of payment as designated by the terms of such bonds. Upon appointment of a substitute paying agent, the commission shall publish notice of such action as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the former paying agent had residence. Upon designation of another place of payment, publication of notice shall be made in the county in which was located the former place of payment.

§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

Any funds of a political subdivision or of any of the agencies, boards, commission or departments of the state of West
Virginia raised by levy, sale of bonds or otherwise and which cannot be used within a reasonable time may be transferred to the municipal bond commission. Any funds so transferred shall be invested by the commission in accordance with the provisions of this article. Any such funds so transferred may be withdrawn by the public body which transferred the same as authorized by this article upon one hundred twenty days' notice in writing to the commission.


The commission shall prepare a complete and full report of its operations and investments at the close of each fiscal year and furnish a copy thereof to the governor, president of the Senate, speaker of the House of Delegates and the legislative auditor on or before the first day of the next regular session of the Legislature. Copies of the report shall be available upon request for a reasonable fee to any citizen of the state: Provided, That such report shall be available for public inspection during regular office hours of the commission.

CHAPTER 154
(Com. Sub. for S. B. 219—By Mr. Neeley and Mr. Hinkle)

[Passed April 9, 1977; in effect July 1, 1977. Approved by the Governor.]
nation and appointment of board members, their qualifications, term of office, oath, bond, compensation and expenses; meetings of board; appointment of director of authority by board; authorizing the authority to provide solid waste disposal projects; powers, duties and responsibility of authority; power of authority to collect service charges and exercise other powers of governmental agencies in event of default; venue of actions against the authority; authorizing the authority to purchase property and exercise the right of eminent domain; relating to development and designation of solid waste disposal sheds by authority; expenditure of funds for study and engineering of proposed solid waste disposal projects; issuance of solid waste disposal revenue bonds, notes, renewal bonds and renewal notes; requirements for their issuance; relating generally to all such revenue bonds and notes and resolutions authorizing the same; limiting the total amount of bonded indebtedness to fifty million dollars; trust agreements to secure all such revenue bonds and notes; legal remedies of bondholders and trustees; involvement of the authority and counties, municipalities and other political subdivisions in the establishment of solid waste disposal projects and the maintenance and operation thereof; specifying that such revenue bonds and notes are not debt of state, or of any county, municipality or political subdivision in state; relating to use of moneys, properties and assets by authority and restrictions on their use; investment of funds by authority; rentals, fees, service charges and other revenues the authority may derive from solid waste disposal projects; relating generally to contracts and agreements with respect to such projects; authorizing governmental and other contributions to authority; authorizing proceeds of other bond issues to be used to aid authority; maintenance, operation and repair of solid waste disposal projects and the taking, destroying and damaging of property; requiring reports by authority; making solid waste disposal revenue bonds lawful investments; providing exemption from taxation for authority; prohibiting officers, members and employees of the authority from having financial interest in contracts, sale of property and activities of authority and setting forth criminal penalties for
violation of such prohibition; meetings and records of authority to be open to public with certain exceptions; continuing regulation of solid waste collectors and haulers by public service commission and bringing about their compliance with solid waste disposal shed plan and projects; relating to cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.; and rule of construction of provisions of article.

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-six, to read as follows:

ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.

§16-26-1. Short title.

§16-26-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

§16-26-3. Definitions.

§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualifications of board members; their term of office, compensation and expenses; director of authority.

§16-26-5. Authority to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

§16-26-6. Powers, duties and responsibilities of authority generally.

§16-26-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.


§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.

§16-26-10. Authority empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

§16-26-11. Trustee for bondholders; contents of trust agreement.

§16-26-12. Legal remedies of bondholders and trustees.

§16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

§16-26-14. Use of funds, properties, etc., by authority; restrictions thereon.

§16-26-15. Investment of funds by authority.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.
§16-26-17. Maintenance, operation and repair of projects; repair of damaged property; reports by authority to governor and Legislature.


§16-26-19. Exemption from taxation.

§16-26-20. Governmental agencies authorized to convey property.

§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

§16-26-22. Meetings and records of authority to be open to public with certain exceptions.

§16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

§16-26-24. Cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

§16-26-25. Liberal construction of article.

§16-26-1. Short title.

1 This article shall be known and cited as the "West Virginia Resource Recovery—Solid Waste Disposal Authority Act."

§16-26-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

1 The Legislature finds that uncontrolled, inadequately controlled and improper collection and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; and (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste.

Further, the Legislature finds that governmental agencies in the state and the private sector do not have the financial and other resources needed to provide for the proper collection and disposal of solid waste; that solid waste disposal sheds and projects must be established on a relatively large scale to be economically feasible and stable; and that proper solid waste collection
and disposal at the lowest minimum cost can only be achieved through comprehensive solid waste management.

It is declared to be the public policy and a responsibility of this state to assist efforts of governmental agencies and the private sector to provide for the proper collection, disposal and recycling of solid waste and to solve and prevent the problems set forth in this article. It is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient collection, disposal and recycling of solid waste and to assist and cooperate with governmental agencies and the private sector in achieving all the purposes set forth in this article, and to encourage the recycling or extraction of recoverable resources from such solid waste.

The Legislature finds that the public policy and responsibility of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of solid waste disposal projects as provided in this article.

§16-26-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

1. (1) "Authority" means the West Virginia resource recovery—solid waste disposal authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

2. (2) "Board" means the West Virginia resource recovery—solid waste disposal authority board created in section four of this article, which shall manage and control the West Virginia resource recovery—solid waste disposal authority as provided in this article.

3. (3) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the West Virginia resource recovery—solid waste disposal authority to effect the intents and purposes of this article.

4. (4) "Construction" includes reconstruction, enlarge-
ment, improvement and providing furnishings or equip-
ment for a solid waste disposal project.

(5) "Cost" means, as applied to solid waste disposal
projects, the cost of their acquisition and construction;
the cost of acquisition of all land, rights-of-way, property,
rights, easements, franchise rights and interests required
by the authority for such acquisition and construction; the
cost of demolishing or removing any buildings or struc-
tures on land so acquired, including the cost of acquiring
any land to which such buildings or structures may be
moved; the cost of diverting highways, interchange of
highways and access roads to private property, including
the cost of land or easements therefor; the cost of all
machinery, furnishings and equipment; all financing
charges and interest prior to and during construction and
for no more than eighteen months after completion of
construction; the cost of all engineering services and all
expenses of research and development with respect to
solid waste disposal facilities; the cost of all legal ser-
ices and expenses; the cost of all plans, specifications,
surveys and estimates of cost and revenues; all working
capital and other expenses necessary or incident to de-
termining the feasibility or practicability of acquiring or
constructing any such project; all administrative expenses
and such other expenses as may be necessary or incident
to the acquisition or construction of the project; the
financing of such acquisition or construction, including the
amount authorized in the resolution of the authority
providing for the issuance of solid waste disposal revenue
bonds to be paid into any special funds from the proceeds
of such bonds; and the financing of the placing of any
such project in operation. Any obligation or expenses
incurred after the effective date of this article by any
governmental agency, with the approval of the authority,
for surveys, borings, preparation of plans and specifica-
tions and other engineering services in connection with
the acquisition or construction of a project shall be re-
garded as a part of the cost of such project and shall
be reimbursed out of the proceeds of loans or solid waste
disposal revenue bonds as authorized by the provisions
of this article.
(6) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste disposal facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(7) "Industrial waste" means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(8) "Owner" includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(9) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity whatever.

(10) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(11) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia resource recovery—solid waste disposal authority as rent, use fee, service charge or other charge for use of, or in connection
with, any solid waste disposal project, or as principal of
or interest, charges or other fees on loans, or any other
collections on loans made by the West Virginia solid
waste disposal authority to governmental agencies to
finance in whole or in part the acquisition or construction
of any solid waste development project or projects, or
other money or property which is received and may be
expended for or pledged as revenues pursuant to this
article.

(12) "Solid waste" means all putrescible and non-
putrescible solid waste substances, except human excreta,
including but not limited to garbage, rubbish, ashes, in-
cinerator residue, street refuse, dead animals, demolition
and construction waste, vehicles and parts thereof, tires,
appliances, sewage plant sludge, commercial and indus-
trial waste and special waste, including but not limited
to explosives, pathological waste and radioactive material,
except those commercial and industrial wastes and special
wastes which are under the control of the department
of natural resources or the West Virginia air pollution
control commission, or both, or of the United States gov-
ernment.

(13) "Solid waste disposal facility" means any method,
system or facility to collect, transport, treat, neutralize,
dispose of, stabilize, segregate, recover, recycle or hold
solid waste, including without limiting the generality of
the foregoing, the equipment, furnishings and appurte-
nances thereof.

(14) "Solid waste disposal project" or "project" means
any solid waste disposal facility the acquisition or con-
struction of which is authorized by the West Virginia
resource recovery—solid waste disposal authority or any
acquisition or construction which is financed in whole or
in part from funds made available by grant or loan by, or
through, the authority as provided in this article, in-
cluding all buildings and facilities which the authority
deems necessary for the operation of the project, together
with all property, rights, easements and interests which
may be required for the operation of the project.

(15) "Solid waste disposal shed" or "shed" means a
geographical area which the West Virginia resource recovery—solid waste disposal authority designates as provided in section eight of this article for solid waste management.

§16-26-4. West Virginia resource recovery—solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.

The West Virginia resource recovery—solid waste disposal authority is hereby created. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by a five-member board known as the West Virginia resource recovery—solid waste disposal authority board which is hereby created. The director of the department of health shall be a member ex officio of the board. The other four members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of one, two, three and four years, respectively. One appointee shall be a member of the West Virginia association of county officials, one a member of the West Virginia municipal league and a resident of a municipality as defined in section two, article one, chapter eight of this code, one a member of a regional council as defined in section two, article twenty-five, chapter eight of this code and one a contract solid waste hauler who holds a valid certificate of convenience and necessity issued by the public service commission. The successor of each such appointed member shall be appointed for a term of four years in the same manner the original appointments were made and so that the representation on the board as set forth in this section is preserved, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be ap-
pointed only for the remainder of such term. Each board
cmember shall serve until the appointment and qualifica-
tion of his successor.

No more than two of the appointed board members
may at any one time be from the same congressional
district or belong to the same political party. No
appointed board member may be an officer or em-
ployee of the United States or this state. Appointed
board members may be reappointed to serve additional
terms. All members of the board shall be citizens
of the state. Each appointed member of the board,
before entering upon his duties, shall comply with
the requirements of article one, chapter six of this
code and give bond in the sum of twenty-five thousand
dollars. Appointed members may be removed from the
board only for the same causes as elective state officers
may be removed.

Annually the board shall elect one of its appointed
members as chairman, another as vice-chairman and
appoint a secretary-treasurer, who need not be a
member of the board. Three members of the board
shall constitute a quorum and the affirmative vote of
three members shall be necessary for any action taken
by vote of the board. No vacancy in the membership
of the board shall impair the rights of a quorum
by such vote to exercise all the rights and perform
all the duties of the board and the authority. The
person appointed as secretary-treasurer shall give bond
in the sum of fifty thousand dollars. If a board mem-
ber is appointed as secretary-treasurer, he shall give
bond in the sum of twenty-five thousand dollars in ad-
dition to the bond required in the preceding para-
graph.

The director of the department of health shall not
receive any compensation for serving as a board mem-
ber. Each of the four appointed members of the board
shall receive compensation of fifty dollars for each day
actually spent in attending meetings of the board or in
the discharge of his duties as a member of the board,
but not to exceed two thousand five hundred dollars in
any fiscal year. Each of the five board members shall
be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of his duties as a
member of the board. All such compensation and ex-
penses incurred by board members shall be payable
solely from funds of the authority or from funds appro-
priated for such purpose by the Legislature and no li-
ability or obligation shall be incurred by the authority
beyond the extent to which moneys are available from
funds of the authority or from such appropriation.

The board shall meet at least four times annually and
at any time upon the call of its chairman or upon the
request in writing to the chairman of three board mem-
bers.

The board shall appoint a director of the authority.
The director shall have successfully completed one full
year of graduate school in the discipline of systems
analysis or environmental engineering and, in addition,
shall have one year of work experience in systems an­
alysis and three years of work experience in solid waste
management, or four years’ experience in solid waste man-
agement.

§16-26-5. Authority to designate and establish disposal sheds;
construction, maintenance, etc., of disposal proj­
ects; loan agreements; compliance with federal
and state law.

To accomplish the public policy and purpose and to
meet the responsibility of the state as set forth in this
article, the West Virginia resource recovery—solid waste
disposal authority shall designate and establish solid
waste disposal sheds and it may initiate, acquire, con­
struct, maintain, repair and operate solid waste disposal
projects or cause the same to be operated pursuant to
a lease, sublease or agreement with any person or gov-
ernmental agency; may make loans and grants to per-
sons and to governmental agencies for the acquisition
or construction of solid waste disposal projects by such
persons and governmental agencies; and may issue solid
waste disposal revenue bonds of this state, payable solely
from revenues, to pay the cost of, or finance, in whole or
in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the authority determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state water resources board and the division of water resources of the department of natural resources for any waters of the state which may be affected thereby, with the air quality standards set by the West Virginia air pollution control commission and with health standards set by the department of health. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a solid waste disposal project, which loan agreement shall include without limitation the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;

(2) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of such governmental agency under the loan agreement, increase service charges from persons using said project, which service charges shall be pledged for the repayment of such loan together with all interest, fees and charges thereon and all other financial obligations of such governmental agency under the loan agreement; and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations
issued by the authority or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project.

The authority shall comply with all of the provisions
of federal law and of article one of this chapter and any
rules and regulations promulgated thereunder which per-
tain to solid waste collection and disposal.

§16-26-6. Powers, duties and responsibilities of authority
generally.

The West Virginia resource recovery—solid waste
disposal authority may exercise all powers necessary or
appropriate to carry out and effectuate its corporate
purpose. The authority may:

(1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business, and rules and
regulations, promulgated pursuant to the provisions
of chapter twenty-nine-a of this code, to implement
and make effective its powers and duties.

(2) Adopt an official seal.

(3) Maintain a principal office which shall be in
Kanawha county, and, if necessary, regional suboffices
at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to en-
force the obligations and covenants made under sections
ten, eleven and sixteen of this article. Any actions
against the authority shall be brought in the circuit
court of Kanawha county.

(5) Make loans and grants to persons and to gov-
ernmental agencies for the acquisition or construction
of solid waste disposal projects and adopt rules and
procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for operation by a governmental agency
or person, solid waste disposal projects, and, in ac-
cordance with chapter twenty-nine-a of this code,
adopt rules and regulations for the use of such projects.

(7) Make available the use or services of any solid waste disposal project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as provided in section nine of this article unless the bonds are refunded by refunding bond, for the purpose of paying all or any part of the cost of or financing by loans to governmental agencies one or more solid waste disposal projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste disposal facility operated under permits issued pursuant to the provisions of article one, chapter sixteen of this code and owned by any person or governmental agency. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to
the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. A contract or lease for the operation of a solid waste disposal project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents, engineers, accountants, auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of solid waste disposal revenue bonds or notes issued by the
authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste disposal project or for research and development with respect to solid waste disposal projects and solid waste disposal sheds and receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to solid waste disposal projects and solid waste disposal sheds.

(15) Purchase fire and extended coverage and liability insurance for any solid waste disposal project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, subject to the prior approval of the public service commission of West Virginia, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.
§16-26-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to insure that the public purposes to be served by the authority may be properly carried out and in order to assure the timely payment to the authority of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the authority shall have, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:

1. The authority may directly impose, in its own name and for its own benefit, service charges determined by it to be necessary under the circumstances upon all users of the solid waste disposal project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

2. The authority may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the solid waste disposal project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including without limitation all rights and remedies with respect to users of such solid waste disposal project.

3. The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including without limitation the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and
collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.


Prior to beginning or raising the cost of the first solid waste disposal project and within one year of the effective date of this article, the authority shall divide the state into geographical areas for solid waste management which shall be known as solid waste disposal sheds.

Before it designates the sheds, the authority shall consult with the governing bodies of the counties and municipalities in the state and obtain and evaluate their opinions as to how many sheds there should be and where their boundaries should be located. The authority shall then cause informational gathering studies and feasibility and cost studies to be made in order for it to designate the solid waste disposal sheds within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be established. The sheds shall not overlap and shall cover the entire state.

Although solid waste disposal sheds may be designated by the authority without respect to political or geographical boundaries, it shall consider such boundaries, regions as defined in section two, article twenty-five, chapter eight of this code, and any county or municipal comprehensive plan as defined in section three, article twenty-four, chapter eight of this code in determining the area and boundary of each shed. The authority shall designate the sheds so that:

(1) The goal of providing solid waste collection and disposal service to each household, business and industry in the state can reasonably be achieved.

(2) The total cost of solid waste collection and disposal and the cost of solid waste collection and disposal within each shed and per person can be kept as low as possible.

(3) Solid waste collection and disposal service, facili-
ties and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.

§16-26-9. Expenditure of funds and use of health department employees for study and engineering of proposed projects; records to be kept; repayment to department.

1 With the approval of the authority, the director of the department of health shall expend out of any funds available for the purpose such moneys as are necessary for the study and engineering of any proposed solid waste disposal project and may use its employees and consultants for that purpose. All such expenses incurred by the director of the department of health prior to the issuance of solid waste disposal revenue bonds or notes under this article shall be paid by him and charged to the appropriate solid waste disposal project. The director of the department of health shall keep proper records and accounts showing the amounts so charged. Upon the sale of solid waste disposal revenue bonds or notes for a solid waste disposal project, the moneys so expended by the director of the department of health with the approval of the authority in connection with such project shall be repaid to the department of health from the proceeds of such bonds or notes.

§16-26-10. Authority empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

1 The authority is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of fifty million dollars.
The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes shall be obligations of the authority payable out of the revenues and reserves created for such purposes by the authority, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the authority, shall bear such dates and shall mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the authority may authorize. The authority may sell such bonds and notes at public or private sale, at the price the authority determines. The bonds and notes shall be executed by the chairman and vice-chairman of the authority, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof
shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the authority; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the authority to do all things necessary for the authorization, issuance and sale of bonds
in such amounts as may be necessary for the timely re-
tirement of notes issued in anticipation of the issuance
of bonds; limitations on the issuance of additional bonds
or notes; the terms upon which additional bonds or notes
may be issued and secured; the refunding of outstanding
bonds or notes; the procedure, if any, by which the terms
of any contract with bondholders or noteholders may be
amended or abrogated, the holders of which must consent
thereto, and the manner in which such consent may be
given; limitations on the amount of moneys to be ex-
pended by the authority for operating, administrative or
other expenses of the authority; securing any bonds or
notes by a trust agreement; and any other matters, of
like or different character, which in any way affect the
security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes shall be less than
the minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chairman of the authority shall
certify, on or before the first day of December of each
year, the amount of such deficiency to the governor of
the state, for inclusion, if the governor shall so elect,
of the amount of such deficiency in the budget to be
submitted to the next session of the Legislature for
appropriation to the authority to be pledged for pay-
ment of such bonds or notes: Provided, That the Legis-
lature shall not be required to make any appropriation
so requested, and the amount of such deficiencies shall
not constitute a debt or liability of the state.

Neither the members of the authority nor any person
executing the bonds or notes shall be liable personally on
the bonds or notes or be subject to any personal liability
or accountability by reason of the issuance thereof.

§16-26-11. Trustee for bondholders; contents of trust agree-
ment.

1 In the discretion of the authority, any solid waste
disposal revenue bonds or notes or solid waste disposal
revenue refunding bonds issued by the authority under
this article may be secured by a trust agreement between
the authority and a corporate trustee, which trustee may
be any trust company or banking institution having the
powers of a trust company within or without this state.

Any such trust agreement may pledge or assign rev-

enues of the authority to be received, but shall not convey
or mortgage any solid waste disposal project or any part
thereof. Any such trust agreement or any resolution pro-
viding for the issuance of such bonds or notes may
contain such provisions for protecting and enforcing the
rights and remedies of the bondholders or noteholders as
are reasonable and proper and not in violation of law,
including the provisions contained in section nine of this
article, covenants setting forth the duties of the au-
thority in relation to the acquisition of property, the
construction, improvement, maintenance, repair, opera-
tion and insurance of the solid waste disposal project,
the cost of which is paid in whole or in part from the
proceeds of such bonds or notes, the rentals or other
charges to be imposed for the use or services of any solid
waste disposal project, provisions with regard to the
payment of the principal of and interest, charges and fees
on loans made to governmental agencies from the proceeds
of such bonds or notes, the custody, safeguarding, and
application of all moneys and provisions for the employ-
ment of consulting engineers in connection with the con-
struction or operation of such solid waste disposal project.

Any banking institution or trust company incorporated
under the laws of this state which may act as depository
of the proceeds of bonds or notes or of revenues shall
furnish such indemnifying bonds or pledge such securities
as are required by the authority. Any such trust agree-
ment may set forth the rights and remedies of the bond-
holders and noteholders and of the trustee and may re-
strict individual rights of action by bondholders and note-
holders as customarily provided in trust agreements or
trust indentures securing similar bonds. Such trust agree-
ment may contain such other provisions as the authority
deems reasonable and proper for the security of the
bondholders or noteholders. All expenses incurred in
carrying out the provisions of any such trust agreement
may be treated as a part of the cost of the operation of
the solid waste disposal project. Any such trust agreement or resolution authorizing the issuance of solid waste disposal revenue bonds may provide the method whereby the general administrative overhead expenses of the authority shall be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

§16-26-12. Legal remedies of bondholders and trustees.

Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or resolution, to be performed by the authority or any officer or employee thereof, including the fixing, charging and collecting of sufficient rentals, fees, service charges or other charges.

§16-26-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds issued under authority of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof shall have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article.
unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under authority of this article. This article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§16-26-14. Use of funds, properties, etc., by authority; restrictions thereon.

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of solid waste disposal revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of solid waste disposal revenue bonds or in any trust agreement securing the same, or except when invested pursuant to section fifteen of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.
§16-26-15. Investment of funds by authority.

1 The authority is hereby authorized and empowered to
2 invest any funds not needed for immediate disbursement
3 in any of the following securities:
4
5 (1) Direct obligations of or obligations guaranteed by
6 the United States of America;
7
8 (2) Bonds, debentures, notes or other evidences of
9 indebtedness issued by any of the following agencies:
10 Banks for cooperatives; federal intermediate credit banks;
11 federal home loan bank system; Export-Import Bank of
12 the United States; federal land banks; the Federal Na-
13 tional Mortgage Association or the Government National
14 Mortgage Association;
15
16 (3) Public housing bonds issued by public agencies or
17 municipalities and fully secured as to the payment of
18 both principal and interest by a pledge of annual contri-
19 butions under an annual contributions contract or con-
20 tracts with the United States of America; or temporary
21 notes issued by public agencies or municipalities or pre-
22 liminary loan notes issued by public agencies or munici-
23 palities, in each case, fully secured as to the payment of
24 both principal and interest by a requisition or payment
25 agreement with the United States of America;
26
27 (4) Certificates of deposit secured by obligations of
28 the United States of America;
29
30 (5) Direct obligations of or obligations guaranteed by
31 the state of West Virginia; or
32
33 (6) Direct and general obligations of any other state
34 within the territorial United States, to the payment of
35 the principal of and interest on which the full faith and
36 credit of such state is pledged: Provided, That at the time
37 of their purchase, such obligations are rated in either
38 of the two highest rating categories by a nationally
39 recognized bond-rating agency.
40
41 Funds of the authority in excess of current needs, ex-
42 cept as otherwise provided in any resolution authorizing
43 the issuance of its solid waste disposal revenue bonds or
44 in any trust agreement securing the same, may be in-
45 vested by the authority in any security or securities in
which the West Virginia state board of investments is authorized to invest under sections nine and ten, article six, chapter twelve of this code, except those securities specified in subdivisions (f) and (g) of said section nine. Income from all such investments of moneys in any fund shall be credited to such funds as the authority determines, subject to the provisions of any such resolution or trust agreement and such investments may be sold at such times as the authority determines.

§16-26-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

This section shall apply to any solid waste disposal project or projects which are owned in whole or in part by the authority.

The authority may charge, alter and collect rentals, fees, service charges or other charges for the use or services of any solid waste disposal project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, fees, service charges or other charges for such use or services. Such rentals, fees, service charges or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste disposal project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain solid waste disposal facilities may enter into a contract or lease with the authority whereby the use or services of any solid waste disposal project of the
authority will be made available to such governmental
agency and pay for such use or services such rentals, fees,
service charges or other charges as may be agreed to by
such governmental agency and the authority.

Any governmental agency or agencies or combination
thereof may cooperate with the authority in the acquisi-
tion or construction of a solid waste disposal project and
shall enter into such agreements with the authority as are
necessary, with a view to effective cooperative action and
safeguarding of the respective interests of the parties
thereto, which agreements shall provide for such con-
tributions by the parties thereto in such proportion as
may be agreed upon and such other terms as may be
mutually satisfactory to the parties, including without
limitation the authorization of the construction of the
project by one of the parties acting as agent for all of
the parties and the ownership and control of the project
by the authority to the extent necessary or appropriate
for purposes of the issuance of solid waste disposal reve-
 nue bonds by the authority. Any governmental agency
may provide such contribution as is required under such
agreements by the appropriation of money or, if autho-
rized by a favorable vote of the electors to issue bonds or
notes or levy taxes or assessments and issue notes or
bonds in anticipation of the collection thereof, by the
issuance of bonds or notes or by the levying of taxes or
assessments and the issuance of bonds or notes in antici-
pation of the collection thereof, and by the payment of
such appropriated money or the proceeds of such bonds
or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote
of the electors in an election held before or after the
effective date of this section for the purpose of issuing
bonds to provide funds to acquire, construct or equip, or
provide real estate and interests in real estate for a
solid waste disposal project, whether or not the govern-
mental agency at the time of such election had the au-
thority to pay the proceeds from such bonds or notes
issued in anticipation thereof to the authority as pro-
vided in this section, may issue such bonds or notes in
68 anticipation of the issuance thereof and pay the proceeds
69 thereof to the authority in accordance with an agreement
70 between such governmental agency and the authority:
71 Provided, That the legislative authority of the govern-
72 mental agency finds and determines that the solid waste
73 disposal project to be acquired or constructed by the
74 authority in cooperation with such governmental agency
75 will serve the same public purpose and meet substantially
76 the same public need as the project otherwise proposed
77 to be acquired or constructed by the governmental
78 agency with the proceeds of such bonds or notes.

§16-26-17. Maintenance, operation and repair of projects;
repair of damaged property; reports by authority
to governor and Legislature.

1 Each solid waste development project, when constructed
2 and placed in operation, shall be maintained and kept in
3 good condition and repair by the authority or if owned
4 by a governmental agency, by such governmental agency,
5 or the authority or such governmental agency shall cause
6 the same to be maintained and kept in good condition and
7 repair. Each such project owned by the authority shall
8 be operated by such operating employees as the authority
9 employs or pursuant to a contract or lease with a gov-
10 ernmental agency or person. All public or private prop-
11 erty damaged or destroyed in carrying out the provision
12 of this article and in the exercise of the powers granted
13 hereunder with regard to any project shall be restored
14 or repaired and placed in its original condition, as nearly
15 as practicable, or adequate compensation made therefor
16 out of funds provided in accordance with the provisions
17 of this article.
18 As soon as possible after the close of each fiscal year,
19 the authority shall make an annual report of its activi-
20 ties for the preceding fiscal year to the governor and
21 the Legislature. Each such report shall set forth a com-
22 plete operating and financial statement covering the
23 authority's operations during the preceding fiscal year.
24 The authority shall cause an audit of its books and
25 accounts to be made at least once each fiscal year by
26 certified public accountants and the cost thereof may be
27 treated as a part of the cost of construction or of opera-

The provisions of sections ten and eleven, article six, chapter twelve of this code notwithstanding, all solid waste disposal revenue bonds issued pursuant to this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

§16-26-19. Exemption from taxation.

The authority shall not be required to pay any taxes or assessments upon any solid waste disposal project or upon any property acquired or used by the authority or upon the income therefrom. Bonds and notes issued by the authority and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§16-26-20. Governmental agencies authorized to convey property.

All governmental agencies, notwithstanding any provision of law to the contrary, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.
§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

1 No officer, member or employee of the authority may be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or by the authority.
2 This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency.
3 No officer, member or employee of the authority may have or acquire any financial interest, either direct or indirect, in any project or activity of the authority or in any services or material to be used or furnished in connection with any project or activity of the authority.
4 If an officer, member or employee of the authority has any such interest at the time he becomes an officer, member or employee of the authority, he shall disclose and divest himself of it. Failure to do so shall be cause for dismissal from the position he holds with the authority.
5 No officer, member or employee of the authority may accept a gratuity from any person doing business with the authority or from any person for the purpose of gaining favor with the authority.
6 Any officer, member or employee of the authority who has any financial interest prohibited by this section or who fails to comply with its provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§16-26-22. Meetings and records of authority to be open to public with certain exceptions.

1 The authority shall comply with all of the requirements in article nine-a, chapter six of this code. Notwithstanding the provisions of subsection (b), section four of said article, all meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except the authority may, at its discretion for any reason set forth in subsection (a), section four of said article, or when
§16-26-23. Regulation of solid waste collectors and haulers to continue under public service commission; bringing about their compliance with solid waste disposal shed plan and solid waste disposal projects; giving testimony at commission hearings.

Solid waste collectors and haulers who are "common carriers by motor vehicle", as defined in section two, article one, chapter twenty-four-a of this code, shall continue to be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules and regulations promulgated thereunder. Nothing in this article shall give the authority any power or right to regulate such solid waste collectors and haulers in any manner, but the public service commission, when it issues a new certificate of convenience and necessity, or when it alters or adjusts the provisions of any existing certificate of convenience and necessity, or when it approves the assignment or transfer of any certificate of convenience and necessity, shall consult with the authority regarding what action it could take which would most likely further the implementation of the authority's solid waste disposal shed plan and solid waste disposal projects and shall take any reasonable action that will lead to or bring about compliance of such waste collectors and haulers with such plan and projects.

At any hearing conducted by the public service commission pertaining to solid waste collectors and haulers on any of these matters, any member of the board, the director or an employee of the board designated by the director may appear before the commission and present evidence.
§16-26-24. Cooperation of authority and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

1 The provisions of this article are complementary to those contained in article twenty-four, chapter seventeen of this code, and do not alter or diminish the authority of any enforcement agency, as defined in section two thereof, to collect and dispose of abandoned household appliances and motor vehicles, inoperative household appliances and junked motor vehicles and parts thereof, including tires.

2 The authority and such enforcement agencies shall cooperate fully with each other in collecting and disposing of such solid waste.

§16-26-25. Liberal construction of article.

1 The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

CHAPTER 155

(H. B. 1494—By Mrs. Snyder and Mr. Shiflet)

[Passed April 8, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to assessment of real property for ad valorem tax purposes; providing that farm property be valued according to its actual use rather than at its potential use.

Be it enacted by the Legislature of West Virginia:

That section one, article three, 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 3. ASSESSMENTS GENERALLY.
§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors.

All property shall be assessed annually as of the first day of July at its true and actual value; that is to say, at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations. The taxes upon all property shall be paid by those who are the owners thereof on that day, whether it be assessed to them or others. If at any time after the beginning of the assessment year, it be ascertained by the tax commissioner that the assessor, or any of his deputies, is not complying with this provision or that he has failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at its true and actual value, the tax commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making
such assessment and correction of values, the tax commis-
sioner may appoint one or more special assessors, as necessity
may require, to make such assessment in any such county,
and any such special assessor or assessors, as the case may
be, shall have all the power and authority now vested by
law in assessors, and the work of such special assessor or
assessors shall be accepted and treated for all purposes by
the county boards of review and equalization and the levying
bodies, subject to any revisions of value on appeal, as the
true and lawful assessment of that year as to all property
valued by him or them. The tax commissioner shall, with
the approval of the board of public works, fix the compensa-
tion of all such special assessors as may be designated by him,
which, together with their actual expenses, shall be paid
out of the county fund by the county commission of the
county in which any such assessment is ordered, upon the
receipt of a certificate of the tax commissioner filed with
the clerk of the county commission showing the amounts due
and to whom payable, after such expenses have been audited
by the county commission.

Any assessor who knowingly fails, neglects or refuses to
assess all the property of his county, as herein provided, shall
be guilty of malfeasance in office, and, upon conviction
thereof, shall be fined not less than one hundred nor more
than five hundred dollars, or imprisoned in the county jail
not less than three nor more than six months, or both, in the
discretion of the court, and upon conviction, shall be removed
from office.

CHAPTER 156

(S. B. 331—By Mr. Brotherton, Mr. President, and Mr. Savilla)

[Passed March 25, 1977; in effect July 1, 1977. Approved by the Governor.]

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 for persons over sixty-five; ascertainment of age for eligibility.

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.

1 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 or will become sixty-five on or before June thirtieth following the July first assessment day. 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.

14 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 remain qualified under this section. Only one exemption shall be granted for each owner-occupied residence regardless of the number of qualified persons, sixty-five or older, residing therein.

24 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 showing that no taxes are due.
Only those homeowners sixty-five years of age or older on the thirtieth day of June following the assessment date will be eligible for the exemption 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 homeowner 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 thirtieth day of June following 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 homeowner 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 assessor, 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 necessary instructions and forms and shall promulgate all necessary regulations to effectuate the purpose of this section.

CHAPTER 157

(Com. Sub. for H. B. 1507—By Mr. Farley)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred
Be it enacted by the Legislature of West Virginia:

That section two, 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.

§11-19-2. Excise tax on bottled soft drinks, syrups and dry mixtures; disposition thereof.

For the purpose of providing revenue for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing of West Virginia University, an excise tax is hereby levied and imposed on and after midnight of the last day of June, one thousand nine hundred fifty-one, upon the sale, use, handling or distribution of all bottled soft drinks and all soft drink syrups, whether manufactured within or without this state, as follows:

(1) On each bottled soft drink, a tax of one cent on each sixteen and nine-tenths fluid ounces, or fraction thereof, or on each one-half liter, or fraction thereof contained therein.

(2) On each gallon of soft drink syrup, a tax of eighty cents, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of eighty-four cents, and in like ratio on each part four liters thereof.

(3) On each ounce by weight of dry mixture or fraction thereof used for making soft drinks, a tax of one cent or on each 28.35 grams, or fraction thereof, a tax of one cent.

Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax hereby imposed. The excise tax hereby imposed shall not be collected more
than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used or distributed in this state.

All revenue collected by the commissioner under the provisions of this article, less such costs of administration as are hereinafter provided for, shall be paid by him into a special medical school fund, which is hereby created in the state treasury, to be used solely for the construction, maintenance and operation of a four-year school of medicine, dentistry and nursing, as otherwise provided by law.

CHAPTER 158
(S. B. 578—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments
made to the laws of the United States prior to the first
day of January, one thousand nine hundred seventy-
seven, shall be given effect in determining the taxes im-
posed by this article for the tax period beginning the
first day of January, one thousand nine hundred seventy-
seven, and thereafter, but no amendment to the laws of
the United States made on or after the first day of
January, one thousand nine hundred seventy-seven, shall
be given effect.

CHAPTER 159
(S. B. 577—By Mr. Brotherton, Mr. President)

[Passed April 7, 1977; in effect 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.


1 (a) General.—Any term used in this article shall have
2 the same meaning as when used in a comparable con-
3 text in the laws of the United States relating to federal
4 income taxes, unless a different meaning is clearly re-
5 quired by the context or by definition in this article.
6 Any reference in this article to the laws of the United
7 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-seven, 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-seven, 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-seven, 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 West Virginia extends under section one, article two, chapter twenty-four of the code of West Virginia.

(15) The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(16) The term "this state" means the state of West Virginia.
AN ACT to amend and reenact section four, article three, chapter forty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to preventing failure of devise or bequest because of void residuary clause in will.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PROVISIONS AS TO CONSTRUCTION.

§41-3-4. Failure or invalidity of devise or bequest.

1 Unless a contrary intention shall appear by the will, such
2 real or personal estate, or interest therein, as shall be
3 comprised in any devise or bequest in such will, which de-
4 vise or bequest shall fail or be void, or be otherwise in-
5 capable of taking effect, shall, if the estate be real estate,
6 be included in the residuary devise, or, if the estate be personal
7 estate, in the residuary bequest, if any residuary devise or be-
8 quest be contained in such will, and, in the absence of such
9 residuary devise or bequest, shall pass as in case of intestacy.
10 However, when a devise or bequest shall be included in a
11 residuary clause of the will, which devise or bequest shall fail or
12 be void or be otherwise incapable of taking effect, it shall not
13 pass as in case of intestacy but shall pass to the remaining
14 residuary devisees or legatees or devisee or legatee, if any
15 there be, in proportion to their respective shares or interests in
16 the residue.
AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, abolishing the West Virginia commission on the status of women, and establishing a new women's commission; members; powers and duties; acceptance of federal funds; cooperation of other agencies; and annual report.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WOMEN'S COMMISSION.
§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.
§29-20-4. Power of commission to accept funds; assistance from other departments.
§29-20-5. Rules and regulations.
§29-20-6. Annual report.

§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.

1 The West Virginia commission on the status of women is hereby abolished, and there is hereby created within the office of the governor the West Virginia women's commission, to consist of seventeen members, six of whom shall be ex officio members, not entitled to vote: The attorney general, the state superintendent of schools, the commissioner of labor, the commissioner of welfare, the director of the human rights commission and the director of personnel of the civil service system. Each ex officio member may designate one representative employed by his department to meet with
the commission in his absence. The governor shall appoint the additional eleven members, by and with the advice and consent of the Senate, from among the citizens of the state. The governor shall designate the chairman and vice chairman of the commission and the commission may elect such other officers as it deems necessary. The members shall serve a term beginning the first day of July, one thousand nine hundred seventy-seven, three to serve for a term of one year, four to serve for a term of two years, and the remaining four to serve for a term of three years. The successors of the members initially appointed as provided herein, shall be appointed for a term of three years each in the same manner as the members initially appointed under this article, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. Each member shall serve until the appointment and qualification of his successor.

No member may receive any salary for his services, but each may be reimbursed for actual and necessary expenses incurred by him in the performance of his duties out of funds received by the commission under section four of this article, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the commission.


It is the duty of the commission
(a) To review and study the status of women in this state;
(b) To recommend methods of overcoming discrimination against women in public and private employment and in the exercise of their civil and political rights;
(c) To promote more effective methods for enabling women to develop their skills, to continue their education and to be retrained;
(d) To strengthen home life by directing attention to critical problems confronting women as wives, mothers, homemakers and workers;
(e) To make surveys in the fields of, but not limited to,
education, social services, labor laws and employment policies, law enforcement, health, new and expanded services of benefit to women, legal rights, family relations and volunteer services;

(f) To secure appropriate recognition of women's accomplishments and contributions to this state;

(g) To disseminate information for the purpose of educating the public as to the existence and functions of the commission and as to matters of general beneficial interest to women; and

(h) To advise and consult with the human rights commission on matters relating generally to women.


The commission may employ an executive director and such other personnel as may be deemed necessary to accomplish its objectives. All persons so employed by the commission shall be paid from funds received by the commission under section four of this article.

§29-20-4. Power of commission to accept funds; assistance from other departments.

The commission may accept gifts, grants and bequests of funds from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions; make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of this article. The commission may request and shall receive from any department or agency of the state government such assistance, information and advice as will enable it to carry out its powers and duties hereunder.

§29-20-5. Rules and regulations.

The commission shall adopt rules and regulations concerning the operation of the commission, the functions and responsibilities of its officers and employees and such other matters as may be necessary to carry out the purpose of this article, subject to the applicable provisions of chapter twenty-nine-a of this code.
§29-20-6. Annual report.

1 The commission shall submit an annual report to the
2 Legislature and the governor, including recommendations
3 based on its studies.

CHAPTER 162
(S. B. 307—By Mr. Palumbo)

[Passed April 8, 1977; in effect from passage. Approved by the Governor.]

AN ACT to repeal section seven, article four, chapter twenty-
three of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, relating to workmen's com-
ensation claims for hernia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§1. Repeal of section relating to workmen's compensation
claims for hernia.

1 Section seven, article four, chapter twenty-three of the
2 code of West Virginia, one thousand nine hundred thirty-
3 one, as amended, is hereby repealed.

CHAPTER 163
(S. B. 126—By Mr. Rollins)

[Passed April 9, 1977; in effect from passage. Approved by the Governor.]

AN ACT directing the state auditor and state treasurer to trans-
fer immediately unexpended and unencumbered moneys
from the Vietnam Veterans Bonus Fund, Account No. 166,
to the Revenue Sharing Trust Fund.
VIETNAM VETERANS BONUS FUND.

§1. Transfer of moneys from fund.

The state auditor and state treasurer shall immediately transfer to the Revenue Sharing Trust Fund seven million eight hundred thousand dollars of the unexpended and unencumbered sums of money remaining in the Vietnam Veterans Bonus Fund, Account No. 166, established by the provisions of chapter two, acts of the Legislature, second extraordinary session, one thousand nine hundred seventy-four, and supplemented by the provisions of chapter fourteen, acts of the Legislature, regular session, one thousand nine hundred seventy-five.

CHAPTER 164
(S. B. 336—By Mr. Oates)

[Passed March 19, 1977; in effect from passage. Approved by the Governor.]

AN ACT authorizing and empowering the county commission of Hampshire County to transfer and expend thirty thousand dollars from the jail improvement fund of said county to the new building and improvement fund for the purpose of replacing the heating system in the Hampshire county courthouse.

Be it enacted by the Legislature of West Virginia:

HAMPShIRE COUNTY FUNDS TRANSFER.

§1. Hampshire county commission authorized to transfer and expend special funds.

The county commission of Hampshire County is authorized and empowered to transfer and expend thirty thousand dollars from the jail improvement fund to the new building and improvement fund for the purpose of replacing the heating system and for other repairs and improvements in the Hampshire county courthouse.
AN ACT authorizing the county commission of Hancock County to create a special fund for the purpose of making a loan from such fund to the Oakland public service district.

Be it enacted by the Legislature of West Virginia:

HANCOCK COUNTY SPECIAL FUND.

§1. Special fund created.

1. The county commission of Hancock County is hereby authorized to create a special fund and transfer into it any funds remaining in any other special funds in the county and funds from the county general fund as the commission may deem proper, for the purpose of making a loan from such special fund to the Oakland public service district located within Hancock County.

§2. Terms of loan.

1. The loan made to the Oakland public service district from the fund created in section one preceding shall be evidenced by a proper note, shall not exceed thirty-five thousand dollars, shall be repaid to such fund in equal installments over a term not to exceed ten years and shall bear interest at a rate to be determined by the county commission of Hancock County.
RESOLUTIONS

CONCURRENT RESOLUTIONS
(Only resolutions of general interest are included herein)

HOUSE CONCURRENT RESOLUTION NO. 12
(By Mr. Caudle and Mr. Martin)
[Adopted April 6, 1977]

Requesting the United States Congress to call a Constitutional Convention for the purpose of offering an amendment to the Constitution of the United States, abolishing the electoral college.

WHEREAS, The election of presidents and vice presidents of the United States is a matter of enormous importance to the citizens of this nation, requiring the direct participation of the voters; and

WHEREAS, There is at present no direct election of presidents and vice presidents of the United States, and election to that office is by a college of electors; and

WHEREAS, Members of the electoral college have little discretion in casting their votes, are not apportioned among the states on a one-man, one-vote basis and constitute an unnecessary and anachronistic impediment to the direct participation of the voters in the selection of the chief executive; and

WHEREAS, The continued existence of the electoral college presents the opportunity for the selection of a president of this nation who obtained that office without receiving a plurality of the votes cast for that office; therefore, be it

Resolved by the Legislature of West Virginia:

That application is hereby made to the Congress of the United States, pursuant to Article V of the Constitution of the United States, for the calling of a convention for the purpose of proposing the following article as an amendment to the Constitution of the United States:

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"Section 1. The people of the several States and the District constituting the seat of government of the United States shall elect the President and Vice President. Each elector shall cast a single vote for two persons who shall have consented to the joining of their names as candidates for the offices of President and Vice President. No candidate shall consent to the joinder of his name with that of more than one other person.

"Section 2. The electors of President and Vice President in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature, except that for electors of President and Vice President the legislature of any State may prescribe less restrictive residence qualifications and for electors of President and Vice President the Congress may establish uniform residence qualifications.

"Section 3. The persons joined as candidates for President and Vice President having the greatest number of votes shall be elected President and Vice President, if such number be at least 40 per centum of the total number of votes cast.
Vice President. Immediately after such choosing, the special ses­sion shall be adjourned sine die.

"No business other than the choosing of a President and Vice President shall be transacted in any special session in which the Congress is assembled under this section. A regular session of the Congress shall be adjourned during the period of any such special session, but may be continued after the adjournment of such special session. The assembly of the Congress in special session under this section shall not affect the term of office in which a Member of the Congress theretofore has been elected or appointed, and this section shall not impair the powers of any Member of the Congress with respect to any matter other than proceedings conducted in special session under this section.

"Section 4. The times, places, and manner of holding such elections and entitlement to inclusion on the ballot shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. The days for such elections shall be determined by Congress and shall be uniform throughout the United States. The Congress shall prescribe by law the times, places, and manner in which the results of such elections shall be ascertained and declared. No such election shall be held later than the first Tuesday after the first Monday in November, and the results thereof shall be declared no later than the thirtieth day after the date on which the election occurs.

"Section 5. The Congress may by law provide for the case of the death, inability, or withdrawal of any candidate for President or Vice President before a President and Vice President have been elected, and for the case of the death of both the President-elect and Vice President-elect.

"Section 6. Sections 1 through 4 of this article shall take effect two years after the ratification of this article.

"Section 7. The Congress shall have power to enforce this article by appropriate legislation."

Further Resolved, That a duly attested copy of this resolution be immediately transmitted to the Secretary of the Senate of the United States, the Clerk of the House of Representatives of the United States and to each member of this State's delegation in Congress.
Expressing support of statewide standards for new residential and commercial structures.

WHEREAS, There are serious economic consequences of the State's current energy supply shortages; and

WHEREAS, There are significant energy savings to be realized through the effective implementation of energy conservation programs, one of which may be the establishment of building and thermal efficiency standards for new residential and commercial structures; and

WHEREAS, The American Society of Heating, Refrigerating and Air-Conditioning Engineers and the Building Officials and Code Administrators International, Incorporated, in cooperation with the office of Housing and Urban Development have developed building standards that may lay the foundation for building and thermal standards legislation in the State; therefore, be it

Resolved by the Legislature of West Virginia:

That the matter of building and thermal efficiency standards for new residential and commercial structures is a primary concern; and, be it

Further Resolved, That the Clerk of the House of Delegates be directed to cause copies of this resolution to be forwarded to the Commission on Energy, Economy and Environment, Dean B. L. Atchley, West Virginia University and the Chairmen of the Senate and House Judiciary Committees.

HOUSE CONCURRENT RESOLUTION NO. 26
(By Mrs. Withrow and Mr. Brenda)
[Adopted March 26, 1977]
Memorializing the Congress of the United States to amend the Veterans Omnibus Health Care Act of 1976.

WHEREAS, The Veterans Omnibus Health Care Act of 1976, Public
CONCURRENT RESOLUTIONS

Law 94-581, passed by the Congress of the United States on October 1, 1976, denies medical services in the Veterans Administration Hospital Out Patient Clinics to nonservice connected veterans and to certain service connected veterans of our armed forces; and

WHEREAS, This law is causing great hardships and much distress to many West Virginia veterans; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia protests and deplores the conditions existing under the operation of Public Law 94-581 and hereby petitions the Congress of the United States to amend that section of the law which denies services to nonservice connected veterans as well as to certain service connected veterans; and, be it

Further Resolved, That the Clerk of the House of Delegates send a copy of this resolution to the Senators and members of the House of Representatives representing the State of West Virginia in the Congress.

SENATE CONCURRENT RESOLUTION NO. 13

(By Mr. Gainer and Mr. Susman)

[Adopted April 6, 1977]

Directing the Joint Committee on Government and Finance to conduct an in-depth study of the problems and obstacles which must be overcome to facilitate the location of coal gasification plants in this State.

WHEREAS, The strength and prosperity of this State is dependent on coal, its uses and its marketability; and

WHEREAS, There are large high sulphur coal reserves in the central and northern counties of this State, but the market for high sulphur coal has been depressed; and

WHEREAS, New markets and uses for West Virginia’s coal reserves must be developed; and

WHEREAS, New coal gasification plants located within the boundaries of this State would provide new markets and new uses for
the State's coal reserves and would improve the State's economic
ccondition; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby
directed to make an in-depth study of the problems and obstacles
which must be overcome to facilitate the location of coal gasification
plants in this State; and, be it

Further Resolved, That the study shall be conducted by an
eleven member committee of which three members shall be members
of the Senate, appointed by the President of the Senate, three mem-
bers shall be members of the House of Delegates, appointed by the
Speaker of the House of Delegates, one member shall be a member
of the United Mine Workers Union who is a resident of this State
and shall be appointed by the President of the United Mine Workers
Union of America, one member shall be a member of the West
Virginia Coal Association, appointed by the President of the Coal
Association, one member shall be the State Commerce Commissioner
or the person he designates, one member shall be the Director of the
State Office of Federal-State Relations or the person he designates
and one member shall be the Dean of the School of Engineering of
West Virginia University or the person he designates; and, be it

Further Resolved, That the Joint Committee on Government and
Finance report its findings, recommendations and any proposed legis-
lation to the regular session of the Legislature, 1978; and, be it

Further Resolved, That the expenses necessary to conduct this
study, prepare the report and draft any legislation proposed be paid
from legislative appropriations to the Joint Committee on Govern-
ment and Finance:

SENATE CONCURRENT RESOLUTION NO. 24

(Originating in the Committee on Energy, Industry and Mining)

[Adopted April 4, 1977]

Creating a Fossil Fuel Conservation and Development Study Com-
mittee to conduct a comprehensive study of fossil fuel conserva-
tion and development in this State, including an examination
of coal mining and oil and gas drilling methods, the safety
aspects of such methods, and the respective property rights of the owners of the various fossil fuel natural resources, the royalty owners of such natural resources, and the lessors and lessees of such natural resources.

WHEREAS, The State of West Virginia has been blessed with an abundance of valuable natural resources, especially fossil fuels, including coal, oil and gas; and

WHEREAS, There is a need for conservation and wise development of those natural resources; and

WHEREAS, Any program, rule, regulation, or body of law concerning the conservation and development of those natural resources should take into account the respective rights and interests of the owners, developers, royalty owners, lessors and lessees of the different natural resources; and

WHEREAS, It is the opinion of many persons knowledgeable in the areas of fossil fuel conservation and development that there exists a need for review and revision of the articles of the Code of West Virginia concerned with the conservation and development of the fossil fuel resources found in this State; therefore, be it

Resolved by the Legislature of West Virginia:

That a special interim legislative committee to be known as the "Fossil Fuel Conservation and Development Study Committee" is hereby created to conduct a comprehensive and detailed interim study into the fossil fuel conservation and development laws of this State, including within its study the examination of coal mining and oil and gas drilling methods which may best promote the conservation and development of fossil fuel natural resources of this State, the safety aspects of such methods of mining and drilling, and the respective property rights of the owners of the various fossil fuel natural resources, the owners of royalties on such natural resources, and the lessors and lessees of such natural resources; and, be it

Further Resolved, That the Fossil Fuel Conservation and Development Study Committee submit a report of its findings, conclusions and recommendations, together with drafts of any legislation it may propose to the regular session of the Legislature, one thousand nine hundred seventy-eight; and, be it
CONCURRENT RESOLUTIONS

Further Resolved, That the Committee with approval of the Joint Committee on Government and Finance may employ and fix the compensation of such knowledgeable consultants, professional and assistants as it considers necessary; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft proposed legislation be approved in advance by the Joint Committee on Government and Finance, and be paid from legislative appropriations to the Joint Committee on Government and Finance.

SENATE CONCURRENT RESOLUTION NO. 36
(By Mr. Ward and Mr. Fanning)

Requesting the Joint Committee on Government and Finance and the Governor to appoint a citizens committee to initiate and conduct an investigation of the causes and problems of the recurring flooding in Southern West Virginia and particularly the sudden and devastating flood occurring in April, 1977.

WHEREAS, Flooding occurs frequently in Southern West Virginia which causes the citizens living in that section of the Mountain State loss of life, substantial property damage, and untold human suffering; and

WHEREAS, The April, 1977 flood caused unusual and great damage and loss to the citizens of Southern West Virginia, as exemplified by over ten thousand families being displaced, over five thousand homes being damaged, hundreds of businesses suffering major damage, and several towns and cities being almost totally destroyed; and

WHEREAS, It is in the interest and well being of the citizens of West Virginia because of the tremendous loss of property and severe economic impact upon the State of West Virginia that the Legislature investigate: (1) The adequacy of the flood warning system and release of pertinent information by the National Weather Service and utilization thereof in the State of West Virginia; (2) the capability on the part of the State of West Virginia to deal promptly and effectively with flood disasters and the assessment and delivery
of essential necessities for human survival and recovery; and (3) the
topography and geographical factors of the land in Southern West
Virginia; and (4) the adequacy of river channelization, locks and
dams and other flood control projects which have all been studied
many times before but without positive results; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance and the
Governor are hereby requested to appoint a citizens committee to
investigate the causes of floods which occur in Southern West Vir­
ginia and other pertinent details relating to the prevention of flooding
and the servicing of human needs that arise in the aftermath of
flooding, and to bring about eventual prevention of future flooding
in Southern West Virginia and all other areas of the State; and, be it

Further Resolved, That the aforesaid citizens committee shall be
composed of twelve citizens who reside in the areas affected by
the flooding in Southern West Virginia; that six members be ap­
pointed by the Governor; three members be appointed by the Presi­
dent of the Senate and three members appointed by the Speaker of
the House of Delegates; that the Joint Committee on Government
and Finance do aid and assist the citizens committee in investigating
the causes of the flooding and the related problems contained in this
resolution and in making a report thereon; and, be it

Further Resolved, That the Joint Committee on Government and
Finance may employ, as the committee may deem advisable,
independent specialists in the fields of engineering, geology and other
specialists to assist the citizens committee in its investigation of the
causes of flooding in Southern West Virginia and related problems
contained in this resolution; and, be it

Further Resolved, That the citizens committee submit a report
of its findings, conclusions and recommendations together with
drafts of any legislation it may propose to the regular session of the
Legislature, 1978; and, be it

Further Resolved, That the expenses necessary to conduct this
investigation, prepare reports and draft any proposed legislation
be paid from legislative appropriations to the Joint Committee on
Government and Finance.
HOUSE JOINT RESOLUTION NO. 16
(By Mr. Shepherd)
[Adopted April 5, 1977]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating to permitting the Legislature to exempt, to such extent as it may from time to time determine, inventory and warehouse goods from ad valorem property taxation by general law; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred seventy-eight, or at any special election held prior thereto for the purpose of presenting to the voters of the State the question of ratification or rejection of one or more constitutional amendments, which proposed amendment is that section one-a, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1a. Exemption from ad valorem property taxation.

Notwithstanding the provisions of section one of this article, bank deposits, money and household goods and personal effects if such household goods and personal effects are not held or used for profit, shall be exempt from ad valorem property taxation, and the Legislature may, in its discretion and to such extent as it may from time to time determine, exempt inventory and warehouse goods from ad valorem property taxation by general law: Provided, That such exemption shall not apply to inventories of natural resources held for the manufacturing and sale of energy.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such amendment is hereby numbered
“Amendment No. 1” and designated as the “Freeport Amendment,” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to permit the Legislature to exempt inventory and warehouse goods from ad valorem property taxation by general law to such extent as it may from time to time determine.”
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 West Virginia Air Pollution Commission, Account No. 476, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill".

WHEREAS, The Governor, on July 26, 1976, at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217, as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That Account No. 476, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following designated line item and sum:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

BUSINESS AND INDUSTRIAL RELATIONS

94—West Virginia Air Pollution Commission

Acct. No. 476

1 3a Diffusion Modeling ... $ 200,000

2 The purpose of this supplementary appropriation bill is to
3 fund the above item as therein provided, with such funds
4 being available for expenditure in the current fiscal year of
5 1976-77 and upon the effective date of this bill.

CHAPTER 2

(Com. Sub. for S. B. 70—By Mr. Hamilton, Mr. Williams and Mr. Gainer)

[Passed July 30, 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-seven, to the State Board of Education—Vocational Division, Account No. 289, supplementing 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, on July 26, 1976, and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217,
as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of $101,424,818; 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 Account No. 289, 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 sums to the designated line items:

**TITLE II—APPROPRIATIONS.**

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

**EDUCATIONAL**

34—State Board of Education—Vocational Division

Acct. No. 289

5a Construction of New Vocational Education Facilities $ 3,539,500

5b Outlay for new equipment for newly constructed Vocational Education Facilities 1,375,000

5c Replacement of equipment in existing Vocational Educational Facilities 750,000

Total $ 5,664,500

The purpose of this supplementary appropriation bill is to fund the above items as therein provided, with such funds being available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.
remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the State Department of Education—State Aid to Schools, Account No. 295, supplementing 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, on July 26, 1976, and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217, as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of $101,424,818; 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 Account No. 295, 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 sums to the designated line items:

**TITLE II—APPROPRIATIONS.**

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

**EDUCATIONAL**

39—*State Department of Education—State Aid to Schools*  
Acct. No. 295

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<td>6 Other Current Expenses</td>
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<td>8 Program Improvement</td>
<td>$248,000</td>
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**Total**  
$30,652,713
The purpose of this supplementary appropriation is to provide salary increases in the amount of $1,000 for professional educators and the other resultant increases within the State Basic Foundation Program, pursuant to Chapter 18, Article 9A of the Code of West Virginia of 1931, as amended. Such amounts shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

CHAPTER 4
(Com. Sub. for S. 8. 4—By Mr. Rogerson)

[Passed July 30, 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-seven, to the Department of Education, Account No. 299, supplementing 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, on July 26, 1976, and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217, as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of $101,424,818; 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 Account No. 299, Enrolled Committee Substitute for House Bill No. 701, acts of the Legislature, regular session, one thousand
nine thousand seventy-six, 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**

43—Department of Education

Acct. No. 299

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<tr>
<td>1</td>
<td>To fund minimum salaries for Support Personnel—Total</td>
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The purpose of this supplementary appropriation is to provide salary increases in the amount of $100 per month for service and auxiliary (support) school personnel. Such amount shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

---

**CHAPTER 5**

(Com. Sub. for H. B. 138—By Mr. Seibert)

[Passed November 10, 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-seven, to the State Health Department, Account No. 400, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.

WHEREAS, The Governor, on July 26, 1976 and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217, as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further
appropriation of $101,424,818; a portion of which balance is hereby
appropriated by the terms of this supplementary appropriation bill; there
dependent

Be it enacted by the Legislature of West Virginia:

That Account No. 400, chapter seven, acts of the Legislature,
regular session, one thousand nine hundred seventy-six, known as the
Budget Bill, be supplemented by adding thereto the following sums
to the designated line item:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 HEALTH AND WELFARE

4 59—State Health Department

5 Acct. No. 400

6 21 Early Childhood Development Program — $400,000

7 The purpose of this supplementary appropriation bill is to
fund the above item as therein provided, with such funds being
available for expenditure in the current fiscal year of 1976-77
and upon the effective date of this bill.

CHAPTER 6
(Com. Sub. for H. B. 151—By Mr. Seibert)

[Passed November 10, 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 State Health Department, Account No.
9715, supplementing 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 Execu-
tive Budget Document, dated January 14, 1976, which included a
section relating to available revenues in the Revenue Sharing Trust Fund, which section of the Executive Budget Document was revised and amended pursuant to the communication of the Governor, dated February 28, 1976, in all of which is set forth the statement of revenues available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

WHEREAS, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills during its regular session, 1976, and first extraordinary session, 1976, appropriating moneys from the Revenue Sharing Trust Fund and all well within the available revenues in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation 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 designated account, items and language of appropriation:

1 TITLE II—APPROPRIATIONS.

2 Section 7. Appropriations from Revenue Sharing Trust Fund.

3 HEALTH AND WELFARE

4 State Health Department

5 Acct. No. 9715

6 TO BE PAID FROM REVENUE SHARING TRUST FUND

7 1 Swine Influenza Inoculation Program __ $ 50,000

8 The purpose of this supplementary appropriation bill is to provide funds for the program of inoculation against Swine Flu. Such funds shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of the 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-seven, to the State Health Department, Account No. 9715, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the “Budget Bill.”

WHEREAS, The acquisition and maintenance of proper supplies of blood which are quickly available to the citizens of this State are deemed by the Legislature to be a vital public need and important public purpose, as well as the meeting of a state responsibility in providing for the health, safety and welfare of the people of this State; and

WHEREAS, Property purchased with public funds and to be used in the acquisition and maintenance of supplies of blood should have title thereto vested in the State and an agency thereof; and

WHEREAS, The Governor had heretofore submitted to the Legislature his Executive Budget Document, dated January 14, 1976, which included a section relating to revenues available in the Revenue Sharing Trust Fund, which section was revised and amended by the Governor pursuant to his communication of February 28, 1976, and in all of which is set forth the statement of revenue determined available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

WHEREAS, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills which appropriate moneys from the Revenue Sharing Trust Fund and well within the revenues available in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore
Be it enacted by the Legislature of West Virginia:

That chapter seven, 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 designated account, item and language of appropriation:

TITLE II—APPROPRIATIONS.

Section 7. Appropriations from Revenue Sharing Trust Fund.

HEALTH AND WELFARE

State Health Department
Acct. No. 9715

TO BE PAID FROM REVENUE SHARING TRUST FUND

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</table>
| 1 | 1 | Equipment and other personal property to be used in Tri-State Red Cross Blood Center | $ 500,000

The purpose of this supplementary appropriation bill is to provide funds for the purchase and acquisition of equipment and other personal property by the State Health Department, which department shall retain title thereto, with the same to be furnished to the Tri-State Red Cross Blood Center for use in the acquisition and maintenance of blood supplies by such center. Such funds shall be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

CHAPTER 8

(Com. Sub. for H. B. 111—By Mr. Seibert)

[Passed November 10, 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-seven, to the West Virginia Board of Regents (Control), Account No. 279, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill.
WHEREAS, The Governor, on July 26, 1976 and at the Second Extraordinary Session of the Legislature, 1976, submitted a financial statement of the General Revenue Fund in amendment and revision of his Executive Budget Document, wherein is set forth the total cash balance and investments on hand as of July 1, 1976, and the estimated revenue for fiscal year 1976-77, totaling $866,555,217, as reduced by prior year appropriation balances forwarded of $64,919,210 and as further reduced by regular appropriations for fiscal year 1976-77, heretofore appropriated by the Legislature, thereby leaving an unappropriated balance available for further appropriation of $101,424,818; 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 Account No. 279, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, be supplemented by adding thereto the following sums to the designated line item:

1 TITLE II—APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 EDUCATIONAL
4 27—West Virginia Board of Regents (Control)
5 Acct. No. 279
6 17 Scholarship Program __________________________ $353,000
7 The purpose of this supplementary appropriation bill is to
8 fund the above item as therein provided, with such funds
9 being available for expenditure in the current fiscal year of
10 1976-77 and upon the effective date of this bill.

CHAPTER 9
(Com. Sub. for H. B. 147—By Mr. Seibert)

[Passed July 30, 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 West Virginia University—Medical School, Account No. 9747, supplementing 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 section relating to available revenues in the Revenue Sharing Trust Fund, which section of the Executive Budget Document was revised and amended pursuant to the communication of the Governor, dated February 28, 1976, in all of which is set forth the statement of revenues available for appropriation in the Revenue Sharing Trust Fund, including the fiscal year 1976-77; and

WHEREAS, The Legislature has heretofore enacted the Budget Bill and certain supplementary appropriation bills during its regular session, 1976, and first extraordinary session, 1976, appropriating moneys from the Revenue Sharing Trust Fund and all well within the available revenues in such fund, thereby leaving Revenue Sharing Trust Funds available for further appropriation; a portion of said further appropriation 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 designated account, items and language of appropriation:

1 TITLE II—APPROPRIATIONS.
2 Sec. 7. Appropriations from Revenue Sharing Trust Fund.
3 EDUCATIONAL
4 Acct. No. 9747
5 West Virginia University—Medical School
6 TO BE PAID FROM REVENUE SHARING TRUST FUND
7 1 Purchase of Whole Body Scanner $600,000
8 The purpose of this supplementary appropriation bill is to provide moneys for the purchase of a whole body scanner;
such moneys to be available for expenditure in the current fiscal year of 1976-77 and upon the effective date of this bill.

CHAPTER 10

(Corn. Sub. for S. B. 1—By Mr. Rogerson)

[Passed July 30, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state minimum salaries; salaries not to be diminished.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries.

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On and after the first day of July, one thousand nine hundred seventy-six, each teacher shall receive the amount prescribed in the "State Minimum Salary Schedule" as set forth in this section, specific additional amounts prescribed in this article, and any county supplement in effect in a county during the contract year.

CHAPTER 11

[Passed July 30, 1976; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to minimum pay scales and employment terms for school auxiliary and service personnel; defining terms in this connection; relating to other rights, privileges and benefits of such personnel; authorizing county boards of education to establish higher salary schedules; relating to the authority of the state board of education in connection with the foregoing; relating to enforcement; providing an effective date; salaries not to be diminished; relating to reclassification; and award of attorney's fees and court costs to party prevailing against the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-8. Minimum monthly pay for service and auxiliary personnel.

The purpose of this section is to establish a state minimum monthly pay scale and employment term for auxiliary and service personnel. The employment term for auxiliary and service personnel shall be no less than ten months, a month being defined as twenty employment days: Provided, That the county board of education may contract with all or part of
such personnel for a longer term. The beginning and closing dates of the ten-month term shall not exceed forty-three weeks. Auxiliary and service personnel employed on a yearly or twelve-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement shall be applicable.

Upon the change in classification or upon meeting the requirements of an advanced classification of or by any employee, his salary shall be made to comply with the requirements of this article, and to any county salary schedule in excess of the minimum requirements of this article, based upon his advanced classification and allowable years of employment.

An employee's contract as provided in sections four and five, article two of this chapter shall state the appropriate monthly salary the employee is to be paid based on the class title as provided in this article and any county salary schedule in excess of the minimum requirements of this article.

The column heads of the state minimum pay scale and class titles, set forth below are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of auxiliary and service personnel.

"Years of employment" means the number of years which an employee classified as auxiliary or service personnel has been employed by a board of education in any position prior to or subsequent to the effective date of this section and including service in the armed forces of the United States if the employee were employed at the time of his induction. For the purpose of this section, years of employment shall be limited to the number of years shown and allowed under the state minimum pay scale set forth hereinafter.

"Class title" means the name of the position or job held by auxiliary and service personnel.

"Aide I" means auxiliary personnel as defined in section one, article one of this chapter.

"Aide II" means auxiliary personnel as defined in section one, article one of this chapter who have completed a training
program approved by the state board of education.

“Custodian I” means personnel employed to keep buildings clean and free of refuse.

“Custodian II” means personnel employed as a watchman or groundsman.

“Custodian III” means personnel employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs.

“Custodian IV” means personnel employed as head custodians. In addition to providing services as defined in “Custodian III,” their duties may include supervising other custodian personnel.

“Carpenter I” means personnel classified as a carpenter’s helper.

“Carpenter II” means personnel classified as a journeyman carpenter.

“Electrician I” means personnel employed as an apprentice electrician and helper or holds an electrician helper license issued by the state fire marshal.

“Electrician II” means personnel employed as an electrician journeyman or holds a journeyman electrician license issued by the state fire marshal.

“Foreman” means skilled persons employed for supervision of personnel who work in the areas of repair and maintenance of school property and equipment.

“General maintenance” means personnel employed as helpers to skilled maintenance employees and to perform minor repairs to equipment and buildings of a county school system.

“Groundsmen” means personnel employed to perform duties that relate to the appearance, repair and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings.

“Handyman” means personnel employed to perform routine manual tasks in any operation of the county school system.
“Lubrication man” means personnel employed to lubricate and service gasoline or diesel-powered equipment of a county school system.

“Machinist” means personnel employed to perform machinist tasks which include the ability to operate lathes, planer, shaper, threading machine and wheel press. Such personnel should also have ability to work from blueprints and drawings.

“Mechanic” means personnel employed who can independently perform skilled duties in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system.

“Mechanic assistant” means personnel employed as a mechanic apprentice and helper.

“Office equipment repairman I” means personnel employed as an office equipment repairman apprentice or helper.

“Office equipment repairman II” means personnel responsible for servicing and repairing all office machines and equipment. Such personnel shall be responsible for parts being purchased necessary for the proper operation of a program of continuous maintenance and repair.

“Painter” means personnel employed to perform duties of painting, finishing and decorating of wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system.

“Plumber I” means personnel employed as an apprentice plumber and helper.

“Plumber II” means personnel employed as journeyman plumber.

“Supervisor of maintenance” means skilled personnel not defined as professional personnel or professional educators as in section one, article one of this chapter. His responsibilities would include directing the upkeep of buildings and shops, issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures, mechanical and electrical equipment of a board of education.
“Truck driver” means personnel employed to operate light or heavy duty gasoline and diesel-powered vehicles.

“Watchman” means personnel employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties.

“Clerk I” means personnel employed to perform clerical tasks.

“Clerk II” means personnel employed to perform general clerical tasks, prepare reports and tabulations and operate office machines.

“Secretary I” means personnel employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.

“Secretary II” means personnel employed as school, office or program secretaries to perform general clerical tasks, transcribe, prepare reports, receive callers and refer them to proper persons, operate office machines, keep records and handle routine correspondence.

“Secretary III” means personnel assigned to the county board of education office administrators in charge of various departments or with particular responsibilities of purchasing and financial control.

“Cafeteria manager” means personnel employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports and keeping records pertinent to food services of a school.

“Cook I” means personnel employed as a cook’s helper.

“Cook II” means personnel employed to interpret menus, to prepare and serve meals in a lunch program of a school system.

“Cook III” means personnel employed to prepare and serve meals, make reports, prepare requisitions for supplies, order equipment and repairs for a lunch program of a school system.
“Food services supervisor” means qualified personnel not defined as professional personnel or professional educators as in section one, article one of this chapter, employed to manage and supervise a county school system’s food service or school lunch program. The duties would include preparing inservice training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency, keeping aggregate records and reports.

“Bus operator” means personnel employed to operate school buses and other school transportation vehicles as provided by the state board of education.

“School bus supervisor” means qualified personnel employed to assist in selecting school bus operators and routing and scheduling of school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, pupils, bus operators and other employees.

On and after the first day of July, one thousand nine hundred seventy-six, the minimum monthly pay for each auxiliary or service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the following “State Minimum Pay Scale,” and the minimum monthly pay for each auxiliary or service employee whose employment is for a period of less than three and one-half hours a day shall be at least one-half the amount indicated in the following “State Minimum Pay Scale”:

## State Minimum Pay Scale

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In addition to the compensation herein provided for auxiliary and service personnel, each auxiliary or service employee shall, notwithstanding any provision in this code to the contrary, be entitled to all auxiliary and service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to such employee's hours of employment or the methods or sources of compensation.

Auxiliary and service personnel whose years of employment exceed the number of years shown and provided for under the state minimum pay scale heretofore set forth shall not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he is employed.

The county board of education may establish salary schedules which shall be in excess of the state minimum fixed by this article, such county schedules to be uniform throughout the county with regard to any training classifications, experience, years of employment, responsibility, duties, pupil participation, pupil enrollment, size of buildings, operation of equipment or other requirements. Uniformity shall apply to any additional salary increments or compensation for all persons performing like assignments and duties within the county. In establishing such local salary schedules, no county, from the effective date of this article, shall reduce local funds allocated for auxiliary and service personnel salaries used for supplementing federal and state funds provided for such salaries.

The state board of education is hereby authorized to establish other class titles of auxiliary and service personnel positions and jobs not listed in this section. The state board of education is further authorized to provide appropriate pay grades for such positions and jobs but pay shall be established within the minimum salary scale of this section.

No person employed as an auxiliary or service employee by a county board during the school year ending the thirtieth day of June, one thousand nine hundred seventy-six, shall have his annual salary for the school year 1976-77 reduced as a result of the enactment of this section.
Any board failing to comply with the provisions of this article may be compelled to do so by mandamus, and shall be liable to any party prevailing against the board for court costs and his reasonable attorney fees, as determined and established by the court.

The provisions of this section shall become effective July one, one thousand nine hundred seventy-six.
AN ACT to amend and reenact section four, article ten, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the compromise of actions and suits in behalf of infants and insane persons and distribution of funds arising therefrom; and increasing to ten thousand dollars the maximum amount of such compromises which may be excepted from reference to a commissioner of accounts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-4. Compromise of actions and suits in behalf of infants and insane persons and disbursement of funds arising therefrom.

1 In any action or suit wherein an infant or insane person is a party, the court in which the same is pending, or the judge thereof in vacation, shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such infant or insane person, if such compromise shall be deemed to be to the best interest of the infant or insane person. Such approval or confirmation shall never be granted
except upon written application therefor by the guardian, committee, curator, or next friend of the infant or insane person, setting forth under oath all the facts of the case and the reasons why such compromise is deemed to be for the best interest of the infant or insane person. And the court or judge, before approving such compromise, shall, in order to determine whether to approve or disapprove the compromise, hear the testimony of witnesses relating to the subject matter of the compromise and cause said testimony to be reduced to writing and filed with the papers in the case. The court or judge, upon approving and confirming such compromise, shall enter judgment or decree accordingly. Such judgment or decree shall bind the respective parties thereto, including such infant or insane person, with like force and effect, and shall be subject to review, modification or reversal to the same extent only, as if it were a consent judgment or decree, entered under similar circumstances, in a case in which all the parties were adults and sane. In any such compromise wherein the amount paid to the guardian or committee does not exceed the sum of ten thousand dollars, the court or judge approving and confirming the compromise and entering judgment or decree thereon may, in its or his discretion, dispense with or withdraw a reference to a commissioner of accounts as to said compromise, authorize the disbursement of the fund so created by the compromise and may discharge the guardian or committee and the surety on his bond as to the proceeding then pending in the circuit court, and in all such cases a certified copy of the order of the court or judge, as the case may be, shall be recorded in the office of the clerk of the county commission wherein the guardian or committee was appointed.

CHAPTER 2
(H. B. 100—By Mr. Speaker, Mr. Kopp)

[Passed June 22, 1977; 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.

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-eight.

Sec. 2. Definitions.—For the purpose of this act: "Governor" shall mean the Governor of the State of West Virginia.

"Spending Unit" shall mean the department, agency or institution to which an appropriation is made.

The "fiscal year" one thousand nine hundred seventy-eight shall mean the period from July first, one thousand nine hundred seventy-seven through June thirtieth, one thousand nine hundred seventy-eight.

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collection. If the amount collected exceeds the amount designated "from collections" the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Chapter 5-A, Article 2 of the Code of West Virginia.

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

"Personal Services" shall be expended only for the pay-
ment 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.

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 per-
sonal service;

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

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

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

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

Sec. 4. Method of expenditure.—Money appropriated
by this act, unless otherwise specifically directed, shall be
appropriated and expended according to the provisions of
Chapter 12, Article 3 of the Code of West Virginia, accord-
ing to any law detailing a procedure specifically limiting
that article.
TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

AGRICULTURE

Department of agriculture—Acct. No. 510
Department of agriculture (agricultural awards)—Acct. No. 515
Department of agriculture (division of rural resources)—
Acct. No. 513
Department of agriculture (meat Inspection)—Acct. No. 514
Department of agriculture (soil conservation committee)—
Acct. No. 512
Farm management commission—Acct. 511

BUSINESS AND INDUSTRIAL RELATIONS

Bureau of labor and department of weights and measures—
Acct. No. 450
Council of State Governments—Acct. No. 472
Department of banking—Acct. No. 480
Department of mines—Acct. No. 460
Interstate commission on Potomac river basin—Acct. No. 473
Interstate education compact—Acct. No. 477
Interstate mining compact commission—Acct. No. 451
Ohio river basin commission—Acct. No. 469
Ohio river valley water sanitation commission—Acct. No. 474
Southern regional education board—Acct. No. 475
West Virginia air pollution control commission—Acct. No. 476
West Virginia nonintoxicating beer commission—Acct. No. 490
West Virginia racing commission—Acct. No. 495
West Virginia state aeronautics commission—Acct. No. 485

CORRECTION

Anthony Center—Acct. No. 369
Davis Center—Acct. No. 371
Department of corrections—Acct. No. 368
Huttonsville Correctional Center—Acct. No. 376
Leckie Center—Acct. No. 373
West Virginia industrial home for girls—Acct. No. 372
West Virginia industrial school for boys—Acct. No. 370
West Virginia penitentiary—Acct. No. 375
West Virginia state prison for women—Acct. No. 374

CONSERVATION AND DEVELOPMENT

Department of natural resources—Acct. No. 565
Geological and economic survey commission—Acct. No. 520
Public land corporation—Acct. No. 566
Water development authority—Acct. No. 567
West Virginia railroad maintenance authority—Acct. No. 569

EDUCATIONAL

Department of culture and history—Acct. No. 351
Department of education—Acct. No. 286
Department of education (aid for exceptional children)—Acct. No. 296
Department of education (support personnel)—Acct. No. 299
### Appropriations

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Educational broadcasting authority</td>
<td>291</td>
</tr>
<tr>
<td>Marshall University (medical school)</td>
<td>284</td>
</tr>
<tr>
<td>State board of education (early childhood aides)</td>
<td>297</td>
</tr>
<tr>
<td>State board of education (vocational division)</td>
<td>294</td>
</tr>
<tr>
<td>State board of education (vocational division)</td>
<td>289</td>
</tr>
<tr>
<td>State department of education (professional educators)</td>
<td>290</td>
</tr>
<tr>
<td>State department of education (state aid to schools)</td>
<td>295</td>
</tr>
<tr>
<td>State department of education (school lunch program)</td>
<td>287</td>
</tr>
<tr>
<td>State department of education (teacher education program)</td>
<td>277</td>
</tr>
<tr>
<td>State FFA-FHA camp and conference center</td>
<td>336</td>
</tr>
<tr>
<td>Teachers retirement board</td>
<td>298</td>
</tr>
<tr>
<td>West Virginia board of regents</td>
<td>280</td>
</tr>
<tr>
<td>West Virginia college of osteopathic medicine</td>
<td>281</td>
</tr>
<tr>
<td>West Virginia library commission</td>
<td>350</td>
</tr>
<tr>
<td>West Virginia schools for the deaf and blind</td>
<td>333</td>
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<tr>
<td>West Virginia University (medical school)</td>
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### Executive

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account Number</th>
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<tbody>
<tr>
<td>Governor's office</td>
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<tr>
<td>Governor's office (civil contingent fund)</td>
<td>124</td>
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<tr>
<td>Governor's office (custodial fund)</td>
<td>123</td>
</tr>
<tr>
<td>Governor's office (disaster relief-federal matching)</td>
<td>126</td>
</tr>
<tr>
<td>Governor's office (emergency relief)</td>
<td>128</td>
</tr>
<tr>
<td>Governor's office (McMechen and Stonewood relief)</td>
<td>127</td>
</tr>
<tr>
<td>Office of economic and community development</td>
<td>121</td>
</tr>
<tr>
<td>Housing development loan (guarantee fund)</td>
<td>129</td>
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<tr>
<td>Office of emergency services</td>
<td>130</td>
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</table>

### Fiscal

<table>
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<tr>
<th>Agency</th>
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<tbody>
<tr>
<td>Auditor's office (general administration)</td>
<td>150</td>
</tr>
<tr>
<td>Auditor's office (social security)</td>
<td>151</td>
</tr>
<tr>
<td>Department of finance and administration</td>
<td>210</td>
</tr>
<tr>
<td>Sinking fund commission</td>
<td>170</td>
</tr>
<tr>
<td>State board of insurance</td>
<td>225</td>
</tr>
<tr>
<td>State commissioner of public institutions</td>
<td>190</td>
</tr>
<tr>
<td>State tax department</td>
<td>180</td>
</tr>
<tr>
<td>State tax department (property appraisal)</td>
<td>185</td>
</tr>
<tr>
<td>Treasurer's office</td>
<td>160</td>
</tr>
<tr>
<td>Treasurer's office (school buildings sinking fund)</td>
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### Health and Welfare

<table>
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<tr>
<th>Agency</th>
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<tbody>
<tr>
<td>Andrew S. Rowan memorial home</td>
<td>427</td>
</tr>
<tr>
<td>Colin Anderson Center</td>
<td>419</td>
</tr>
<tr>
<td>Denmar state hospital</td>
<td>432</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>404</td>
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<tr>
<td>Department of veterans affairs (patriotic exercises)</td>
<td>403</td>
</tr>
<tr>
<td>Department of welfare</td>
<td>405</td>
</tr>
<tr>
<td>Department of welfare (food stamp and government donated food)</td>
<td>407</td>
</tr>
<tr>
<td>Department of welfare (medical program)</td>
<td>408</td>
</tr>
<tr>
<td>Department of welfare—West Virginia Children's Home</td>
<td>412</td>
</tr>
<tr>
<td>Fairmont emergency hospital</td>
<td>425</td>
</tr>
<tr>
<td>Greenbrier school for mentally retarded children</td>
<td>414</td>
</tr>
<tr>
<td>Hopeumont state hospital</td>
<td>430</td>
</tr>
<tr>
<td>Lakin state hospital</td>
<td>423</td>
</tr>
<tr>
<td>Pinecrest state hospital</td>
<td>431</td>
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</table>
## APPROPRIATIONS

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
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<tbody>
<tr>
<td>Solid waste disposal</td>
<td>402</td>
</tr>
<tr>
<td>State board of education (rehabilitation division)</td>
<td>440</td>
</tr>
<tr>
<td>State commission on aging</td>
<td>406</td>
</tr>
<tr>
<td>State health department</td>
<td>400</td>
</tr>
<tr>
<td>State health department—mental hospitals</td>
<td>416</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>426</td>
</tr>
<tr>
<td>State board of education—state board of education (rehabilitation division)</td>
<td>440</td>
</tr>
<tr>
<td>State commission on aging—state commission on aging</td>
<td>406</td>
</tr>
<tr>
<td>State health department—state health department</td>
<td>400</td>
</tr>
<tr>
<td>State health department—mental hospitals—state health department—mental hospitals</td>
<td>416</td>
</tr>
<tr>
<td>Welch emergency hospital—state Welch emergency hospital</td>
<td>426</td>
</tr>
</tbody>
</table>

## INCORPORATING AND RECORDING

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secretary of state</td>
<td>250</td>
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</table>

## JUDICIAL

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
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<tbody>
<tr>
<td>Supreme Court</td>
<td>111</td>
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</table>

## LEGAL

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney general</td>
<td>240</td>
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<tr>
<td>Commission on uniform state laws</td>
<td>245</td>
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## LEGISLATIVE

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>House of Delegates</td>
<td>102</td>
</tr>
<tr>
<td>Joint expenses</td>
<td>103</td>
</tr>
<tr>
<td>Senate</td>
<td>101</td>
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</table>

## MISCELLANEOUS BOARDS AND COMMISSIONS

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
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</thead>
<tbody>
<tr>
<td>Board of architects</td>
<td>595</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>588</td>
</tr>
<tr>
<td>Board of embalmers and funeral directors</td>
<td>593</td>
</tr>
<tr>
<td>Board of examiners for practical nurses</td>
<td>587</td>
</tr>
<tr>
<td>Board of land surveyors</td>
<td>585</td>
</tr>
<tr>
<td>Board of osteopathy</td>
<td>591</td>
</tr>
<tr>
<td>Board of pharmacy</td>
<td>590</td>
</tr>
<tr>
<td>Board of professional foresters</td>
<td>586</td>
</tr>
<tr>
<td>Board of registration for professional engineers</td>
<td>594</td>
</tr>
<tr>
<td>Board of sanitarians</td>
<td>599</td>
</tr>
<tr>
<td>Human rights commission</td>
<td>598</td>
</tr>
<tr>
<td>Insurance commissioner</td>
<td>616</td>
</tr>
<tr>
<td>State fire commission</td>
<td>617</td>
</tr>
<tr>
<td>State veterinary board</td>
<td>596</td>
</tr>
<tr>
<td>West Virginia civil service system</td>
<td>584</td>
</tr>
<tr>
<td>West Virginia public employees insurance board</td>
<td>615</td>
</tr>
<tr>
<td>West Virginia public employees retirement board</td>
<td>614</td>
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</tbody>
</table>

## PROTECTION

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjutant general (state militia)</td>
<td>580</td>
</tr>
<tr>
<td>Department of public safety</td>
<td>570</td>
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</table>

## ROADS AND HIGHWAYS

<table>
<thead>
<tr>
<th>Department/Board/Commission</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>State department of highways</td>
<td>641</td>
</tr>
</tbody>
</table>
§2. Appropriations from other funds.

**PAYABLE FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auditor's office (land department operating fund)</td>
<td>812</td>
<td>1005</td>
</tr>
<tr>
<td>Department of agriculture</td>
<td>818</td>
<td>1006</td>
</tr>
<tr>
<td>Department of finance and administration (division of purchasing-revolving fund)</td>
<td>814</td>
<td>1005</td>
</tr>
<tr>
<td>Department of finance and administration (information system services division fund)</td>
<td>8151</td>
<td>1006</td>
</tr>
<tr>
<td>Department of natural resources</td>
<td>830</td>
<td>1008</td>
</tr>
<tr>
<td>Department of public safety (inspection fees)</td>
<td>835</td>
<td>1009</td>
</tr>
<tr>
<td>Public service commission</td>
<td>828</td>
<td>1007</td>
</tr>
<tr>
<td>Public service commission (gas pipeline division)</td>
<td>8285</td>
<td>1007</td>
</tr>
<tr>
<td>Public service commission (motor carrier division)</td>
<td>829</td>
<td>1008</td>
</tr>
<tr>
<td>Real estate commission</td>
<td>801</td>
<td>1004</td>
</tr>
<tr>
<td>State committee of barbers and beauticians</td>
<td>822</td>
<td>1006</td>
</tr>
<tr>
<td>Treasurer's office</td>
<td>800</td>
<td>1004</td>
</tr>
<tr>
<td>West Virginia alcohol beverage control</td>
<td>927</td>
<td>1012</td>
</tr>
<tr>
<td>West Virginia board of regents (special capital improvement fund)</td>
<td>884</td>
<td>1012</td>
</tr>
<tr>
<td>West Virginia board of regents (state system special capital improvement fund)</td>
<td>8835</td>
<td>1010</td>
</tr>
<tr>
<td>West Virginia board of regents—West Virginia University (special capital improvement fund)</td>
<td>883</td>
<td>1009</td>
</tr>
<tr>
<td>West Virginia racing commission</td>
<td>808</td>
<td>1004</td>
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</tbody>
</table>

**PAYABLE FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of motor vehicles</td>
<td>671</td>
<td>1003</td>
</tr>
<tr>
<td>State department of highways</td>
<td>670</td>
<td>1002</td>
</tr>
<tr>
<td>State tax department (gasoline tax division)</td>
<td>672</td>
<td>1003</td>
</tr>
</tbody>
</table>

**PAYABLE FROM GENERAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of education (veterans education)</td>
<td>702</td>
<td>1003</td>
</tr>
</tbody>
</table>

**PAYABLE FROM MEDICAL SCHOOL FUND**

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia University (medical school)</td>
<td>928</td>
<td>1013</td>
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</table>

**PAYABLE FROM WORKMEN'S COMPENSATION FUND**

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
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<tbody>
<tr>
<td>Workmen's compensation commission</td>
<td>900</td>
<td>1012</td>
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</tbody>
</table>

§3. Awards for claims against the state.

§4. Reappropriations.

§5. Appropriations from revenue sharing trust fund.

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fairmont emergency hospital</td>
<td>9733</td>
<td>1020</td>
</tr>
<tr>
<td>Governor's office</td>
<td>9721</td>
<td>1019</td>
</tr>
<tr>
<td>State department of highways</td>
<td>9705</td>
<td>1019</td>
</tr>
<tr>
<td>State health department</td>
<td>9715</td>
<td>1020</td>
</tr>
<tr>
<td>West Virginia penitentiary</td>
<td>9734</td>
<td>1020</td>
</tr>
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</table>

§6. Appropriation from countercyclical fiscal assistance trust fund.

<table>
<thead>
<tr>
<th>Fund Description</th>
<th>Account No.</th>
<th>Lines</th>
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</thead>
<tbody>
<tr>
<td>Governor's office</td>
<td>8012</td>
<td>1021</td>
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</tbody>
</table>

§7. Reappropriations—"Revenue Sharing Trust Fund."
§8. Special revenue appropriations.
§9. State improvement fund appropriation.
§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.

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

### LEGISLATIVE

1—Senate

Acct. No. 101

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$235,000</td>
</tr>
<tr>
<td>Compensation and per diem of officers and 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>$255,000</td>
</tr>
<tr>
<td>Printing Blue Book</td>
<td>$107,000</td>
</tr>
</tbody>
</table>

**Total** | **$1,377,000**

The distribution of the Blue Book 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 1976-77 are to remain in full force and effect, and are hereby reappropriated to June 30, 1978.

Any balances so reappropriated may be transferred and credited to the 1977-78 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 approval 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 Contingent Fund of the Senate for such services.

For duties imposed by law and the Senate, the Clerk of the Senate shall be paid an annual salary of thirty-five thousand dollars, payable out of the amount appropriated for Compensation and per diem of officers and employees.
APPROPRIATIONS

2—House of Delegates

Acct. No. 102

1 Compensation of Members $545,000
2 Compensation and per diem of officers and employees $410,000
3 Expenses of Members $330,000
4 Current Expenses and Contingent Fund $290,000

Total $1,575,000

The appropriations for the House of Delegates for the fiscal year 1976-77 are to remain in full force and effect, and are hereby reappropriated to June 30, 1978. Any balances so reappropriated may be transferred and credited to the 1977-78 accounts.

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

The Clerk of the House of Delegates, with approval of the Speaker, is authorized to draw his requisitions upon the Auditor, payable out of the Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates, and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the requisition for 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 House Resolution adopted February 15, 1977, 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

1 To Pay the Cost of Legislative Printing $ 550,000

2 Total $ 550,000

The appropriations for Joint Expenses for the fiscal year 1976-77 are to remain in full force and effect and are hereby reappropriated to June 30, 1978. Any balances so reappropriated may be transferred and credited to the 1977-78 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

1 Personal Services $ 8,217,537

2 Other Expenses 802,000

3 Judges' Retirement System 600,000

4 Other Court Costs 1,677,000

5 Total $ 11,296,537

This appropriation shall be administered by the Administrative Director of the State Supreme Court of Appeals who shall draw his requisitions for warrants in payment 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 1976-77 is hereby reappropriated for expenditures during fiscal year 1977-78.

EXECUTIVE

5—Governor’s Office

Acct. No. 120

1 Salary of Governor _______________ $ 50,000
2 Other Personal Services _______________ 658,170
3 Current Expenses _______________ 176,200
4 Equipment _______________ 23,000

5 Total _______________ $ 907,370

Any unexpended balance remaining at the close of the fiscal year 1976-77 for “Publication of Governor’s Papers and Inaugural Expense” is hereby reappropriated for expenditure during the fiscal year 1977-78.

6—Office of Economic and Community Development

Acct. No. 121

1 Personal Services _______________ $ 671,734
2 Current Expenses _______________ 1,667,770
3 Equipment _______________ 40,200
4 Industrial Development Revolving Fund _______________ 4,000,000
5 Federal-State Coordination _______________ 3,056,830
6 Governor’s Committee on Crime, Delinquency and Correction _______________ 400,000
7 Regional Council—To Match Federal Funds _______________ 200,000

9 Total _______________ $ 10,036,534

Any unexpended balance remaining in accounts “Federal-State Coordination,” “Governor’s Committee on Crime, Delinquency—To Match Federal Funds” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditures during the fiscal year 1977-78.
quency and Correction,” and “Regional Council—To Match Federal Funds” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

7—Governor’s Office—Custodial Fund

Acct. No. 123

1 Unclassified—Total __________________________ $ 175,000

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.

8—Governor’s Office—Civil Contingent Fund

Acct. No. 124

1 Unclassified—Total __________________________ $ 750,000

2 Of the 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.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

9—Governor’s Office—Disaster Relief-Matching

Acct. No. 126

1 Unclassified—Total __________________________ $ 50,000

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

10—Governor’s Office—McMchen and Stonewood Relief

Acct. No. 127

1 Any unexpended balance remaining in the appropriation for “Governor’s office—McMchen and Stonewood Relief”
3 at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

11—Governor's Office—Emergency Relief

Acct. No. 128

Any unexpended balance remaining in the appropriation for "Emergency Relief for Water Systems of Municipalities, Towns, Villages and Public Service Districts" at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

12—Housing Development Loan—Guarantee Fund

Acct. No. 129

1 Total ____________________________ $ 1,000,000

The above appropriation is to be used in conjunction with the development of housing needed in the State. Funds may be transferred by the Governor to the West Virginia Housing Development Fund.

13—Office of Emergency Services

Acct. No. 130

1 Personal Services ____________________________ $ 167,275
2 Current Expenses ______ $ 49,920
3 Equipment _______________ $ 11,400
4 Communications Center _______ $ 250,000

5 Total $ 478,595

FISCAL

14—Auditor's Office—General Administration

Acct. No. 150

1 Salary of State Auditor ____________________________ $ 32,500
2 Other Personal Services ____________________________ $ 911,443
3 Current Expenses ____________________________ $ 375,025
4 Equipment ____________________________ $ 39,700
APPROPRIATIONS

5 Mental Hygiene Fund _______________________ 150,000
6 Microfilm _________________________________ 20,000
7 Representation of Needy Persons Fund _______ 1,275,000

8 Total $ 2,803,668

15—Auditor's Office—Social Security

Acct. No. 151

1 To match contributions of state employees
2 for social security—Total __________________ $ 12,000,000

3 The above appropriation is intended to cover the state's share of social security costs for those spending units operating from General Revenue Fund. The State Department of Highways, Department of Motor Vehicles, Workmen's Compensation Commission, Public Service Commission, and other departments operating from Special Revenue Fund and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.

11 Any unexpended balance remaining in the appropriation for "Auditor's Office—Social Security" at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

16—Treasurer's Office

Acct. No. 160

1 Salary of State Treasurer _____________________ $ 35,000
2 Other Personal Services _______________________ 337,850
3 Current Expenses ____________________________ 302,031
4 Equipment _________________________________ 27,500
5 Microfilm Program __________________________ 7,700

6 Total ______________________________________ $ 710,081

17—Treasurer's Office—School Building Sinking Fund

Acct. No. 165

1 Total ______________________________________ $ 12,454,696
Any unexpended balance remaining in the appropriation for “Treasurer’s Office—School Building Sinking Fund” at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

18—Sinking Fund Commission

<table>
<thead>
<tr>
<th>Acct. No. 170</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 54,683</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 10,350</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$ 65,033</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the “Equipment” appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

19—State Tax Department

<table>
<thead>
<tr>
<th>Acct. No. 180</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 3,286,920</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 2,329,200</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$ 72,000</td>
</tr>
</tbody>
</table>
| 4            | Circuit Breaker Reimbursement | $ 150,000
|              | Total            | $ 5,838,120     |

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

20—State Tax Department

<table>
<thead>
<tr>
<th>Property Appraisal</th>
<th>Acct. No. 185</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$ 1,618,936</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Other Expenses</td>
<td>$ 1,107,350</td>
<td></td>
</tr>
</tbody>
</table>
| 3                  | Reimbursement to Counties for Computer- | $ 80,000
|                    | ization          |                 |
| 4                  | Total            | $ 2,806,286     |
Any unexpended balance remaining in the "Property Appraisal Account" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

21—State Commissioner of Public Institutions

Acct. No. 190

Any unexpended balance remaining in the appropriation "Prison Industries" as provided for in Enrolled Senate Bill No. 594, 1977 Regular Session of the Legislature, is hereby reappropriated for expenditure during the fiscal year 1977-78.

22—Department of Finance and Administration

Acct. No. 210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,357,000</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$654,596</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$142,800</td>
</tr>
<tr>
<td>Equipment</td>
<td>$13,200</td>
</tr>
<tr>
<td>Postage</td>
<td>$650,000</td>
</tr>
<tr>
<td>Records Management</td>
<td>$57,273</td>
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<tr>
<td>State Agency Surplus Property</td>
<td>$82,384</td>
</tr>
<tr>
<td>Utilities</td>
<td>$550,000</td>
</tr>
<tr>
<td>Fire Service Fee</td>
<td>$73,965</td>
</tr>
<tr>
<td>Building Equipment and Supplies</td>
<td>$25,000</td>
</tr>
<tr>
<td>Major Building Repairs</td>
<td>$300,000</td>
</tr>
<tr>
<td>Total</td>
<td>$4,906,218</td>
</tr>
</tbody>
</table>

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 insuf-
24 sufficient to meet the mailing requirements of the State spending
25 units as set out above, any excess postage meter service re-
26 quirements shall be a proper charge against the units, and each
27 spending unit shall refund to the Postage appropriation of
28 the Department of Finance and Administration any amounts
29 required for the Department for postage in excess of this
30 appropriation.

31 Any unexpended balance remaining in the “Postage Ac-
32 count” at the close of the fiscal year 1976-77 is hereby re-
33 appropriated for expenditure during the fiscal year 1977-78.

34 Any unexpended balances remaining at the close of the fiscal
35 year 1976-77 for “Major Building Repairs” is hereby reap-
36 propriated for expenditure during the fiscal year 1977-78,
37 (Major Building Repairs to include maintenance and repairs to
38 Governor’s Mansion).

39 State Department of Highways shall reimburse the appro-
40 priation of the Department of Finance and Administration
41 monthly for all actual expenses incurred pursuant to the pro-
42 visions of Chapter 17, Article 2-A, Section 13 of the Code of
43 West Virginia.

23—State Board of Insurance

Acct. No. 225

1 Personal Services .................. $ 49,962
2 Current Expenses .......................... 15,525
3 Equipment ................................ 500
4 Insurance Fund .......................... 3,465,000

5 Total .......................... $ 3,530,987

6 The above appropriation on line 4, is for the purpose
7 of paying premiums, self-insurance losses, loss adjustment
8 expenses and loss prevention engineering fees for property,
9 casualty and fidelity insurance for the various State agencies.
10 Should this appropriation be insufficient to meet the re-
11 quirements of the State spending units, any excess costs
12 shall be a proper charge against the units and each spending
13 unit shall reimburse to the Board of Insurance any amounts
required for that department for costs in excess of this appropriation.

Any and all of the funds appropriated for "Insurance Fund", may be transferred to a "special account" for the payment of premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees.

Any unexpended balance remaining in the appropriation for "Self-Insurance Fund" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

Any or all of the funds appropriated for "Insurance Fund" may be transferred to a special account for disbursement for payment of premiums and insurance losses.

**LEGAL**

24—*Attorney General*

<table>
<thead>
<tr>
<th>Acct. No. 240</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Attorney General</td>
<td>$35,000</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$1,006,582</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$120,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$19,000</td>
</tr>
<tr>
<td>5</td>
<td>To protect the resources or tax structure of the State in controversies or legal proceedings affecting same</td>
<td>$3,250</td>
</tr>
<tr>
<td>6</td>
<td>Consumer Protection</td>
<td>$148,136</td>
</tr>
<tr>
<td>7</td>
<td>Buffalo Creek Legal Expenses</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

**Total** | $1,336,968 |

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

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

25—Commission on Uniform State Laws

Acct. No. 245

1 Unclassified—Total _________________________ $ 8,000
2 To pay expenses of members of the Commission on Uniform State Laws.

INCORPORATING AND RECORDING

26—Secretary of State

Acct. No. 250

1 Salary of Secretary of State _________________________ $ 30,000
2 Other Personal Services ____________________________ 224,265
3 Current Expenses ________________________________ 79,120
4 Equipment _________________________________________ 10,000
5 Regulation of Charitable Fund Raising ______________ 42,500
6 Certification of Primary and General Elections _________ 3,000

7 Total ________________________________ $ 388,885

8 Any unexpended balance remaining in the appropriation “Publication of State Register” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during fiscal year 1977-78.

EDUCATIONAL

27—State Department of Education

Acct. No. 277

1 Teacher Education Program—Total __________ $ 131,250

28—West Virginia Board of Regents (Control)

Acct. No. 279

1 Personal Services _______________________________ $ 74,550,000
2 Current Expenses ________________________________ 15,392,322
3 Repairs and Alterations ____________________________ 1,442,500
4 Equipment _______________________________________ 3,560,000
5 Oak Wilt Research ________________________________ 14,200
### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterinary, Optometry, Podiatry, and Architectural Tuition</td>
<td>583,000</td>
</tr>
<tr>
<td>Educational T. V.</td>
<td>754,474</td>
</tr>
<tr>
<td>Moving of WWVU-TV</td>
<td>273,169</td>
</tr>
<tr>
<td>Bureau for Coal Research</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Forestry Products</td>
<td>154,788</td>
</tr>
<tr>
<td>Regional Research Institute</td>
<td>104,155</td>
</tr>
<tr>
<td>Intensive Agricultural Demonstration Trial</td>
<td>45,604</td>
</tr>
<tr>
<td>Community and Development Research</td>
<td></td>
</tr>
<tr>
<td>Intensive Agricultural Demonstration Trial</td>
<td></td>
</tr>
<tr>
<td>(Glenville)</td>
<td>32,742</td>
</tr>
<tr>
<td>Center for Economic Action (Concord)</td>
<td>58,370</td>
</tr>
<tr>
<td>New Programs</td>
<td>380,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>295,000</td>
</tr>
<tr>
<td>Title I—Matching Funds</td>
<td>133,000</td>
</tr>
<tr>
<td>Scholarship Program</td>
<td>2,300,000</td>
</tr>
<tr>
<td>Awareness Program</td>
<td>54,808</td>
</tr>
<tr>
<td>Facilities and Scholarship Program</td>
<td>85,418</td>
</tr>
<tr>
<td>Agricultural Experiment Station—Intensive Horticultural Demonstration</td>
<td>34,665</td>
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<tr>
<td>Total</td>
<td>101,248,215</td>
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</table>

29—*West Virginia Board of Regents*

**Acct. No. 280**

<table>
<thead>
<tr>
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<tr>
<td>Personal Services</td>
<td>462,000</td>
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<tr>
<td>Current Expenses</td>
<td>126,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>1,500</td>
</tr>
<tr>
<td>Total</td>
<td>590,000</td>
</tr>
</tbody>
</table>

30—*West Virginia College of Osteopathic Medicine*

**Acct. No. 281**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>2,231,760</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.
31—Marshall University—Medical School
Acct. No. 284

1 Unclassified—Total $ 1,668,559

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

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

1 Personal Services $ 8,594,304
2 Current Expenses 4,598,385
3 Repairs and Alterations 400,000
4 Equipment 256,900
5 Family Practice Residency Support Program 377,283
6 Intern and Residency Support Programs for Community Hospitals 775,000

8 Total $15,001,872

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

33—Department of Education
Acct. No. 286

1 Personal Services $ 898,630
2 Current Expenses 586,137
3 Equipment 11,000
4 National Defense Education Act 489,810
5 Statewide Testing Program 142,112
6 Safety Education—Aid to Counties 210,000
7 State Aid to Children's Home 80,000
8 Regional Education Service Agency 479,800
9 Project 0629-061, Identification & Remediation of Learning Disabilities 50,000
10 Project 0629-062, Diagnosis and Remediation of Learning Disabilities 50,000
11 Project 0629-067, Early Learning and Child Care 50,000
15 Project 0629-077, Early Learning and Child Care .......................... $50,000
16 Project 0629-078, Early Learning and Child Care .......................... $50,000
19 Total ........................................................................ $3,147,489
20 The above appropriation includes the State Board of Education and their executive offices.
22 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.

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

1 Personal Services ......................................................... $129,150
2 Current Expenses ................................................... 34,350
3 Aid to Counties—Includes hot lunches and canning for hot lunches ........................................ 1,895,400
5 Total ........................................................................ $2,058,900

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

1 Personal Services ......................................................... $227,118
2 Current Expenses ................................................... 63,650
3 Equipment .................................................................. 7,000
4 Vocational Aid .......................................................... 8,362,753
5 Adult Basic Education ................................................. 700,000
6 Replacement of Equipment ........................................ 750,000
7 Completion of Vocational Building ......................... 130,000
8 Total ........................................................................ $10,240,521
9 Any unexpended balance remaining in the appropriation for “Building Construction” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.
36—State Department of Education—Professional Educators

Acct. No. 290

1 Total __________________________ $ 28,384,834

37—Educational Broadcasting Authority

Acct. No. 291

1 Personal Services __________________________ $ 59,523
2 Current Expenses __________________________ 29,255
3 Equipment __________________________ 2,500
4 Regional ETV __________________________ 1,509,026
5 Total __________________________ $ 1,600,304

"Regional ETV" is 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 the acquisition of a new FM radio station to serve the northern panhandle; and such funds may be transferred to special revenue accounts for matching County and/or Federal Funds.

38—State Board of Education—Vocational Division

Acct. No. 294

1 Total __________________________ $ 550,000

2 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

39—State Department of Education—State Aid to Schools

Acct. No. 295

1 Professional Educators __________________________ $207,724,900
2 Other Personnel __________________________ 41,544,980
3 Fixed Charges __________________________ 19,567,686
4 Transportation Charges __________________________ 9,753,278
5 Administration __________________________ 2,077,240
6 Other Current Expenses __________________________ 24,926,988
7 National Average Attainment __________________________ 16,228,262
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Program Improvement</td>
</tr>
<tr>
<td>9</td>
<td>Increased Enrollment</td>
</tr>
<tr>
<td>10</td>
<td>Sub Total</td>
</tr>
<tr>
<td>11</td>
<td>Less Local Share</td>
</tr>
<tr>
<td>12</td>
<td>Total</td>
</tr>
</tbody>
</table>

40—Department of Education—Aid for Exceptional Children

Acct. No. 296

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$192,250</td>
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<tr>
<td>2</td>
<td>Current Expenses</td>
<td>79,700</td>
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<td>3</td>
<td>Out-of-State Instruction</td>
<td>360,000</td>
</tr>
<tr>
<td>4</td>
<td>Aid to Counties</td>
<td>6,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$6,631,950</td>
</tr>
</tbody>
</table>

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

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Early Childhood Aides—Total</td>
<td>$2,882,880</td>
</tr>
</tbody>
</table>

42—Teachers' Retirement Board

Acct. No. 298

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers Retirement Fund</td>
<td>$40,965,000</td>
</tr>
<tr>
<td>2</td>
<td>Expense Fund</td>
<td>35,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$41,000,000</td>
</tr>
</tbody>
</table>

43—Department of Education

Acct. No. 299

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>To fund minimum salaries for Support Personnel—Total</td>
<td>$21,916,658</td>
</tr>
</tbody>
</table>

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

**Acct. No. 333**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,009,394</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$498,952</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$154,180</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$95,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,757,526</strong></td>
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</table>

### State FFA-FHA Camp and Conference Center

**Acct. No. 336**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$94,500</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$21,450</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$25,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$23,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$163,950</strong></td>
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</table>

### West Virginia Library Commission

**Acct. No. 350**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$675,548</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$142,650</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$3,500</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>5 Grants-in-Aid</td>
<td>$2,200,000</td>
</tr>
<tr>
<td>6 Library Matching Fund (Construction)</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>7 Books and Periodicals</td>
<td>$60,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,086,698</strong></td>
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</table>

Any unexpended balance remaining in the appropriation for “Library Matching Fund” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

### Department of Culture and History

**Acct. No. 351**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1 Personal Services</td>
<td>$749,477</td>
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<tr>
<td>Item</td>
<td>Amount</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>478,205</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>4,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>77,150</td>
</tr>
<tr>
<td>Mt. State Forest Festival</td>
<td>25,000</td>
</tr>
<tr>
<td>Theatre Arts of West Virginia</td>
<td>230,000</td>
</tr>
<tr>
<td>Alpine Festival</td>
<td>7,500</td>
</tr>
<tr>
<td>Arts and Humanities Fund</td>
<td>400,000</td>
</tr>
<tr>
<td>West Virginia Water Festival</td>
<td>8,000</td>
</tr>
<tr>
<td>Tri-County Fair</td>
<td>5,000</td>
</tr>
<tr>
<td>Oil and Gas Festival</td>
<td>3,000</td>
</tr>
<tr>
<td>White Water Weekend</td>
<td>3,000</td>
</tr>
<tr>
<td>Calhoun County Wood Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>New Martinsville Regatta</td>
<td>2,500</td>
</tr>
<tr>
<td>Braxton County Regatta</td>
<td>4,000</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>243,668</td>
</tr>
<tr>
<td>Cherry River Festival</td>
<td>2,000</td>
</tr>
<tr>
<td>Mother’s Day Founders Festival</td>
<td>15,000</td>
</tr>
<tr>
<td>Mt. Heritage Arts and Crafts Fair</td>
<td>5,000</td>
</tr>
<tr>
<td>Wellsburg July 4th Celebration</td>
<td>2,500</td>
</tr>
<tr>
<td>Sternwheel Regatta</td>
<td>10,000</td>
</tr>
<tr>
<td>Sistersville Outboard Regatta</td>
<td>2,000</td>
</tr>
<tr>
<td>Ohio River Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>Ripley 4th of July Festival</td>
<td>2,500</td>
</tr>
<tr>
<td>King Coal Festival</td>
<td>1,000</td>
</tr>
<tr>
<td>Independence Hall, Wheeling, West Virginia</td>
<td>100,000</td>
</tr>
<tr>
<td>Gen. Adam Stephen Memorial</td>
<td>24,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 2,410,000</strong></td>
</tr>
</tbody>
</table>

29 The above appropriations, Mt. State Forest Festival, Theatre Arts of West Virginia, West Virginia Water Festival, Tri-County Fair, 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, Ripley 4th of July Festival, King Coal Festival, and Gen. Adam Stephen Memorial shall be expended only upon authorization of the Director of the Department of Culture and History and in
accordance 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 Science and Cultural Center, for moneys expended from the General Revenue Fund for Arts and Humanities are hereby reappropriated for the purposes as originally made, including Personal Services, Current Expenses and Equipment.

Any unexpended balance remaining in the appropriation for "Independence Hall, Wheeling, West Virginia" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

Any unexpended balance remaining in the appropriation for "National Youth Science Camp" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

**CORRECTION**

48—Department of Correction

Acct. No. 368

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$30,000</td>
</tr>
<tr>
<td>Salaries of Board Members</td>
<td></td>
</tr>
<tr>
<td>Board of Probation and Parole</td>
<td>$48,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$909,337</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$275,354</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$4,200</td>
</tr>
<tr>
<td>Equipment</td>
<td>$7,999</td>
</tr>
<tr>
<td>Work Study Release Program</td>
<td>$183,834</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,458,724</strong></td>
</tr>
</tbody>
</table>

49—Anthony Center

Acct. No. 369

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$404,849</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$158,385</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$19,000</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Name of Institution</th>
<th>Account No.</th>
<th>1 Personal Services</th>
<th>2 Current Expenses</th>
<th>3 Repairs and Alterations</th>
<th>4 Equipment</th>
<th>5 Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia Industrial School for Boys</td>
<td>370</td>
<td>$870,022</td>
<td>$287,300</td>
<td>$95,000</td>
<td>$63,000</td>
<td>$1,315,322</td>
</tr>
<tr>
<td>Davis Center</td>
<td>371</td>
<td>$324,800</td>
<td>$184,745</td>
<td>$19,500</td>
<td>$43,000</td>
<td>$572,045</td>
</tr>
<tr>
<td>West Virginia Industrial Home for Girls</td>
<td>372</td>
<td>$522,000</td>
<td>$184,695</td>
<td>$35,000</td>
<td>$42,000</td>
<td>$788,695</td>
</tr>
<tr>
<td>Leckie Center</td>
<td>373</td>
<td>$309,565</td>
<td>$185,660</td>
<td>$41,100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Equipment</td>
<td>28,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>564,325</td>
</tr>
</tbody>
</table>

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

**Acct. No. 374**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$201,150</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$115,080</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$23,600</td>
</tr>
<tr>
<td>Equipment</td>
<td>$15,900</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$355,730</strong></td>
</tr>
</tbody>
</table>

#### 55—West Virginia Penitentiary

**Acct. No. 375**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,252,775</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,195,565</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$116,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$187,800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,752,640</strong></td>
</tr>
</tbody>
</table>

6. Any unexpended balance remaining in the account “Replacement of Sanitary System (Sewers) and Construction of Boiler Plant”; and “Purchase of Building and Land” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

11. Any or all of the accounts “Replacement of Sanitary System (Sewer) and Construction of Boiler Plant” may be used to match and aid Federal Funds.

#### 56—Huttonsville Correctional Center

**Acct. No. 376**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,367,782</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$957,982</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$73,900</td>
</tr>
</tbody>
</table>
HEALTH AND WELFARE

57—State Health Department

Acct. No. 400

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,538,574</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>560,960</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>51,037</td>
</tr>
<tr>
<td>4 Local Health Services</td>
<td>2,100,000</td>
</tr>
<tr>
<td>5 Maternal and Child Health Programs</td>
<td>730,960</td>
</tr>
<tr>
<td>6 Home Health Services</td>
<td>505,580</td>
</tr>
<tr>
<td>7 Commission on Postmortem Examinations</td>
<td>400,000</td>
</tr>
<tr>
<td>8 Cancer Control and Treatment; Heart Disease</td>
<td></td>
</tr>
<tr>
<td>9 Control; Dental Clinics; Diagnostic Services</td>
<td></td>
</tr>
<tr>
<td>10 for Tuberculosis Controls; Special Project for Eradication of Tuberculosis; Environmental Health Services; Nursing Home Inspection Unit; Biologicals for Immunization and Venereal Disease Drugs; Early Childhood Development Program; Regional Health Services</td>
<td></td>
</tr>
<tr>
<td>11 Emergency Medical Services</td>
<td>2,052,503</td>
</tr>
<tr>
<td>12 Mental Health Research and Training</td>
<td>10,000</td>
</tr>
<tr>
<td>13 Mental Health Education</td>
<td>22,050</td>
</tr>
<tr>
<td>14 Community Mental Retardation Program</td>
<td>1,750,000</td>
</tr>
<tr>
<td>15 Alcohol and Drug Abuse Program</td>
<td>395,000</td>
</tr>
<tr>
<td>16 Community Mental Health Programs and Functional Relocation of Patients</td>
<td></td>
</tr>
<tr>
<td>17 Foster Grandparents Program</td>
<td>131,000</td>
</tr>
<tr>
<td>18 Mental Retardation—Developmental Disabilities and Legal Advocacy Program</td>
<td></td>
</tr>
<tr>
<td>19 Total</td>
<td>$19,421,707</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.
31 1976-77; is hereby reappropriated for expenditure during the fiscal year 1977-78.

33 Any unexpended balance remaining in the appropriation "Commission on Postmortem Examination" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

58—Solid Waste Disposal

Acct. No. 402

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

59—Department of Veterans Affairs

Acct. No. 403

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In aid of Veterans Day Patriotic Exercises</td>
</tr>
</tbody>
</table>

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.

60—Department of Veterans Affairs

Acct. No. 404

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Educational opportunities for children of War Veterans</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

61—Department of Welfare

Acct. No. 405

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
</tr>
<tr>
<td>4</td>
<td>Public Assistance Grants</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
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</table>
### Appropriations

<table>
<thead>
<tr>
<th>6</th>
<th>Services to Children, Aged, Blind and Disabled</th>
<th>13,848,474</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Emergency Assistance Program</td>
<td>1,550,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$ 42,727,445</td>
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</table>

#### 62—State Commission on Aging

**Acct. No. 406**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$ 74,550</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$ 49,020</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>735</td>
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<tr>
<td>4</td>
<td>Programs for Elderly</td>
<td>$ 650,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$ 774,305</td>
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</tbody>
</table>

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

**Acct. No. 407**

<table>
<thead>
<tr>
<th>1</th>
<th>Current Expenses</th>
<th>$ 511,432</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Equipment</td>
<td>12,500</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$ 523,932</td>
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</table>

#### 64—Department of Welfare—Medical Program

**Acct. No. 408**

<table>
<thead>
<tr>
<th>1</th>
<th>Current Expenses</th>
<th>$ 1,100,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Equipment</td>
<td>8,750</td>
</tr>
<tr>
<td>3</td>
<td>Direct Services</td>
<td>$ 24,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$ 25,108,750</td>
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</table>

#### 65—Department of Welfare—West Virginia Children's Home

**Acct. No. 412**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$ 160,500</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>85,620</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>16,000</td>
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</tbody>
</table>
### Ch. 2] Appropriations

<table>
<thead>
<tr>
<th>4</th>
<th>Equipment</th>
<th>$22,600</th>
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</thead>
<tbody>
<tr>
<td>5</td>
<td>Total</td>
<td>$284,720</td>
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</tbody>
</table>

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

**Acct. No. 414**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$773,850</th>
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<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$211,984</td>
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<td>3</td>
<td>Repairs and Alterations</td>
<td>$100,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$60,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,145,834</td>
</tr>
</tbody>
</table>

#### 67—State Health Department—Mental Hospitals

**Acct. No. 416**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$13,929,766</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,671,734</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$519,425</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$271,186</td>
</tr>
<tr>
<td>5</td>
<td>Student Nurse Affiliation Program (Huntington)</td>
<td>$45,000</td>
</tr>
<tr>
<td>6</td>
<td>Psychiatric Training Center—Student Nurses (Weston)</td>
<td>$157,500</td>
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<tr>
<td>7</td>
<td>Total</td>
<td>$19,594,611</td>
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</tbody>
</table>

The director of health, prior to the beginning of the fiscal year, shall file with the legislative auditor an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation. He shall also, within fifteen days after the close of each six-month period of said fiscal year, file with the legislative auditor an itemized report of expenditures made during the preceding six-month period. Such report shall include the total of expenditures made under each of line items 1, 2, 3, and 4 above.

#### 68—Colin Anderson Center

**Acct. No. 419**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$5,302,577</th>
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### APPROPRIATIONS

#### [Ch. 2]

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<th></th>
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#### 69—Lakin State Hospital

Acct. No. 423

1 Any unexpended balance remaining in the appropriation “To complete Heating System” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

#### 70—Fairmont Emergency Hospital

Acct. No. 425

<table>
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<th>Personal Services</th>
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<td>$ 934,690</td>
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#### 71—Welch Emergency Hospital

Acct. No. 426

<table>
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#### 72—Andrew S. Rowan Memorial Home

Acct. No. 427

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### 73—Hopemont State Hospital

**Acct. No. 430**

<table>
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<td>Personal Services</td>
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<td>Current Expenses</td>
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<td>$57,200</td>
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<td>Equipment</td>
<td>$70,000</td>
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<td><strong>Total</strong></td>
<td><strong>$3,786,801</strong></td>
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### 74—Pinecrest State Hospital

**Acct. No. 431**

<table>
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<th>Item</th>
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<tbody>
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<td>$857,000</td>
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<td>Equipment</td>
<td>$94,300</td>
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<td><strong>Total</strong></td>
<td><strong>$3,897,646</strong></td>
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### 75—Denmar State Hospital

**Acct. No. 432**

<table>
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<th>Item</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>$1,878,620</td>
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<td>Current Expenses</td>
<td>$646,890</td>
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<td>Repairs and Alterations</td>
<td>$84,000</td>
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<td>Equipment</td>
<td>$129,300</td>
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<td><strong>Total</strong></td>
<td><strong>$2,738,810</strong></td>
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### 76—State Board of Education—Rehabilitation Division

**Acct. No. 440**

<table>
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<th>Item</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,762,253</td>
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<tr>
<td>Current Expenses</td>
<td>$505,500</td>
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<tr>
<td>Rehabilitation Center</td>
<td>$1,817,430</td>
</tr>
<tr>
<td>Case Services</td>
<td>$2,233,113</td>
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</tbody>
</table>
Supervisory Services for Vending Stand Program for Blind 181,708
Training and Special Projects 515,148
Social Security Matching Fund 178,708
Total 7,193,860

Any unexpended balance remaining in the appropriation for “Rehabilitation Center Construction” at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

BUSINESS AND INDUSTRIAL RELATIONS

77—Bureau of Labor and Department of Weights and Measures

Acct. No. 450

1 Personal Services $ 938,800
2 Current Expenses 317,045
3 Equipment 22,000

4 Total $ 1,277,845

78—Interstate Mining Compact Commission

Acct. No. 451

1 Total $ 10,000

79—Department of Mines

Acct. No. 460

1 Personal Services $ 2,647,604
2 Current Expenses 525,000
3 Equipment 101,700
4 Special Mine Drainage Program 50,000
5 Miner Training, Education and Certification 172,331
6 Board of Coal Mine Health and Safety 10,000

7 Total $ 3,506,635
Any unexpended balance remaining in the appropriation for “Subsidence—Federal Matching” at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

80—Ohio River Basin Commission
Acct. No. 469
1 Total __________________________ $ 21,600

81—Council of State Governments
Acct. No. 472
1 Total __________________________ $ 21,900

82—Interstate Commission on Potomac River Basin
Acct. No. 473
1 West Virginia’s contribution to Potomac River Basin Interstate Commission __________ $ 12,450

83—Ohio River Valley Water Sanitation Commission
Acct. No. 474
1 West Virginia’s contribution to the Ohio River Valley Water Sanitation Commission __________ $ 40,575

84—Southern Regional Education Board
Acct. No. 475
1 West Virginia’s contribution to Southern Regional Education Board ______________ $ 64,000
3 To be expended upon requisition of the Governor.

85—West Virginia Air Pollution Commission
Acct. No. 476
1 Personal Services __________________________ $ 450,000
2 Current Expenses __________________________ 125,360
Equipment

Total $584,685

Any unexpended balance remaining in the appropriation for "Diffusion Modeling," at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

86—Interstate Education Compact

Acct. No. 477

West Virginia’s contribution to Interstate Education Compact to be expended upon requisition of the Governor $14,250

87—Department of Banking

Acct. No. 480

Personal Services $295,125
Current Expenses 177,500
Equipment 3,900

Total $476,525

88—West Virginia State Aeronautics Commission

Acct. No. 485

Personal Services $38,850
Current Expenses 23,385
Equipment 2,000
Aerial Markers 5,000
Airport Matching Fund 700,000
Civil Air Patrol Expenses 21,000

Total $790,235

Any unexpended balance remaining in the appropriation "Airport Matching" at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during fiscal year 1977-78.
### Appropriations

#### 89—West Virginia Nonintoxicating Beer Commission

**Acct. No. 490**

<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
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<td>Personal Services</td>
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<tr>
<td>Current Expenses</td>
<td>$74,350</td>
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<tr>
<td>Equipment</td>
<td>$3,000</td>
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<td><strong>Total</strong></td>
<td><strong>$334,400</strong></td>
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#### 90—West Virginia Racing Commission

**Acct. No. 495**

<table>
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<td>Personal Services</td>
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<td>Current Expenses</td>
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<td>Equipment</td>
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<td><strong>Total</strong></td>
<td><strong>$456,291</strong></td>
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### Agriculture

#### 91—Department of Agriculture

**Acct. No. 510**

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<tr>
<td>Salary of Commissioner</td>
<td>$32,500</td>
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<tr>
<td>Other Personal Services</td>
<td>$1,312,500</td>
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<td>Current Expenses</td>
<td>$705,267</td>
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<td>Equipment</td>
<td>$16,000</td>
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<tr>
<td>Marijuana and Multiflora Rose Eradication Program</td>
<td>$50,159</td>
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<td><strong>Total</strong></td>
<td><strong>$2,116,426</strong></td>
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Out of the above funds a sum may be used to match Federal funds for the eradication and control of pest and plant disease.

Any unexpended balance remaining in the appropriation for "Marijuana and Multiflora Rose Eradication Program" at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.
### 92—Farm Management Commission

*Acct. No. 511*

<table>
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<tr>
<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$623,400</td>
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<td>3 Repairs and Alterations</td>
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<td>4 Equipment</td>
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<tr>
<td>5 Unclassified</td>
<td>$500,000</td>
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<td><strong>Total</strong></td>
<td><strong>$2,476,152</strong></td>
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### 93—Department of Agriculture—Soil Conservation Committee

*Acct. No. 512*

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<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
<td>$79,525</td>
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<tr>
<td>3 Watershed Program</td>
<td>$200,000</td>
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<td><strong>Total</strong></td>
<td><strong>$512,625</strong></td>
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Any unexpended balance remaining in the appropriation for “Watershed Program,” “Mud River Flood Control Project” and “Channelization of Kelley’s Creek” hereinafter known as “Stream Channelization” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

### 94—Department of Agriculture—Division of Rural Resources (Matching Fund)

*Acct. No. 513*

<table>
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<td>1 Personal Services</td>
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<td>2 Current Expenses</td>
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<td><strong>Total</strong></td>
<td><strong>$636,991</strong></td>
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Any part or all of this appropriation may be transferred to Special Revenue Fund for the purpose of matching Federal Funds for the above-named program.
95—Department of Agriculture—Meat Inspection

Acct. No. 514

1 Unclassified—Total $ 402,150

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

Any unexpended balance remaining in the appropriation for “Meat Inspection” at the close of the fiscal year 1976-77 is hereby reappropriated for expenditure during the fiscal year 1977-78.

96—Department of Agriculture—Agricultural Awards

Acct. No. 515

1 Agricultural Awards $ 66,000
2 West Virginia State Fair 35,000
3 Black Walnut Festival 4,000
4 Apple Festival 2,000
5 Strawberry Festival 5,450
6 Buckwheat Festival 4,500
7 Marshall Fair 3,000
8 Town and Country Days 3,000
9 Potato Festival 2,000
10 Webster Logging Festival 2,500
11 Paden City Labor Day Festival 2,500
12 Jackson County Junior Fair 2,000
13 Mason County Fair 4,000
14 Tyler County Fair 3,000
15 Wyoming County Labor Day Festival (4-H awards) 3,000
16 Lincoln County Tobacco Fair 1,500
17 Clay County Golden Delicious Festival 2,000
18 West Virginia Sports Festival 2,000
19 Wood County Fair 3,500
20 Braxton Fair Association 2,500
21 Virginia Point Days (Wayne County) 2,000
22 Monroe County Farmer's Day (Union) 2,000
23 Huntington River Day Fair 1,500
### Appropriations [Ch. 2]

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>25</td>
<td>Pocahontas County Pioneer Days</td>
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<tr>
<td>26</td>
<td>Mannington District Fair</td>
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<td>27</td>
<td>Paw Paw District Fair</td>
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<td>28</td>
<td>Winfield District Fair</td>
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<td>29</td>
<td>Putnam County Midway Fair</td>
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<tr>
<td>30</td>
<td>Berkeley County Youth Fair</td>
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<td>31</td>
<td>Raleigh County 4-H Awards</td>
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<td>32</td>
<td>Wayside Fair</td>
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<td>33</td>
<td>West Virginia Poultry Festival (Hardy County)</td>
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#### Conservation and Development

**97—Geological and Economic Survey**

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<td>Repairs and Alterations</td>
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<td>Equipment</td>
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<td>Cooperative Mapping Program</td>
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<td>6</td>
<td>Coal Quality and Reserve Study</td>
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<td>7</td>
<td>Archaeological Investigations</td>
<td>31,000</td>
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<tr>
<td>8</td>
<td>Investigations of Geological Hazards</td>
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**98—Department of Natural Resources**

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<td>Equipment</td>
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<td>5</td>
<td>Clarke-McNary Fire Prevention</td>
<td>600,000</td>
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<td>6</td>
<td>Water Resources Board and Reclamation Board of Review</td>
<td>30,000</td>
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<tr>
<td>7</td>
<td>Cass Scenic Railroad</td>
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<tr>
<td>9</td>
<td>Parks Improvement Program</td>
<td>425,000</td>
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</table>
10 Mine Coal Refuse Pile Removal and Reclamation 300,000
12 Debt Service 975,000
13 Special Works Program 350,000
14 Construction, Development and Improvement of sewage systems and water systems on State forests, parks and recreation areas 800,000

Total $11,629,969


The balance remaining in the above-mentioned appropriation for "Purchase of Land—Pipestem State Park," is redesignated for "Park Improvements—Pipestem State Park," and the balance remaining in the above-mentioned appropriation for "Berwind Lake Public Hunting and Fishing Area" is redesignated for "Area Improvements—Berwind Lake Public Hunting and Fishing Area."

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

99—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 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

The appropriation for "National Track and Field Hall of Fame," as designated in Chapter 8, Acts of the Legislature, First Extraordinary Session, 1975, is hereby redesignated as fol-
The purpose of this bill is to provide state general revenue moneys to match federal funds, county funds, municipal funds, board of education funds, or any combination thereof, for the establishment of the "National Track and Field Hall of Fame". Such moneys may be transferred to a special fund to match and aid federal funds or other of the aforesaid funds and for disbursement therefrom.

100—Water Development Authority

Acct. No. 567

<table>
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<tr>
<td>Operating Expenses</td>
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<td>Capital Outlay</td>
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Any unexpended balance remaining in the appropriation for "Capital Outlay" at the close of the fiscal year 1976-77, is hereby reappropriated for expenditure during the fiscal year 1977-78.

101—West Virginia Railroad Maintenance Authority

Acct. No. 569

<table>
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<tr>
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<td>South Branch Line Preservation</td>
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PROTECTION

102—Department of Public Safety

Acct. No. 570

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<tr>
<td>Personal Services</td>
<td>$8,745,980</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$3,477,836</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$242,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,850,701</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>5</th>
<th>Emergency Fund</th>
<th>$5,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Total</td>
<td>$14,321,517</td>
</tr>
</tbody>
</table>

**103—Adjutant General—State Militia**

**Acct. No. 580**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$171,425</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>355,390</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>36,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>11,000</td>
</tr>
<tr>
<td>5</td>
<td>Compensation of Commanding Officers, Clerical Allowances and Uniform Allowances</td>
<td>95,360</td>
</tr>
<tr>
<td>6</td>
<td>Property Maintenance</td>
<td>451,503</td>
</tr>
<tr>
<td>7</td>
<td>State Armory Board</td>
<td>1,572,000</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>$2,692,678</td>
</tr>
</tbody>
</table>

### MISCELLANEOUS BOARDS AND COMMISSIONS

**104—West Virginia Civil Service System**

**Acct. No. 584**

<table>
<thead>
<tr>
<th>1</th>
<th>Personal Services</th>
<th>$551,556</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>270,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>$821,556</td>
</tr>
</tbody>
</table>

The director shall maintain accurate records reflecting the cost of administering the provisions of this appropriation. At the close of each quarter-year period, he shall summarize the cost and shall bill each department commission, board or agency which receives support from any funds other than General Revenue Fund for a prorata share of the administrative cost based on the relationship between the quarterly-average number of employees in the service of such department, commission, board or agency and the quarterly-average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.
16 This reimbursement is to be deposited in the General Revenue Fund.

105—*West Virginia State Board of Land Surveyors*

Acct. No. 585

1 To pay the per diem of members and other general expenses _________ $ 10,000
2 From Collections ______________________ 10,000

106—*State Board of Professional Foresters*

Acct. No. 586

1 To pay the per diem of members and other general expenses _________ $ 800
2 From Collections ______________________ 800

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

Acct. No. 587

1 To pay the per diem of members and other general expenses _________ 64,000
2 From Collections ______________________ 64,000

108—*State Board of Chiropractic Examiners*

Acct. No. 588

1 To pay the per diem of members and other general expenses _________ $ 2,000
2 From Collections ______________________ $ 2,000

109—*State Board of Pharmacy*

Acct. No. 590

1 To pay the per diem of members and other general expenses _________ $ 62,000
2 From Collections ______________________ 62,000
110—State Board of Osteopathy
Acct. No. 591
1 To pay the per diem of members and other general expenses $6,000
2 From Collections $6,000

111—State Board of Embalmers and Funeral Directors
Acct. No. 593
1 To pay the per diem of members and other general expenses $30,000
2 From Collections $30,000

112—State Board of Registration for Professional Engineers
Acct. No. 594
1 To pay the per diem of members and other general expenses $68,000
2 From Collections $68,000

113—State Board of Architects
Acct. No. 595
1 To pay the per diem of members and other general expenses $14,000
2 From Collections $14,000

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

115—Human Rights Commission
Acct. No. 598
1 Personal Services $233,100
### Appropriations

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>129,350</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>10,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>372,450</td>
</tr>
</tbody>
</table>

#### 116—West Virginia State Board of Sanitarians

**Acct. No. 599**

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

#### 117—West Virginia Public Employees Retirement Board

**Acct. No. 614**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employers Accumulation Fund</td>
<td>6,500,000</td>
</tr>
<tr>
<td>2</td>
<td>Expenses Fund</td>
<td>100,000</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>6,600,000</td>
</tr>
</tbody>
</table>

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. The State Department of Highways, Department of Motor Vehicles, 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.

#### 118—West Virginia Public Employees Insurance Board

**Acct. No. 615**

<table>
<thead>
<tr>
<th>#</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Expense Fund</td>
<td>113,000</td>
</tr>
<tr>
<td>2</td>
<td>Public Employees Health Insurance—State</td>
<td>22,000,000</td>
</tr>
<tr>
<td>3</td>
<td>Contribution</td>
<td>22,113,000</td>
</tr>
</tbody>
</table>
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.

119—Insurance Commissioner

Acct. No. 616

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$357,335</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>100,800</td>
</tr>
<tr>
<td>Equipment</td>
<td>5,100</td>
</tr>
<tr>
<td>Total</td>
<td>$463,235</td>
</tr>
</tbody>
</table>

120—State Fire Commission

Acct. No. 617

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$272,350</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>101,010</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>4,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>25,000</td>
</tr>
<tr>
<td>Total</td>
<td>$402,360</td>
</tr>
</tbody>
</table>

121—State Department of Highways

Acct. No. 641

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance State Local Services</td>
<td>$10,500,000</td>
</tr>
</tbody>
</table>

Any or all of the above appropriation may be transferred to the State Road Fund for distribution.
Sec. 2. Appropriations from other funds.—From the funds designated there is hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5-A, Article 2, of the Code of West Virginia the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred seventy-eight.

**122—State Department of Highways**

Acct. No. 670

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway, Trunkline and Feeder</td>
<td>$ 53,023,000</td>
</tr>
<tr>
<td>Maintenance State Local Services</td>
<td>12,924,000</td>
</tr>
<tr>
<td>Inventory Revolving</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Equipment Revolving</td>
<td>4,500,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>18,931,000</td>
</tr>
<tr>
<td>Debt Service</td>
<td>77,200,000</td>
</tr>
<tr>
<td>Interstate Construction</td>
<td>125,320,000</td>
</tr>
<tr>
<td>Other Federal Aid Programs</td>
<td>79,234,000</td>
</tr>
<tr>
<td>Appalachian Program</td>
<td>58,033,000</td>
</tr>
<tr>
<td>Non-Federal Aid Construction</td>
<td>84,545,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$514,710,000</strong></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 suf-
Ch. 2]  

APPROPRIATIONS 1003

27 Sufficient money 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.

123—Department of Motor Vehicles

Acct. No. 671

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,352,333</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,522,958</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$160,000</td>
</tr>
<tr>
<td>4</td>
<td>Purchase of License Plates</td>
<td>$375,000</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
<td>$82,262</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching</td>
<td>$127,887</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Health Insurance</td>
<td>$66,700</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$3,687,140</td>
</tr>
</tbody>
</table>

124—State Tax Department—Gasoline Tax Division

Acct. No. 672

TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$378,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$160,100</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$4,800</td>
</tr>
<tr>
<td>4</td>
<td>Social Security Matching</td>
<td>$25,000</td>
</tr>
<tr>
<td>5</td>
<td>Public Employees Retirement Matching</td>
<td>$35,910</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Health Insurance</td>
<td>$26,300</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$630,110</td>
</tr>
</tbody>
</table>

125—Department of Education—Veterans Education

Acct. No. 702

TO BE PAID FROM GENERAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$140,136</td>
</tr>
</tbody>
</table>
2 Other Expenses _____________________________ 49,026

3 Total _____________________________ $ 189,162

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.

126—Treasurer's Office

Acct. No. 800

TO BE PAID FROM SPECIAL REVENUE FUND

1 Abandoned and Unclaimed Property—Trust and Expense Fund _____________________________ $ 36,015

127—Real Estate Commission

Acct. No. 801

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services _____________________________ $ 85,887
2 Current Expenses _____________________________ 28,500
3 Equipment _____________________________ 1,500
4 Social Security Matching _____________________________ 5,500
5 Public Employees Retirement Matching ........ 7,000
6 Public Employees Health Insurance ........ 3,000

7 Total _____________________________ $ 131,387

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

128—West Virginia Racing Commission

Acct. No. 808

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses _____________________________ $ 5,000
The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law.

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

129—Auditor’s Office—Land Department Operating Fund

Acct. No. 812

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total ____________________________ $ 12,000

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

130—Department of Finance and Administration—Division of Purchasing—Revolving Fund

Acct. No. 814

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ____________________________ $ 605,997
2 Current Expenses ____________________________ 107,660
3 Equipment ________________________________ 7,500
4 Social Security Matching ______________________ 35,450
5 Public Employees Retirement Matching __________ 57,570
6 Public Employees Health Insurance ______________ 35,000
7 Total ______________________________ $ 849,177

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

The above appropriation includes salaries and operating expenses.

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the purchase of supplies for resale.
### 131—Department of Finance and Administration—Information Systems Service Division Fund

**Acct. No. 8151**

**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>$3,357,105</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,356,696</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$130,600</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$196,390</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$318,924</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$167,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,527,215</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Finance and Administration as provided by law.

### 132—Department of Agriculture

**Acct. No. 818**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$304,500</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$39,675</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$12,000</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$17,813</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$27,455</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$12,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$413,443</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections made by the Department of Agriculture as provided by law.

### 133—State Committee of Barbers and Beauticians

**Acct. No. 822**

**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>$102,900</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>1</td>
<td>Salaries of Commissioners</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement Matching</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Health Insurance</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
</tr>
</tbody>
</table>

8 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.

9 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.
3 Equipment
4 Social Security Matching
5 Public Employees Retirement Matching
6 Public Employees Health Insurance

7 Total

$ 193,156

8 The total amount of this appropriation shall be paid from the 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.

136—Public Service Commission—Motor Carrier Division

Acct. No. 829

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services
2 Current Expenses
3 Equipment
4 Social Security Matching
5 Public Employees Retirement Matching
6 Public Employees Health Insurance

7 Total

$ 1,047,781

8 The total amount of this appropriation shall be paid from the 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.

137—Department of Natural Resources

Acct. No. 830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services
2 Current Expenses
3 Repairs and Alterations
4 Equipment
5 Social Security Matching

2,730,222
813,465
152,800
260,000
159,183
6 Public Employees Retirement Matching 258,775
7 Public Employees Health Insurance 160,000
8 Land Purchase and Buildings 410,000

Total 4,944,445

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. Any unexpended balances remaining in the prior appropriation item "Land Purchase and Buildings" are hereby reappropriated for expenditure, and all moneys accumulated in the fund at the close of fiscal year 1976-77 and available for capital improvements and land purchase purposes are hereby appropriated for expenditure in fiscal year 1977-78; all in accordance with Chapter 20, Article 2, Section 34, Code of West Virginia.

138—Department of Public Safety—Inspection Fees

Acct. No. 835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services 261,463
2 Current Expenses 137,824
3 Repairs and Alterations 8,700
4 Equipment 24,500
5 Social Security Matching 2,000
6 Public Employees Health Insurance 13,800

Total 448,287

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

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

Acct. No. 883

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service 541,942
The total amount of this appropriation shall be paid from the non-revolving 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 1976-77 are hereby appropriated for expenditure during fiscal year 1977-78.

140—Board of Regents—State System
Special Capital Improvements Fund

(Capital Improvement and Bond Retirement Fund)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service and Debt Service Reserve</td>
<td>$2,340,992</td>
</tr>
<tr>
<td>W. Va. Northern Community College, Campus Development</td>
<td>3,272,000</td>
</tr>
<tr>
<td>(Acquisition of Educational Facilities—Wheeling)</td>
<td></td>
</tr>
<tr>
<td>W. Va. State College, Campus Development</td>
<td>765,000</td>
</tr>
<tr>
<td>(Renovation of Administration Building—Supplement)</td>
<td></td>
</tr>
<tr>
<td>West Liberty State College, Campus Development</td>
<td>360,000</td>
</tr>
<tr>
<td>(Complete Renovation of Main Hall—Supplement; Renovation of Tennis Courts; All Weather Running Track)</td>
<td></td>
</tr>
<tr>
<td>Potomac State College, Campus Development</td>
<td>290,000</td>
</tr>
<tr>
<td>(Addition to Maintenance Building; Property Acquisition)</td>
<td></td>
</tr>
<tr>
<td>Potomac State College, General Purpose Lab for Forestry and Science</td>
<td>50,000</td>
</tr>
<tr>
<td>Glenville State College, Campus Development</td>
<td>405,000</td>
</tr>
<tr>
<td>(Implement Recommendations of Space Utilization Study; Upgrade Existing Facilities)</td>
<td></td>
</tr>
<tr>
<td>Southern West Virginia Community College, Campus Development</td>
<td>345,000</td>
</tr>
</tbody>
</table>
(Construction of Educational Facility at Logan—Supplement)  
West Virginia University, Campus Development 2,750,000  
(Renovation of Existing Facilities—Supplement)  
Miscellaneous Projects 950,000  
Bluefield State College 365,000  
Exterior Repair, Replace Windows and Replace Roof of Dickason Hall  
Shepherd College 175,000  
Replace Windows and Install Sprinkler System in the Basement of Knutti Hall  
West Liberty State College 110,000  
New Heating and Air Conditioning and Replace Windows in Shotwell Hall  
Fairmont State College 350,000  
Window and Door Replacement, Fire Protection System, Wiring and Ceiling Repair in Old Science Building  
West Virginia Institute of Technology 275,000  
Replace Retaining Wall in Front of Campus  
West Virginia State College 100,000  
Clean and Tuck Point Walls and Renovate Exterior of Buildings  
Total $12,902,992

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 1976-77 appropriation are hereby reappropriated for expenditure during fiscal year 1977-78.

### 141—Board of Regents—Special Capital Improvement Fund

**Acct. No. 884**

**TO BE PAID FROM SPECIAL REVENUE FUND**

1. Debt Service: $1,677,677

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

Any unexpended balances remaining in prior years and 1976-77 appropriations are hereby reappropriated for expenditure during fiscal year 1977-78.

### 142—Workmen’s Compensation Commission

**Acct. No. 900**

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

1. Personal Services: $2,432,394
2. Current Expenses: $2,005,830
3. Equipment: $50,000
4. Social Security Matching: $142,482
5. Public Employees Retirement Matching: $231,202
6. Public Employees Health Insurance: $115,940

**Total:** $4,977,848

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

### 143—West Virginia Alcohol Beverage Control

**Acct. No. 927**

**TO BE PAID FROM SPECIAL REVENUE FUND**

1. Salary of Commissioner: $30,000
Ch. 2] Appropriations

2 Other Personal Services 6,840,600
3 Current Expenses 3,209,100
4 Repairs and Alterations 55,000
5 Equipment 112,500
6 Social Security Matching 402,691
7 Agency Operating Expense 31,200
8 Public Employees Retirement Matching 653,942
9 Public Employees Health Insurance 384,000

10 Total 11,719,033

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 appropriation, the necessary amount for the purchase of liquor, as provided by law.

144—West Virginia University—Medical School

Acct. No. 928

TO BE PAID FROM MEDICAL SCHOOL FUND

1 Personal Services 27,529,715
2 Current Expenses 16,087,864
3 Repairs and Alterations 1,300,000
4 Equipment 1,900,000
5 Intern and Residency Support Program for Community Hospitals 775,000
6 Family Practice Residency Support Program 377,283

Total 47,969,862

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

Sec. 3. Awards for claims against the state.—From the funds designated there are hereby appropriated for the re-
remainder of the fiscal year 1976-77 and to remain in effect until June 30, 1978, for payment of claims against the state, the following amounts itemized:

(a) Claims against the Department of Public Institutions:

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Randy R. Adams</td>
<td>73.15</td>
</tr>
<tr>
<td>(2) Louis E. Gilbert</td>
<td>375.63</td>
</tr>
<tr>
<td>(3) John Gough</td>
<td>982.70</td>
</tr>
<tr>
<td>(4) Lacy Gwinn</td>
<td>477.27</td>
</tr>
<tr>
<td>(5) Beecher D. Hamons</td>
<td>135.85</td>
</tr>
<tr>
<td>(6) William E. Hefner</td>
<td>252.06</td>
</tr>
<tr>
<td>(7) Edward L. Hill</td>
<td>125.40</td>
</tr>
<tr>
<td>(8) Robert L. Hill</td>
<td>39.54</td>
</tr>
<tr>
<td>(9) Robert Miller</td>
<td>296.55</td>
</tr>
<tr>
<td>(10) Carl Mitchell</td>
<td>828.72</td>
</tr>
<tr>
<td>(11) Clyde Moats</td>
<td>227.35</td>
</tr>
<tr>
<td>(12) William Mullins</td>
<td>621.36</td>
</tr>
<tr>
<td>(13) North-Central Dairy Herd Improvement Association, Inc.</td>
<td>82.04</td>
</tr>
<tr>
<td>(14) Ralston Purina Company</td>
<td>620.96</td>
</tr>
<tr>
<td>(15) Charles Reynolds</td>
<td>212.52</td>
</tr>
<tr>
<td>(16) Homer Reynolds</td>
<td>291.60</td>
</tr>
<tr>
<td>(17) Ronald Robinson</td>
<td>271.70</td>
</tr>
<tr>
<td>(18) Southern States Morgantown Cooperative, Inc.</td>
<td>7,425.98</td>
</tr>
<tr>
<td>(19) Melvin Stemple</td>
<td>683.36</td>
</tr>
<tr>
<td>(20) Harold Sypolt</td>
<td>33.00</td>
</tr>
<tr>
<td>(21) Tri-State Builders Hardware, Inc.</td>
<td>131.40</td>
</tr>
<tr>
<td>(22) Charles Wilson</td>
<td>222.41</td>
</tr>
<tr>
<td>(23) Exxon Company, U.S.A.</td>
<td>514.75</td>
</tr>
<tr>
<td>(24) Reynolds Memorial Hospital</td>
<td>8,742.00</td>
</tr>
<tr>
<td>(25) Standard Exterminating</td>
<td>476.00</td>
</tr>
<tr>
<td>(26) Ohio Valley Drug Company</td>
<td>656.58</td>
</tr>
<tr>
<td>(27) Wheeling Electric Company</td>
<td>4,281.21</td>
</tr>
</tbody>
</table>

(b) Claims against the Board of Regents:

(To be paid from General Revenue Fund)

<table>
<thead>
<tr>
<th>Name</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Marvin E. DeBoer</td>
<td>1,605.00</td>
</tr>
</tbody>
</table>
Ch. 2] APPROPRIATIONS

41 (2) Elizabeth Ann Hedges, Executrix of the
42 Estate of A. Bruce Hedges, deceased __ 8,756.00
43 (3) Deborah Ann Landes ________________ 3,144.65
44 (c) Claims against the Dept. of Public Safety:
45 (To be paid from General Revenue Fund)
46 (1) Montgomery General Hospital __________ 2,898.59
47 (d) Claims against the Adjutant General:
48 (To be paid from General Revenue Fund)
49 (1) Stonewall Casualty Company, subrogee of
50 Lloyd Fox ____________________________ 894.00
51 (2) Louis Tabit, father and next friend of
52 Mary Janet Tabit ________________ 12,150.00
53 (3) Louis Tabit ______________________________ 2,204.89
54 (e) Claims against the Dept. of Mental Health:
55 (To be paid from General Revenue Fund)
56 (1) Janice M. Neal ___________________________ 52.48
57 (2) St. Joseph's Hospital ____________________ 7,946.02
58 (f) Claims against the Department of Highways:
59 (To be paid from State Road Fund)
60 (1) Chester Murphy ___________________________ 350.00
61 (2) The Potomac Edison Company _______ 93.41
62 (3) Harold L. Pitsenbarger _______________ 149.35
63 (4) Florence I. Stepby ___________________ 1,281.53
64 (5) Lois Mullins ___________________________ 300.00
65 (6) James P. Foster, d/b/a
66 Western Virginia Demolition Company __ 499.00
67 (7) Grover A. Harmon ______________________ 12,039.52
68 (8) Ralph Wilson ___________________________ 3,000.00
69 (9) National Engineering & Contracting Co. __ 5,059.01
70 (10) Ernest L. White and Florence White ________ 2,500.00
71 (11) Betty H. Dunlap ________________________ 750.00
72 (12) Black Rock Contracting, Inc. ___________ 30,759.09
73 (13) State Farm Mutual Automobile Insurance
74 Co., subrogee of Monroe Hamon ___________ 289.69
75 (14) Verla R. Anderson ______________________ 15.45
76 (15) The Chesapeake and Potomac
77 Telephone Co. of W. Va. _____________ 11,039.69
78 (16) James D. Linville ______________________ 306.00
79 (17) Larry McConaha ______________________ 31.93
<table>
<thead>
<tr>
<th>80</th>
<th>18</th>
<th>State Farm Fire &amp; Casualty Company, subrogee of Edgar &amp; Bessie Damewood</th>
<th>1,200.00</th>
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</thead>
<tbody>
<tr>
<td>81</td>
<td></td>
<td>------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>82</td>
<td>19</td>
<td>Robert B. Dorsey</td>
<td>89.55</td>
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<tr>
<td>83</td>
<td>20</td>
<td>Chloe Thompson</td>
<td>174.10</td>
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<tr>
<td>84</td>
<td>21</td>
<td>Spencer Toppings</td>
<td>710.00</td>
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<tr>
<td>85</td>
<td>22</td>
<td>Raymond Peak</td>
<td>9,000.00</td>
</tr>
<tr>
<td>86</td>
<td>23</td>
<td>Liberty Mutual Insurance Company, subrogee of Charles C. Simpson</td>
<td>1,775.00</td>
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<tr>
<td>87</td>
<td></td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>88</td>
<td>24</td>
<td>Aetna Casualty &amp; Surety Co., subrogee for Jimmy L. McKinney</td>
<td>989.55</td>
</tr>
<tr>
<td>89</td>
<td></td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>90</td>
<td>25</td>
<td>Charles C. Simpson</td>
<td>125.00</td>
</tr>
<tr>
<td>91</td>
<td>26</td>
<td>The American Road Insurance Company, subrogee of Shellie Morgan, Jr.</td>
<td>199.26</td>
</tr>
<tr>
<td>92</td>
<td></td>
<td>------------------------------------------------------------------------</td>
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<tr>
<td>93</td>
<td>27</td>
<td>Lane S. Bohrer and Barbara S. Bohrer</td>
<td>9,750.00</td>
</tr>
<tr>
<td>94</td>
<td>28</td>
<td>Richard L. Mason and Jeanne Mason</td>
<td>9,750.00</td>
</tr>
<tr>
<td>95</td>
<td>29</td>
<td>W. E. Durig and Minnie Durig</td>
<td>28,000.00</td>
</tr>
<tr>
<td>96</td>
<td>30</td>
<td>Kenneth L. Block and Patricia A. Block</td>
<td>2,500.00</td>
</tr>
<tr>
<td>97</td>
<td>31</td>
<td>Virginia F. Asbury</td>
<td>89.26</td>
</tr>
<tr>
<td>98</td>
<td>32</td>
<td>Nelson Gilbert Casto and Patricia Joyce</td>
<td></td>
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<tr>
<td>99</td>
<td></td>
<td>------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>100</td>
<td>33</td>
<td>Robert England</td>
<td>1,000.00</td>
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<tr>
<td>101</td>
<td>34</td>
<td>Twila Jean Giles</td>
<td>107.84</td>
</tr>
<tr>
<td>102</td>
<td>35</td>
<td>Ina M. Hamrick</td>
<td>1,800.00</td>
</tr>
<tr>
<td>103</td>
<td>36</td>
<td>Helen M. Kelly</td>
<td>6,000.00</td>
</tr>
<tr>
<td>104</td>
<td>37</td>
<td>Lang Brothers, Inc.</td>
<td>27,458.16</td>
</tr>
<tr>
<td>105</td>
<td>38</td>
<td>Romeo G. Perkins and Shelva Jean</td>
<td></td>
</tr>
<tr>
<td>106</td>
<td></td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>107</td>
<td>39</td>
<td>Alan MacKenzie Roberts</td>
<td>80.70</td>
</tr>
<tr>
<td>108</td>
<td>40</td>
<td>Mike Romeo</td>
<td>190.00</td>
</tr>
<tr>
<td>109</td>
<td>41</td>
<td>Fred E. Sloane, Jr. and Minnie Arlene</td>
<td></td>
</tr>
<tr>
<td>110</td>
<td></td>
<td>------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>111</td>
<td>42</td>
<td>Christine Ambrosone Smith</td>
<td>16,000.00</td>
</tr>
<tr>
<td>112</td>
<td>43</td>
<td>Wilmer W. Teets and Sharon J. Teets</td>
<td>9,216.51</td>
</tr>
<tr>
<td>113</td>
<td>44</td>
<td>William N. Williams</td>
<td>1,128.66</td>
</tr>
<tr>
<td>114</td>
<td>45</td>
<td>Robert Woodley</td>
<td>55.00</td>
</tr>
<tr>
<td>115</td>
<td>46</td>
<td>Jesse Wray</td>
<td>542.00</td>
</tr>
<tr>
<td>116</td>
<td>47</td>
<td>Marie Yanasy</td>
<td>79.25</td>
</tr>
<tr>
<td>117</td>
<td>48</td>
<td>Paul W. Sowards</td>
<td>11,000.00</td>
</tr>
<tr>
<td>118</td>
<td>49</td>
<td>Gail Sowards</td>
<td>250.00</td>
</tr>
<tr>
<td>119</td>
<td>50</td>
<td>Paul W. Sowards, as father and next</td>
<td></td>
</tr>
<tr>
<td>120</td>
<td></td>
<td>------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>friend of Christina Gail Sowards</td>
<td>500.00</td>
</tr>
</tbody>
</table>
Ch. 2] APPROPRIATIONS

(51) Paul Sowards, as father and next friend
of Christopher Sowards ___________________ 250.00
(52) Larry G. Conley and Bonita E. Conley ______ _

(g) Claims against the Workmen’s Compensation Fund:
(To be paid from Workmen’s Compensation Fund)
(1) Peck Brogan Building & Remodeling _______ 14,695.00

(h) Claims against the Department of Mines:
(To be paid from General Revenue Fund)
(1) Ralph Underwood, Jr. _____________________ 1,754.35

(i) Claims against the Board of Vocational
Education, Division of Vocational Rehabilitation:
(To be paid from General Revenue Fund)
(1) Gambro, Inc. ____________________________ 536.40

(j) Claims against the Dept. of Commerce:
(To be paid from General Revenue Fund)
(1) Warner P. Simpson Co. ___ 406.18

Sec. 4. Reappropriations.—Any unexpended balances of Items I, V, VI, VII, VIII, IX, X, XII and XIII 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 1977-78; and the unexpended balances in appropriations in said Section 4 of such 1972 Budget Act for the Department of Natural Resources, Item IX, are redesignated as to purpose as follows:

Line Item 6, lines 1-3, Cedar Creek State Park, is redesignated for “Park Improvements—Cedar Creek State Park”.

Line Item 7, lines 1-4, Camp Creek State Forest, is redesignated for “Dam Design and Construction, Picnic Area Expansion, and Other Improvements—Camp Creek State Forest”.

Line Item 9, lines 1-5 Big Ditch (Webster County), is redesignated for “Area Improvements—Big Ditch (Webster County)”.
Line Item 13, lines 1-6, Mill Creek-Staats Mill (Jackson County) is redesignated for “Mill Creek Watershed—Jackson County” and the name of the project is changed in accordance therewith.

Line Item 27, lines 1-2, Tygart Lake State Park, is redesignated for “Park Improvements and Land Acquisition—Tygart Lake State Park”.

Any unexpended balances of Items I, II, III, IV, V, VI, VII, 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 1977-78.

Any unexpended balances of items I, II, III, and IV in the appropriations made by and under the authority of Section 4 of the 1976 Budget Act, are hereby reappropriated for expenditure during the fiscal year 1977-78; and the unexpended balances in appropriations in said Section 4 of such 1973 Budget Act for the Department of Natural Resources, Item XV, are redesignated as to purpose as follows:

Line Item A., lines 1-5, Cass Scenic Railroad, is consolidated into one line item and redesignated for “Area Improvements—Cass Scenic Railroad”.

Line Item C., lines 1-6, Grandview State Park, is consolidated into one line item and redesignated for “Park Improvements—Grandview State Park”.

Line Item D., lines 1-2, North Bend State Park, is consolidated into one line item and redesignated for “Park Improvements—North Bend State Park”.

Line Item E., lines 1-6, Cedar Creek State Park, is consolidated into one line item and redesignated for “Park Improvements—Cedar Creek State Park”.

Line Item F., lines 1-5, Camp Creek State Forest, is redesignated for “Dam Design and Construction, Picnic Area Expansion, and Other Improvements—Camp Creek State Forest”.

Line Item G., lines 1-9, Blackwater Falls State Park, is
52 consolidated into one line item and redesignated for “Park
53 Improvements—Blackwater Falls State Park”.
54
55 Line Item H., line 1, Hawks Nest State Park, is redesignated
56 for “Park Improvements—Hawks Nest State Park”.
57
58 Line Item I., lines 1-5, Pricketts Fort State Park, is con-
59 solidated into one line item and redesignated for “Park Im-
60 provements—Pricketts Fort State Park”.
61
62 Line Item J., lines 1-8, Babcock State Park, is consolidated
63 into one line item and redesignated for “Park Improvements
64 —Babcock State Park”.
65
66 Line Item K., lines 1-15, Tygart Lake State Park, is con-
67 solidated into one line item and redesignated for “Park Im-
68 provements and Land Acquisition—Tygart Lake State Park”.
69
70 Line Item N., line 1, Chief Logan State Park, is redesig-
71 nated for “Park Improvements—Chief Logan State Park”.
72
73 Line Item U., line 1, Big Ditch Recreation Area, is redesig-
74 nated for “Area Improvements—Big Ditch Public Hunting
75 and Fishing Area”.

1 Sec. 5. Appropriations from revenue sharing trust fund.
2 —The following items are hereby appropriated from the
3 Revenue Sharing Trust Fund to be available for expenditure
4 during the fiscal year 1977-78.

145—Revenue Sharing Trust Fund—Governor’s Office

Acct. No. 9721

1 Gas/Coal Conversion Project $ 500,000
2 Community and Economic Development 5,000,000

3 Total $ 5,500,000

146—Revenue Sharing Trust Fund—
State Department of Highways

Acct. No. 9705

1 Maintenance State Local Services $ 42,500,000
1020

APPROPRIATIONS [Ch. 2

147—Revenue Sharing Trust Fund—
Fairmont Emergency Hospital

Acct. No. 9733

1 Construction and Equipment $ 1,500,000

148—Revenue Sharing Trust Fund—
State Health Department

Acct. No. 9715

1 Logan-Mingo Area Mental Health Center $ 168,000
2 Valley Comprehensive Community Mental Health Center 211,000

4 Total $ 379,000

149—Revenue Sharing Trust Fund—
West Virginia Penitentiary

Acct. No. 9734

1 New Locking System $ 228,000

2 Sec. 6. Appropriations from countercyclical fiscal assistance trust fund.—Moneys received by the State of West Virginia pursuant to the provisions of the “Public Works Employment Act of 1976; Title II of Public Law 94-369”; enacted by the Congress of the United States, shall be deposited in the state treasury and kept in a separate account in the state treasury to be entitled “Countercyclical Fiscal Assistance Trust Fund”. The moneys heretofore received in fiscal year 1976-77 and deposited in the state treasury in Account No. 8024-21 for “Public Works Antirecession Program”, including any investment thereof and interest thereon, shall be transferred at the close of fiscal year 1976-77 and deposited in the said “Countercyclical Fiscal Assistance Trust Fund”. The following item is hereby appropriated from the Countercyclical Fiscal Assistance Trust Fund to be available for expenditure during the fiscal year 1977-78.
### Appropriations

#### 150—Countercyclical Fiscal Assistance Trust Fund—Governor's Office

Acct. No. 8012

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation Remuneration Incentive Program (TRIP)</td>
<td>$434,000</td>
</tr>
<tr>
<td>Health Planning, Licensure and Development</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>$116,934</td>
</tr>
</tbody>
</table>

Total $1,550,934

Funds in excess of amounts herein appropriated, after actual receipt and deposit, are hereby appropriated and made available for expenditure upon budget amendment and approval of the Governor.

Any part of this appropriation or amounts in excess thereof may be transferred to any other account in the Governor's Office or to any other department of State government for disbursement or expenditure.

### Sec. 7. 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 Two, acts of the Legislature, Regular Session 1975, under Section 7, acts of the Legislature, Regular Session 1976 and supplementary acts to Chapter 7, acts of the Legislature, Regular Session 1976, at the close of the fiscal year 1976-77 are hereby reappropriated for expenditure during the fiscal year 1977-78.

And the unexpended balances in appropriations in said Section 5 of such 1974 Budget Act for the Department of Natural Resources, Item IV, are redesignated as to purpose as follows:

- Line Items 3-7, Bluestone State Park (Summers), are consolidated into one line item and redesignated for “Park Improvements—Bluestone State Park (Summers”).

- Line Items 9-13, Little Beaver State Park (Raleigh), are
consolidated into one line item and redesignated for “Park Improvements and Land Purchase—Little Beaver State Park (Raleigh)”.

Line Items 14-15, Tygart Lake State Park (Taylor), are redesignated for “Park Improvements—Tygart Lake State Park (Taylor)”.

Line Items 31-32, Valley Falls, are redesignated for “Park Improvements and Land Purchase—Valley Falls State Park”.

The unexpended balance in the appropriations for the Department of Natural Resources, for Pipestem State Park—Capital Improvements, Chapter 37, acts of the Legislature, Regular Session, 1975, is consolidated into one line item and redesignated for “Park Improvements—Pipestem State Park”.

Sec. 8. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred seventy-eight 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 5-A, Article 2, of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the state auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 9. State improvement fund appropriation.—Bequests or donations of nonpublic funds received by the Governor on behalf of the State during the fiscal year one thousand nine hundred seventy-eight, for the purpose of making studies and recommendations relating to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state
treasury in a separate account therein designated "State Improvement Fund."

There is hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred seventy-eight, to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the State or its citizens.

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 into the state treasury is hereby appropriated out of the fund into which 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 obligations 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 re-
lating 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 col-
lections.

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 the gross collections.

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 cor-
porations 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 redemption of lands;
(b) By public service corporations;
(c) For tax forfeitures.

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 9-A, Section 16 of the Code of West Virginia.

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

Sec. 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 5-A, 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 revenue remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred seventy-seven, to the Governor's Office—Emergency Flood Disaster Relief, Account No. 131, supplementing chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill."

WHEREAS, The Legislature hereby finds and declares that an emergency flood disaster has occurred in southern West Virginia, affecting the counties of Cabell, Greenbrier, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming, to the great detriment of such area and of the state of West Virginia, as a whole; and with it being the primary responsibility of the state to respond to such emergency with prompt aid, relief and assistance to its citizens; and

WHEREAS, Such flood disaster has, among other things, destroyed or rendered uninhabitable large numbers of residential housing units, thus depriving and dispossessing persons and families of needed shelter and decent and safe residential housing in such areas and posing a present and continuing danger to such persons' and families' health, safety and welfare; that other governmental programs and aid and that of private enterprise, without prompt and immediate expenditure of public moneys by the state, will be unable to provide the financing and other assistance required for prompt replacement of such residential housing in the affected areas within the time and in the manner which the interest of the state and of its citizens require, and that a direct consequence thereof will be that the citizens of this state and inhabitants of such areas have been and will continue to be forced to relocate to other areas, within or without this state, resulting in (a) loss of employment to our citizens in such areas, (b) a severe, prolonged
disruption and decline in the economy of such areas, (c) a substantial and prolonged impairment of the ability of business, industry and governmental units in such areas to recover from the effects of such disaster because of the loss of key employees and their families, customers and taxpayers forced to relocate elsewhere because of their inability to obtain sanitary, decent and safe replacement residential housing in such areas, and (d) a prolonged erosion of the property tax base and the excise tax base of such areas, all to the great detriment of the direct safety, health and welfare of the citizens of such areas and of this state; thus necessitating expenditure of public moneys in aid thereof and for such public purpose. Relief and assistance to be provided by an appropriation of public moneys of the state will clearly and markedly contribute to the prompt and timely replacement of such residential housing and to the correction and alleviation of the other undesirable human and community conditions, as described, with such appropriation of public moneys to be, in all respects for the benefit of the people and citizens of the state of West Virginia, for a public purpose of promoting their health, welfare and safety, and for a meeting of the public policy and a public necessity of this state; and

WHEREAS, The Governor heretofore submitted to the Legislature his Executive Budget Document, dated February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the fiscal year 1976-77, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore,

Be it enacted by the Legislature of West Virginia:

Title II, section one, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the Budget Bill, is hereby supplemented by adding thereto the following new account, line item and language of appropriation:
EXECUTIVE

Governor's Office—Emergency Flood Disaster Relief

Account No. 131

1 Emergency Flood Disaster Assistance for Replacement Residential Housing, Site Acquisition, or both, in the Counties of Cabell, Greenbrier, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming, State of West Virginia .................. $ 10,000,000

This supplementary appropriation is to be expended through monetary grants or other means, in amounts determined by the Governor, to or for the benefit of persons or families actually deprived or dispossessed from residential housing in their capacity as owner or occupant thereof, which residential housing was destroyed or rendered uninhabitable by the flood disaster in the aforesaid counties of this state in the spring of 1977, for the purpose of aiding in the acquisition and construction in such areas of replacement residential housing, including mobile homes, site acquisition, or both, relating to prior residential housing destroyed or damaged to the point of uninhabitability, with such funds to be further usable for improvements incidental or appurtenant thereto.

All or any part of this appropriation may be expended in conjunction with federal funds, to match or maximize grants-in-aid from the federal government or moneys from any source. Any part of this appropriation may be transferred to any account in the governor's office or to any other department of state government for such purposes and for disbursement therefrom.

This appropriation shall be available for expenditure immediately upon the effective date of this bill, with any unexpended balance remaining in the appropriation at the close of fiscal year 1976-77 being hereby reappropriated for expenditure during the subsequent fiscal year of 1977-78.

Following the effective date of this bill, a monthly
36 report shall be submitted by the Governor to the Legislative Auditor, detailed and itemized, in nature, of all transfers and expenditures made hereunder and for such purposes during the preceding month.

CHAPTER 4

(S. B. 9—By Mr. Brotherton, Mr. President, Mr. Fanning and Mr. Ward)

[Passed May 6, 1977; 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-seven, to the Governor's Office—Civil Contingent Fund, Account No. 124, supplementing chapter seven, 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 February 16, 1977, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the general revenue fund available for further appropriation during the fiscal year 1976-77, a part 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 Account No. 124, chapter seven, acts of the Legislature, regular session, one thousand nine hundred seventy-six, known as the "Budget Bill," be supplemented by adding the following items and sums:
TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

7—Governor's Office—Civil Contingent Fund

Acct. No. 124

1. Southern West Virginia flood disaster recovery program $1,000,000
2. Southern West Virginia flood disaster housing site acquisition in support of federal programs $1,000,000
3. Southern West Virginia flood disaster individual and family assistance grants $2,500,000

Total $4,500,000

This appropriation shall be available for expenditure immediately upon the effective date of this bill.

All or any part of this appropriation may be used to match or aid Federal Funds, and may be transferred to any department, agency, board or commission for such purpose, upon requisition of the Governor.

Any unexpended balance remaining in this account at the close of the fiscal year 1976-77 is hereby appropriated for expenditure during the fiscal year 1977-78.

Following the effective date of this bill, a monthly report shall be submitted by the Governor to the Legislative Auditor, detailed and itemized, in nature, of all transfers and expenditures made hereunder and for such purposes during the preceding month.

CHAPTER 5

(S. B. 6—By Mr. Brotherton, Mr. President)

[Passed May 6, 1977; in effect from passage. Approved by the Governor.]

AN ACT to repeal section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, and to amend and reenact article six, chapter twenty-nine of said code, all relating to the civil service system and classification of employees; providing a general purpose; definition of terms; establishing a classified service and classified-exempt service and providing exceptions; prohibiting additions to the classified service during certain specified periods of time; exempting policymaking positions from the classified service, including those presently so classified; providing a procedure to bring additional positions under classified service; state personnel department generally; retention of certain personnel, funds and equipment; selection and appointment of director of personnel; duties, qualifications and removal of director; continuing that state agency known as the civil service commission; establishing professional and other qualifications of members of civil service commission; providing the governor with the discretion to retain present members of the commission or to appoint new members with professional qualifications; appointment, terms, removal and compensation of members; selection of chairman and meetings of commission; advisory board; duties of commission; additional duties of director and assistants; establishment of a roster of employees; preparation and rating of tests; rules and regulations of commission; position classification plans for classified and classified-exempt service; pay plan for classified service; facilities and equipment for department; compliance of officers and employees; status of present employees; certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll; appeals to commission and hearings; judicial review; records of department; services to political subdivisions and cooperation with other agencies; oaths, testimony and production of records; immunity from suit; refusal to testify; prohibition of favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited; certain other acts prohibited; providing penalties; appropriations to department to cover cost of administration; and acceptance of grants or contributions.
Be it enacted by the Legislature of West Virginia:

That section thirty-four, article two, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed, and that article six, chapter twenty-nine of said code be amended and reenacted, all to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-1. General purpose.
§29-6-2. Definition of terms.
§29-6-3. Classified service.
§29-6-4. Classified-exempt service; additions to classified service; exceptions.
§29-6-5. State personnel department generally; personnel, funds, equipment, etc.
§29-6-6. Selection and appointment of director of personnel; duties; qualifications; removal.
§29-6-7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.
§29-6-8. Duties of commission generally.
§29-6-9. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.
§29-6-10. Rules of commission.
§29-6-11. Duty to furnish facilities for department's use.
§29-6-12. Duties of state officers and employees; legal proceedings to secure compliance with article and rules.
§29-6-14. Certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll.
§29-6-15. Appeals by employees to commission; hearings; review by court of appeals.
§29-6-16. Records of state personnel department.
§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.
§29-6-18. Oaths, testimony and production of records; immunity from suit.
§29-6-19. Refusal to testify.
§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.
§29-6-22. Penalties.
§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

§29-6-1. General purpose.

1 The general purpose of this article is to attract to 
2 the service of this state personnel of the highest ability 
3 and integrity by the establishment of a system of per- 
4 sonnel administration based on merit principles and scien-
scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions in the classified service shall be made solely on the basis of merit and fitness, except as hereinafter specified. All employment positions not in the classified service, with the exception of the board of regents, are included in a classification plan known as classified-exempt service.

§29-6-2. Definition of terms.

As used in this article unless the context clearly indicates otherwise:

(1) "Agency" means any administrative unit of state government, including any authority, board, bureau, commission, committee, council, department or office.

(2) "Appointing authority" means a person or group of persons authorized by an agency to make appointments to positions in the classified or classified-exempt service.

(3) "Class" or "class of positions" means a group of positions sufficiently similar in duties, training, experience and responsibilities, as determined by specification, that the same qualifications, the same title, and the same schedule of compensation and benefits may be equitably applied to each position in the group.

(4) "Classification plan" means the plan by which positions in the classified service and classified-exempt service have been allocated by class.

(5) "Classified-exempt service" means an employee whose position satisfies the definitions for "class" and "classify" but who is not covered under the civil service system or employed by the board of regents.

(6) "Classified service" means an employee whose job satisfies the definitions for "class" and "classify" and who is covered under the civil service system.

(7) "Classify" means to group all positions in classes and to allocate every position to the appropriate class in the classification plan.
(8) "Policymaking position" means a position in which
the person occupying it (a) acts as an adviser to, or
formulates plans for the implementation of broad goals
for, the executive or administrative head of the agency,
(b) is in charge of a major administrative component of
the agency and (c) reports directly and is directly ac-
countable to the administrative or executive head of the
agency.

(9) "Position" means a particular job which has been
classified based on specifications.

(10) "Specification" means a description of a class of
position which defines the class, provides examples of
work performed and the minimum qualifications required
for employment.

(11) "Veteran" means any person who has served in
the armed forces of the United States of America during
World War I (April 6, 1917—November 11, 1918), World
War II (December 7, 1941—December 31, 1946), the Korean
Conflict (June 27, 1950—January 31, 1955), or the Vietnam
Conflict (August 5, 1964—March 28, 1973), and who has
received a discharge under honorable conditions from
such service.

§29-6-3. Classified service.

1 The classified service includes all positions covered
by the present civil service system as of the thirtieth day
of June, one thousand nine hundred seventy-six, except
as otherwise provided in this article. Positions may be
added to the classified service as provided in section four
of this article.

§29-6-4. Classified-exempt service; additions to classified ser-
vice; exceptions.

1 The classified-exempt service comprises all positions
not included in the classified service and those positions
specifically excepted from the classified service as pro-
vided in this section.

5 In no event shall persons employed by the board of
regents be considered as included in either the classified
or classified-exempt service.
Except for the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January and except for the same periods commencing in the year one thousand nine hundred eighty and in each fourth year thereafter, the governor may, by executive order, with the written consent of the civil service commission and the appointing authority concerned, add to the list of positions in the classified service, but such additions shall not include the following:

(1) The state Legislature and other officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions and heads of departments appointed by the governor or such heads of departments selected by commissions or boards when expressly exempt by law or board order.

(3) Excluding the policymaking positions in an agency, one principal assistant or deputy and one private secretary for each board or commission or head of a department elected or appointed by the governor or Legislature.

(4) All policymaking positions.

(5) Not more than fifteen employees in the office of the governor.

(6) Judges, referees, receivers, jurors and notaries public.

(7) The secretaries and clerks of each judge of a court of record.

(8) Patients or inmates employed in state institutions.

(9) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislature or a committee thereof, an executive department or by authority of the governor.

(10) All employees assigned to the executive mansion.

(11) Laborers employed by any agency.

(12) Managers and clerks of liquor stores.
(13) Superintendent, county maintenance of roads, and all personnel under his supervision.

(14) Part-time professional personnel engaged in professional services without administrative duties and personnel employed for less than ninety working days a year.

(15) All clerical employees who are not under the present classified system and whose jobs do not require special knowledge or skill and training in the operation of business machines.

All executive orders of the governor adding to the list of positions in the classified service which were dated or issued during the period commencing on the first day of July, one thousand nine hundred seventy-six, and ending on the first Monday after the second Wednesday of the following January or which are dated or issued within the same period commencing in the year one thousand nine hundred eighty or in each fourth year thereafter, shall be null and void, and no person occupying a position added by such executive order to the list of positions in the classified service shall be entitled on account of such order to any right bestowed upon any position or person within the classified service by the provisions of this article or by any rule or regulation promulgated thereunder.

Nothing herein shall be construed as precluding the appointing authorities from filling any classified-exempt position in the manner in which positions in the classified service are filled.

§29-6-5. State personnel department generally; personnel, funds, equipment, etc.

1. The present department of personnel of the civil service system as of the effective date of this article is continued. The services of the employees of the present office of the director of personnel shall be considered continuous. In addition, all funds, equipment, supplies, personnel and property records, or anything of value now in the possession of the state personnel department shall remain therein.
§29-6-6. Selection and appointment of director of personnel; duties; qualifications; removal.

After selection through open competitive examination, then upon recommendation of the civil service commission, the governor shall appoint a director of personnel, who shall be experienced in the field of personnel administration, and who shall be knowledgeable concerning scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation and welfare of employees, and who is in known sympathy with the application of merit principles in public employment. The selection and appointment must be in conformity with civil service rules. The present director of personnel may be the appointee. It shall be his duty to administer this article so as to effectuate the general purpose of such article as set forth in section one hereof. The director of personnel may be removed by the civil service commission for cause only after he has been presented in writing with the reasons for his removal. He shall be given an opportunity, not less than fifteen days, to answer any charges either in writing or upon his request to be heard by the commission. The statement of reasons and answer or transcript of hearing shall be filed with the secretary of state as a public record. The decision of the commission, after a hearing, shall be final and not subject to appeal.

None of the provisions of section two-a, article seven, chapter six of this code, except the annual salary provision, shall be applicable to the director of personnel of the civil service system.

§29-6-7. Civil service commission; qualifications of members; vacancies; appointment and terms of members; removal; compensation; chairman; meetings; advisory board.

(a) That agency of state government heretofore established and known as the civil service commission shall continue to exist. The commission shall consist of three members with the following qualifications: One shall be a person with professional experience in the personnel
matters of business and industry; one with such experience in the field of government personnel administration; and one with such experience in the field of labor.

Of the three members of the commission: One shall serve for a term ending on the thirtieth day of June, one thousand nine hundred eighty; one for a term ending on the thirtieth day of June, one thousand nine hundred eighty-one; and one for a term ending on the thirtieth day of June, one thousand nine hundred eighty-two. Thereafter, each member of the commission shall be appointed for a term ending six years from the date of expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the commission shall hold office until his successor is appointed and qualified.

The members of the civil service commission shall be persons in sympathy with the application of merit principles to public employment. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer or member of a committee in any partisan political club or organization or shall hold, or be a candidate for, any paid public office. Not more than two members of the same political party shall serve on the commission at the same time.

(b) The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission. On or after the effective date of this article, the governor may continue in office any member of the commission previously appointed for the term to which such member was appointed, notwithstanding the qualifications established in subsection (a) of this section; or the governor may appoint to complete such term a new member who shall meet such professional qualifications.

(c) Except as permitted by subsection (b) of this section, a member of the commission may not be removed from office except for official misconduct, incompetence, neglect of duty, gross immorality or malfeas-
ance, and then only in the manner prescribed in article six, chapter six of this code for the removal by the governor of state elected officers.

(d) Members of the commission shall each be paid seventy-five dollars for each day devoted to the work of the commission, but not more than one thousand eight hundred dollars in any one fiscal year. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties, except that in the event the expenses are paid, or are to be paid, by a third party, the members shall not be reimbursed by the state.

(e) The commission shall elect one of its members chairman. It shall meet at such time and place as shall be specified by call of the chairman or the director of personnel. At least one meeting shall be held in each month. All meetings shall be open to the public. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Two members shall constitute a quorum for the transaction of business.

(f) There is hereby created an advisory board to advise the commission and the director in the administration of this article. The advisory board shall consist of the appointing authorities from all agencies having employees in the classified service.

§29-6-8. Duties of commission generally.

1 In addition to the duties expressly set forth elsewhere in this article, the commission shall:

2 (1) Represent the public interest in the improvement of personnel administration in the classified service.

3 (2) Advise the governor and the director on problems concerning personnel administration.

4 (3) Foster the interest of institutions of learning and of industrial, civic, professional and employee organizations in the improvement of personnel standards in the classified service.
11 (4) Make any investigation which it may consider desirable concerning the administration of personnel in the classified service and make recommendations to the director with respect thereto.

15 (5) Make an annual report and special reports and recommendations to the governor and to the Legislature.

17 (6) Approve the budget as prepared by the director for administration of this article before submission to the department of finance and administration.

§29-6-9. Duties of director generally; designating employee to act in absence of director; assistants in preparation and rating of tests.

1 (a) The director, as executive head of the department, shall direct and supervise all its administrative and technical activities. In addition to the duties imposed upon him elsewhere in this article, it shall be his duty:

5 (1) To apply and carry out this article and the rules adopted thereunder.

7 (2) To attend meetings of the commission and to act as its secretary and keep minutes of its proceedings.

9 (3) To establish and maintain a roster of all employees in the classified and classified-exempt service, in which there shall be set forth, as to each employee, the class title, pay or status, and other pertinent data.

13 (4) To appoint such employees of the department and such experts and special assistants as may be necessary to carry out effectively the provisions of this article.

16 (5) To foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee effectiveness, including training, safety, health, counseling and welfare.

20 (6) To make available to the public information about vacancies in the classified and classified-exempt service and to strive constantly to attract to the career service of this state people of the highest ability.

24 (7) To investigate from time to time the operation and effect of this law and of the rules made thereunder and
to report his findings and recommendations to the commission and to the governor.

(8) To make to the commission an annual report regarding the work of the department and such special reports as he may consider desirable.

(9) To prepare the annual budget for the department of personnel and, when approved by the commission, submit it to the director of the budget.

(10) To perform any other lawful acts which he may consider necessary or desirable to carry out the purposes and provisions of this article.

(b) In the event of the absence of the director or his inability for any cause to discharge the powers and duties of his office, the commission may from time to time designate in writing an employee of the department to act for him. In such case, the powers and duties of the director shall devolve upon such employee designated by the commission.

(c) The director may designate appropriate persons, including officers and employees in the state service, to assist in the preparation and rating of tests. An appointing authority shall excuse any employee in his division from his regular duties for the time required for his work as an examiner. No officer or employee shall be entitled to extra compensation for further services as an examiner but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as an examiner; except that in the event the expenses are paid, or are to be paid, by a third party, reimbursement will not be made by the state.

§29-6-10. Rules of commission.

1 The commission shall have the authority to promulgate, amend or repeal rules, in accordance with chapter twenty-nine-a of this code, to implement the provisions of this article.

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all posi-
tions in the classified-exempt service, based upon simi-
larly of duties performed and responsibilities assumed,
so that the same qualifications may reasonably be required
for and the same schedule of pay may be equitably ap-
plied to all positions in the same class. The position
classification plan for classified-exempt service shall be-
come effective not later than the first day of July, one
thousand nine hundred seventy-nine. Except for persons
employed by the board of regents, all persons receiving
compensation in the form of a wage or salary, funded
either in part or in whole by the state, shall be included
in either the position classification plan for classified
service or classified-exempt service. After each such
classification plan has been approved by the commission,
the director shall allocate the position of every employee
in the classified service to one of the classes in the
classified plan and the position of every employee in the
classified-exempt service to one of the positions in the
classified-exempt plan. Any employee affected by the
allocation of a position to a class shall, after filing with
the director of personnel a written request for reconsider-
atation thereof in such manner and form as the director
may prescribe, be given a reasonable opportunity to be
heard thereon by the director. The interested appointing
authority shall be given like opportunity to be heard.

(2) For a pay plan for all employees in the classified
service, after consultation with appointing authorities and
the state fiscal officers, and after a public hearing held
by the commission. Such pay plan shall become effective
only after it has been approved by the governor after
submission to him by the commission. Amendments to
the pay plan may be made in the same manner. Each
employee shall be paid at one of the rates set forth in the
pay plan for the class of position in which he is employed.
The principle of equal pay for equal work in the several
agencies of the state government shall be followed in the
pay plan as established hereby.

(3) For open competitive examinations to test the
relative fitness of applicants for the respective positions
in the classified service. Such examinations need not be
held until after the rules have been adopted, the service
classified and a pay plan established, but shall be held not later than one year after this article takes effect. Such examinations shall be announced publicly at least fifteen days in advance of the date fixed for the filing of applications therefor, and may be advertised through the press, radio and other media. The director may, however, in his discretion, continue to receive applications and examine candidates long enough to assure a sufficient number of eligibles to meet the needs of the service; and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings.

An additional five points shall be awarded to the score of any examination successfully completed by a veteran. A disabled veteran shall be entitled to an additional ten points, rather than five points as aforesaid, upon successful completion of any examination.

(4) For promotions within the classified service which shall give appropriate consideration to the applicant's qualifications, record of performance and his score on written examination, when such examination is practicable. In filling vacancies an effort should be made to achieve a balance between promotion from within the service and the introduction into the service of qualified new employees. An advancement in rank or grade or an increase in salary beyond the maximum fixed for the class shall constitute a promotion.

(5) For the establishment of eligible lists for appointment and promotion within the classified service, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Eligibility for appointment from any such list shall continue not longer than three years. An appointing authority shall make his selection from the top five names on the appropriate lists of eligibles.

(6) For the rejection of candidates or eligibles within the classified service who fail to comply with reasonable requirements in regard to such factors as age, physical condition, character, training and experience, who are addicted to alcohol or narcotics, or who have attempted any deception or fraud in connection with an examination,
or where in the judgment of the commission there is reasonable doubt of the loyalty of the candidate or allegiance to the nation.

(7) For a period of probation not to exceed one year before appointment or promotion may be made complete within the classified service.

(8) For provisional employment without competitive examination within the classified service when there is no appropriate eligible list available. No such provisional employment shall continue longer than six months, nor shall successive provisional appointments be allowed, except during the first year after the effective date of this article, in order to avoid stoppage of orderly conduct of the business of the state.

(9) For keeping records of performance of all employees in the classified service, which service records may be considered in determining salary increases and decreases provided in the pay plan; as a factor in promotion tests; as a factor in determining the order of layoffs because of lack of funds or work and in reinstatement; and as a factor in demotions, discharges and transfers.

(10) For layoffs by reason of lack of funds or work, or abolition of a position, or material change in duties or organization, and for reemployment of employees so laid off, giving consideration in both layoffs and reemployment to performance record and seniority within the classified service.

(11) For discharge or reduction in rank or grade only for cause of employees in the classified service. Discharge or reduction of these employees shall take place only after the person to be discharged or reduced has been presented with the reasons for such discharge or reduction stated in writing, and has been allowed a reasonable time to reply thereto in writing, or upon request to appear personally and reply to the appointing authority or his deputy. The statement of reasons and the reply shall be filed as a public record with the director. Notwithstanding the foregoing provisions of this subdivision, no permanent
employee shall be discharged from the classified service for absenteeism upon using all entitlement to annual leave and sick leave when such use has been due to illness or injury as verified by a physician’s certification or for other extenuating circumstances beyond the employee’s control unless his disability is of such a nature as to permanently incapacitate him from the performance of the duties of his position. Upon exhaustion of annual leave and sick leave credits for the reasons specified herein and with certification by a physician that the employee is unable to perform his duties, a permanent employee shall be granted a leave of absence without pay for a period not to exceed six months if such employee is not permanently unable to satisfactorily perform the duties of his position.

(12) For such other rules and administrative regulations, not inconsistent with this article, as may be proper and necessary for its enforcement.

(13) The commission shall review and approve by rules and regulations the establishment of all classified-exempt positions to assure consistent interpretation of the provisions of this article.

The commission and the director may include in the rules provided for in this article such provisions as are necessary to conform to regulations and standards of any federal agency governing the receipt and use of federal grants-in-aid by any state agency, anything in this article to the contrary notwithstanding. The commission and the director shall see that rules and practices meeting such standards are in effect continuously after the effective date of this article.

§29-6-11. Duty to furnish facilities for department’s use.

All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light and furniture, for any examination, hearing or investigation authorized by this article. The department shall pay to a municipality
7 or political subdivision the reasonable cost of any such
8 facilities furnished by it.

§29-6-12. Duties of state officers and employees; legal pro-
ceedings to secure compliance with article and
rules.

1 All officers and employees of the state shall comply
2 with and aid in all proper ways in carrying out the pro-
3 visions of this article and the rules, regulations and orders
4 thereunder. All officers and employees shall furnish any
5 records or information which the director or the com-
6 mission may request for any purpose of this article. The
7 director may institute and maintain any action or pro-
8 ceeding at law or in equity that he considers necessary
9 or appropriate to secure compliance with this article and
10 the rules and orders thereunder.


1 (a) Except in the case of the removal of an employee
2 for cause and except for persons in policymaking posi-
3 tions, employees who have gained permanent status under
4 the present system of classified service as of the effective
5 date of this article will not be subject to further examina-
6 tion, except when they wish to qualify for promotion, and
7 will continue in the position they hold. Their rights as
8 permanent employees shall be continuous. Employees
9 holding provisional appointments under the present sys-
10 tem of classified service must qualify for permanent ap-
11 pointments under competitive examination.

12 (b) No person occupying a policymaking position, in-
13 cluding persons included in and qualified for the classified
14 service on the effective date of this article, shall be entitled
15 to any right bestowed upon any position or person within
16 the classified service by the provisions of this article or
17 by any rule or regulation promulgated thereunder:
18 Provided, That any person who, on the effective date of
19 this article, is serving in a policymaking position and is
20 included in and qualified for the classified service in any
21 agency to which the federal merit systems standards apply
22 on account of a state program financed in whole or in
part by federal funds shall lose no rights because of the enactment of this section.

(c) Employees holding positions included under classified service by this article or placed under the same by future action shall be required to take qualifying tests prescribed by the director.

Nothing in this article shall preclude the reclassification or reallocation as provided by this article of any position.

§29-6-14. Certification of payrolls; failure of appointing authority to comply with order of commission; wrongfully withholding certification of payroll.

(a) No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director, or of his authorized agent, that the persons named therein have been appointed and employed in accordance with the provisions of this article and the rules, regulations and orders thereunder. The director may for proper cause withhold certification from an entire payroll or from any specific item or items thereon. The director may, however, provide that certification of payrolls may be made once every six months, and such certification shall remain in effect except in the case of any officer or employee whose status has changed after the last certification of his payroll. In the latter case no voucher for payment of salary to such employee shall be issued or payment of salary made without further certification by the director.

(b) If an appointing authority fails to comply with an order of the commission within thirty days after a hearing, he shall be personally liable to the appealing employee for any salary due from the time of the final order of reinstatement by the commission.

(c) If the director wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain a proceeding in the courts to
compel the director to certify such payroll voucher or account.

§29-6-15. 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, demotion or suspension was proper in all respects and that such dismissal, demotion or suspension 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 commis-
ion is in the best interest of the parties or any combina-
tion 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.

§29-6-16. Records of state personnel department.

The records of the department, except such records
as the rules may properly require to be held confidential
for reasons of public policy, shall be public records and
shall be open to public inspection, subject to reasonable
regulations as to the time and manner of inspection which
may be prescribed by the director.

§29-6-17. Services to political subdivisions; cooperation with agencies for other jurisdictions.

(a) Subject to the approval of the commission the
director may enter into agreements with any munici-
pality or other political subdivision of the state to furnish
services and facilities of the department to such munici-
pality or political subdivision in the administration of
its personnel on merit principles. Any such agreements
shall provide for the reimbursement to the state of the
reasonable cost of the services and facilities furnished,
as determined by the director. All municipalities and
political subdivisions of the state are hereby authorized
to enter into such agreements. Subject to the approval
of the commission, the director may enter into an agree-
ment with the state department of health for the inclu-
sion of personnel of local health departments under the
classified service system established by this article.

(b) The director may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for ap-
20 pointment in accordance with the provisions of this article.

§29-6-18. Oaths, testimony and production of records; immunity from suit.

1 The commission, each member of the commission and the director shall have power to administer oaths, subpoena witnesses and compel the production of books and papers pertinent to any investigation or hearing authorized by this article. Any person who shall fail to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation or hearing or who shall knowingly give false testimony therein shall be subject to the penalty provisions provided for in this article. Immunity from civil suit is hereby granted for all relevant evidence offered at commission hearings.

§29-6-19. Refusal to testify.

1 If any employee in the classified or classified-exempt service shall willfully refuse or fail to appear before any court or judge, any legislative committee, or any officer, board or body authorized to conduct any hearing or inquiry, or having appeared shall refuse to testify or answer any question relating to the affairs or government of the state or the conduct of any state officer or employee on the ground that his testimony or answers would tend to incriminate him, or shall refuse to accept a grant of immunity from prosecution on account of any matter about which he may be asked to testify at any such hearing or inquiry, he shall forfeit his office or position and shall not be eligible thereafter for appointment to any position in the classified or classified-exempt service.

§29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

1 (a) No person shall be appointed or promoted to, or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his political
or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration.

(d) No employee in the classified service or member of the commission or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) No employee in the classified service shall be a member of any national, state or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid public office, or hold any paid elective public office, or shall take any part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances, nonpartisan activities or issues, and other similar questions or activities shall not be deemed to be prohibited by the foregoing provisions of this section.


(a) No person shall make any false statement, certificate, mark, rating or report with regard to any test,
certification or appointment made under any provisions of this article or in any manner commit or attempt to commit any fraud preventing the impartial execution of this article and the rules.

(b) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, or other valuable consideration for or on account of any certification, appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(c) No employee of the department, examiner, or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this article, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

§29-6-22. Penalties.

(a) Any person who willfully violates any provision of this article or of the rules shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars, or imprisoned in the county jail for a period not to exceed one year, or both fined and imprisoned. Jurisdiction under this section shall be in a court of record exercising criminal jurisdiction within the county where the offense is committed.

(b) Any person who is convicted of a misdemeanor under this article shall, for a period of five years, be ineligible for appointment to or employment in a position in the classified or classified-exempt service, and if he is an officer or employee of the state, shall forfeit his present office or position.

§29-6-23. Appropriations; cost of administering article; acceptance of grants or contribution.

(a) Appropriations shall be made from the general fund to the department of personnel to meet the cost of administering the provisions of this article.
4  (b) The director shall maintain accurate records reflect-  
ing the cost of administering the provisions of this  
article.

7  (c) The department is authorized and directed to  
accept on behalf of the state any grant or contribution,  
federal or otherwise, made to assist in meeting the cost of  
carrying out the purposes of this article.

\[\text{CHAPTER 6}\]

\((\text{H. B. 114—Originating in the House Committee on the Judiciary})\)

[Passed May 5, 1977; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and ten, article five, 
chapter forty-nine; and section five, article eleven, chapter 
fifty-one, all of the code of West Virginia, one thousand 
nine hundred thirty-one, as amended, relating to child welfare 
and juvenile proceedings generally; the filing of juvenile peti- 
tions and the grounds for taking juveniles into custody; de- 
tention hearings with respect to such juveniles and the 
procedures relating thereto; providing for representation for 
such juveniles by counsel and the appointment of such counsel 
when appropriate; providing for the fees and expenses for 
such appointed counsel and the payment thereof; providing 
for procedures for the transfer of juvenile proceedings to 
criminal proceedings in certain cases and requiring a hearing 
with respect to any such transfer; and the burden of proof 
with respect to such hearing; providing procedure for appoint- 
ment of counsel; providing for appointment of counsel in 
neglect cases; requiring affidavit of indigency; and duty of circuit 
court to determine whether person is entitled to appointed 
counsel.

\text{Be it enacted by the Legislature of West Virginia:}\n
That sections eight and ten, article five, chapter forty-nine and 
section five, article eleven, chapter fifty-one, all of the code of West 
Virginia, one thousand nine hundred thirty-one, as amended, be 
amended and reenacted to read as follows:
Chapter
51. Courts and Their Officers.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-8. Taking a child into custody; detention hearing; counsel.

(a) In proceedings instituted by the filing of a juvenile petition the circuit court may enter an order directing that a child be taken into custody only if the petition shows that grounds exist for the arrest of an adult in identical circumstances or that the health, safety and welfare of the child demand such custody. A detention hearing shall be held without delay, but in no event shall the delay exceed the next succeeding judicial day, excluding Saturday, and such child shall be released on recognizance to his parent or custodian unless findings are made as specified in subsection (c) of this section.

(b) Absent a court order, a child may be taken into custody by a law-enforcement official only if grounds exist for the arrest of an adult in identical circumstances. Upon taking a child into custody, the arresting officer shall: (1) Immediately notify the child’s parent, custodian or, if the parent or custodian cannot be located, a close relative; (2) release the child into the custody of his parent or custodian unless the circumstances warrant otherwise; and (3) refer the matter to the prosecuting attorney, state department or probation officer for proceedings under this article. If the circumstances do not warrant the immediate release of the child, the arresting officer shall without undue delay notify the court or referee.

(c) In the event that a child is delivered into the custody of a sheriff or director of a detention facility, such sheriff or director shall immediately notify the court or referee. Said sheriff or director shall immediately provide to every child who is delivered into his custody, a written statement explaining
the child's right to a prompt detention hearing, his right to counsel including appointed counsel if he cannot afford counsel and his privilege against self-incrimination. In all cases when a child is delivered into custody, the child shall be released to his parent or custodian by the end of the next succeeding judicial day, excluding Saturday, after being delivered into such custody, unless the child has been placed in detention pursuant to subsection (d) of this section.

(d) A child in custody must immediately be taken before a referee or judge of the circuit court and in no event shall a delay exceed the next succeeding judicial day, excluding Saturday. The judge or referee shall inform the child of his right to remain silent, that any statement may be used against him and of his right to counsel, and no interrogation shall be made without the presence of a parent or counsel. If the child or his parent or custodian has not retained counsel, counsel shall be appointed forthwith. The referee or judge shall hear testimony concerning the circumstances for taking the child into custody, probable cause and the possible need for detention in accordance with section two, article five-a of this chapter.

If there are shown to be sufficient grounds for the arrest, including probable cause for the offense, the child shall be released on recognizance to his parent, or custodian, except that bail may be required when: (1) There is reasonable cause to believe that the child will be unavailable for court proceedings if the child is not detained; or (2) there is reasonable cause to believe that the child will, if not detained, commit an offense involving serious injury to any person. The findings and order shall be made in accordance with section three, article five-a of this chapter. If sufficient grounds for the arrest and probable cause are not shown, the child shall be released.

(e) Upon the presentation to the referee or to the court or judge thereof of a written request for the appointment of counsel and an affidavit by the child, or by his parents, the guardian of his person, his custodian, or any other person standing in loco parentis to him, or by the person named in the petition, showing that neither the child nor any other of
the aforementioned persons can pay for the services of counsel, the court or judge, upon being satisfied as to the truth of the information set forth in the affidavit, shall, by order entered of record, appoint an attorney-at-law to represent the child in any proceedings under the provisions of this article. The attorney so appointed shall be paid for his services and expenses in accordance with the provisions of article eleven, chapter fifty-one of this code.

§49-5-10. Transfer of jurisdiction.

(a) Upon motion of the prosecuting attorney, or upon the recommendation of the referee or upon its own motion, the court may at the time specified in section nine of this article transfer to a criminal proceeding the case of a child who is alleged to have committed, on or after his sixteenth birthday, an offense which, if committed by an adult, would be a felony if there is clear and convincing proof that: (1) The offense allegedly committed by the child is one of violence or evidences conduct which constitutes a substantial danger to the public; and (2) there are no reasonable prospects for rehabilitating the child through resources available to the court under this article. With reference to such rehabilitation prospects the court shall consider the child's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and such other matters as the court may deem appropriate. The burden of proof in any transfer hearing shall rest with the petitioner.

Such motion shall state the grounds for seeking the transfer from a juvenile proceeding to a criminal proceeding and the consequences of such transfer and shall be served upon the child, his parents or custodians and the child's counsel not less than seventy-two hours before the preliminary hearing. If the child's counsel is appointed at the preliminary hearing, the court or referee shall continue the hearing for not less than five days to allow counsel to prepare for the transfer hearing unless counsel indicates that he is prepared to proceed. Testimony of a child at a transfer hearing shall not be admissible in a criminal proceeding or at the adjudicatory hearing under this article.
(b) The hearing on transfer may not be waived and the failure to object to the transfer shall not constitute a waiver.

(c) If the court transfers the case to a criminal proceeding, the court’s findings of fact and conclusions of law shall be incorporated within the order. The child shall have the right to appeal to the supreme court of appeals from this order.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 11. DEFENSE OF NEEDY PERSONS.

§51-11-5. Appointment of counsel; procedure for determining eligibility; revocation of order of appointment of counsel.

(a) A circuit court at any time upon request, and upon the filing of an affidavit of indigency as hereinafter provided shall appoint one or more counsel, at least one of whom shall be reasonably competent in the practice of criminal law:

(1) to represent one accused of a felony, or of a misdemeanor punishable by imprisonment;

(2) to represent a juvenile under the provisions of article five, chapter forty-nine of this code;

(3) to represent a party under the provisions of article six, chapter forty-nine of this code;

(4) to represent a person in custody in seeking a writ of habeas corpus;

(5) to represent a person entitled to counsel under the provisions, chapter twenty-seven of this code;

(6) to represent a person whose order of probation or parole has been revoked under the provisions of article twelve, chapter sixty-two of this code.

(b) The affidavit of indigency and the attorney voucher and affidavit shall be upon such form as shall be prescribed by the supreme court of appeals, and shall be signed by the accused or other needy person or the attorney, or, in the event of his disability, by another person in his behalf.

(c) It shall be the duty of the circuit court, upon the basis of the affidavit of a person requesting appointment of
counsel and of such evidence as may be adduced in open
court, to determine whether such person is a needy person
so as to be entitled to appointed counsel. If the court
should determine that such person is not entitled to ap-
pointed counsel, the appointment previously made shall
be revoked, and the attorney previously appointed shall
be entitled to compensation under the provisions of this
article, for services already rendered.

CHAPTER 7

(Passed May 6, 1977; in effect July 1, 1977. Approved by the Governor.)

AN ACT to repeal article twelve, chapter five; to repeal article
one, chapter twenty-nine and to enact in lieu thereof a
new article one; to repeal article seventeen, chapter
twenty-nine; to amend and reenact section one, article
eight, chapter four; to amend and reenact sections six
and seventeen, article eight, chapter five; to amend and
reenact section one, article four-a, chapter five-a; to amend
and reenact section six, article twenty-six-a, chapter eight;
and to amend and reenact section fifteen, article one, chap-
ter twenty, all of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, all relating to cre-
ating a department of culture and history; providing for
the qualifications, appointment and powers of a commis-
sioner of culture and history; relating to the receipt and
expenditure of funds; relating to the science and culture
center; relating to the transfer of powers, duties, con-
tracts and obligations of existing agencies to the depart-
ment of culture and history; relating to abolishing the
West Virginia antiquities commission and the department
of archives and history; relating to establishing a division
of archives and history and qualifications, appointment and
powers of director thereof; designating the director of
archives and history as the state historian and archivist;
relating to establishing an archives and history commiss-
sion, and providing for its appointment and powers; providing for the protection of archaeological findings and providing penalties; relating to abolishing the arts and humanities council; relating to establishing an arts and humanities division and qualifications, appointment and powers of a director thereof; relating to establishing an arts and humanities commission, and providing for its appointment and powers; relating to publication of materials by divisions of the department of culture and history; relating to land of the department, its control and disposal; relating to membership on the governor's mansion advisory committee; relating to municipal and county historic landmarks commission; relating to membership on the public land corporation; relating to membership on the public records management and preservation committee; relating to disposal of public records with approval of state historian and archivist; relating to civil service coverage; and retaining present members of all commissions, boards and councils.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article one, chapter twenty-nine be repealed and that there be enacted in lieu thereof a new article one; that article seventeen, chapter twenty-nine be repealed; that section one, article eight, chapter four be amended and reenacted; that sections six and seventeen, article eight, chapter five be amended and reenacted; that section one, article four-a, chapter five-a be amended and reenacted; that section six, article twenty-six-a, chapter eight be amended and reenacted; and that section fifteen, article one, chapter twenty, all of said code be amended and reenacted, all to read as follows:

Chapter

29. Miscellaneous Boards and Officers.

4. The Legislature.

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

5A. Department of Finance and Administration.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.

§29-1-2. General powers of commissioner.

§29-1-3. Power to accept and receive funds; power to apply for grants; disbursement of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

§29-1-4. Transfer of powers and duties; existing contracts and obligations.

§29-1-5. Archives and history division; director.

§29-1-5a. Archives and history commission.

§29-1-5b. Protection of archaeological sites; penalties.

§29-1-6. Arts and humanities division; director.

§29-1-6a. Arts and humanities commission.

§29-1-7. Publication of materials; agreements.

§29-1-8. Land; control and disposal; rules and regulations.

§29-1-9. Department employees classified by civil service; exceptions.

§29-1-1. Creation of department of culture and history; divisions and commissions; purposes; definitions; effective date.

Effective the first day of July, one thousand nine hundred seventy-seven, there is hereby created a department of culture and history and the office of commissioner of culture and history. The governor shall nominate, and by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the department and shall be paid an annual salary and be governed by the provisions of section two-a, article seven, chapter six of this code. The commissioner so appointed shall have: (1) a bachelor's degree in one of the fine arts, social sciences, library science or a related field; or (2) four years’ experience in the administration of museum management, public administration, history or a related field.

The department shall consist of two divisions and two corresponding citizens commissions:
(1) An archives and history division, and an archives
and history commission; and
(2) An arts and humanities division, and an arts
and humanities commission.

The commissioner shall exercise control and super-
vision of the department and shall be responsible for
the projects, programs, and actions of each of its divi-
sions. The purpose and duty of the department is to
advance, foster and promote the creative and performing
arts and crafts, including both indoor and outdoor ex-
hibits and performances; to identify, acquire, mark and
care for historical, prehistorical, archaeological and unique
architectural sites, structures and objects in the state;
to coordinate all cultural and artistic activities in the
state government and at the state-owned facilities; to
acquire, preserve and classify books, documents and
memorabilia of historical interest or importance; and, in
general, to do all things necessary or convenient to pre-
serve and advance the culture of the state.

The department shall have jurisdiction and control of
all space in the building presently known as the West
Virginia science and culture center, including the deck
and court yards forming an integral part thereof.

For the purposes of this article "commissioner" means
the commissioner of culture and history, and "depart-
ment" means the department of culture and history.

§29-1-2. General powers of commissioner.

The commissioner shall assign and allocate space in
all facilities assigned to the department and all space
in the building presently known as the West Virginia
science and culture center, and may prescribe rules and
regulations for the use and occupancy of said facilities,
including tours of the science and culture center.

The commissioner shall coordinate the operations and
affairs of the divisions and commissions of the department
and assign each division or commission responsibilities
according to criteria he deems most efficient, productive
and best calculated to carry out the purposes of this
article. He shall provide to the fullest extent possible
for centralization and coordination of the bookkeeping, personnel, purchasing, printing, duplicating, binding and other services which can be efficiently combined. If the commissioner finds it necessary, he may establish an administrative division and other divisions for such purposes as he deems necessary, and may appoint directors thereof. The commissioner may appoint a director of the West Virginia science and culture center.

After consultation with the directors of the divisions of the department and the commissions, the commissioner shall prepare a proposed departmental budget for submission to the governor for each fiscal year. No contract, agreement or undertaking may be entered into by any division of the department which involves the expenditure of funds without the express written approval of the commissioner as to fiscal responsibility.

The commissioner shall prepare and submit to the governor an annual report in accordance with the provisions of section twenty, article one, chapter five of this code, which report shall include a detailed account of the activities of each division and commission of the department.

The commissioner shall employ all personnel for the divisions, except for persons in the professional positions established within the divisions as provided in this article; and shall supply support services to the commissions and to the governor’s mansion advisory committee.

§29-1-3. Power to accept and receive funds; power to apply for grants; disbursal of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.

The department may, in the name of the state of West Virginia, accept and receive grants, appropriations, gifts, bequests and funds from any public or private source for the purpose of carrying out the duties and purposes of this article. The department may apply for grants from the federal government, the national endowment for the arts, private foundations and any other source for the purposes of this article. All funds received from any source
shall be paid into the treasury of the state and disbursed
upon warrant by the state auditor following requisition
by the department. Such requisitions shall be signed by
the commissioner or by such other person as he may
authorize by written document deposited with the auditor
or, in the event of emergency, by the governor or his
designee. No funds or gifts received from any source
shall be expended or used for any purpose other than
that intended as evidenced by a positive and affirmative
declaration or by a negative restriction or limitation.
The unexpended balance on the effective date of this
article of any funds heretofore appropriated to or received
from any source by the West Virginia antiquities com-
mission, the West Virginia arts and humanities council,
the department of archives and history, the arts and
crafts division of the department of commerce, or the
present science and culture center, is hereby transferred
and appropriated to the department of culture and his-
tory for the purpose of carrying out its powers and
duties and payment of any bills and encumbrances in-
curred by the aforesaid agencies, and their successor
divisions within the department, except to the extent
such funds are required to be retained and expended by
an agency having citizen representation in which event
they shall succeed to the appropriate commission estab-
lished by this article. All books, papers, maps, charts,
plans, literature and other records, and all equipment in
the possession of the aforesaid agencies upon the effec-
tive date of this article, or of any member, officer or
employee thereof, shall be delivered and turned over to
the department of culture and history.

All federal or state funds received to provide grants-
in-aid or awards to further the purposes of this article
shall be approved and distributed by the appropriate
commission established by this article.

§29-1-4. Transfer of powers and duties; existing contracts and
obligations.

Except as otherwise provided in this article, the powers
and duties of the West Virginia antiquities commission,
the West Virginia arts and humanities council and the
department of archives and history are hereby trans-
ferred to the department of culture and history. All
existing contracts and obligations of the West Virginia
antiquities commission, the West Virginia arts and
humanities council and the department of archives and
history, or relating to the present science and culture
center, shall remain in full force and effect and shall be
performed by the department of culture and history.

§29-1-5. Archives and history division; director.

The purposes and duties of the archives and history
division are to locate, survey, investigate, register, iden-
tify, excavate, preserve, protect, restore and recommend
to the commissioner for acquisition historic, architec-
tural, archaeological and cultural sites, structures, docu-
ments and objects worthy of preservation, relating to
the state of West Virginia and the territory included
therein from the earliest times to the present, upon its
own initiative or in cooperation with any private or
public society, organization or agency; to conduct a con-
tinuing survey and study throughout the state to deter-
mine the needs and priorities for the preservation, restor-
ation and development of such sites, structures, docu-
ments and objects; to direct, protect, excavate, preserve,
study, and develop such sites, structures, documents, and
to operate and maintain a state library for the preserva-
tion of all public records, state papers, documents and
reports of all three branches of state government in-
cluding all boards, commissions, departments and agen-
cies as well as any other private or public papers, books
or documents of peculiar or historic interest or signifi-
cance; to preserve and protect all battle or regimental
flags borne by West Virginians and other memorabilia
of historic interest; to designate appropriate monuments,
tables or markers, historic, architectural and scenic sites
within the state and to arrange for the purchase,
replacement, care of and maintenance of such monu-
ments, tablets and markers and to formulate and prepare
suitable copy for them; to operate and maintain a state
museum; to cooperate with the state geological and eco-
nomic surveys in the survey's archaeological work; to
edit and publish a quarterly historical magazine devoted to the history, biography, bibliography and genealogy of West Virginia; and to perform such other duties as may be assigned to the division by the commissioner.

With the advice and consent of the archives and history commission, the commissioner shall appoint a director of the archives and history division, who shall have: (1) a bachelor's degree in one of the social sciences, or equivalent training and experience in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management; or (2) three years' experience in administration in the fields of West Virginia history, history, historic preservation, archaeology, or in records, library or archives management. Notwithstanding these qualifications, the person serving as the state historian and archivist on the date of enactment of this article shall be eligible for appointment as the director of the archives and history division. The director of the archives and history division shall serve as the state historian and archivist.

With the approval of the commissioner, the director shall establish professional positions within the division. The director shall employ the personnel within these professional positions for the division.

The director may promulgate rules and regulations concerning the professional policies and functions of the archives and history division, subject to the approval of the archives and history commission.

§29-1-5a. Archives and history commission.

The West Virginia antiquities commission established by article twelve, chapter five of this code shall continue in existence until the first day of July, one thousand nine hundred seventy-seven at which time it shall be abolished, and replaced by an archives and history commission which is hereby created and which shall be composed of nine appointed members.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members
of the commission for staggered terms of three years. A
person appointed to fill a vacancy shall be appointed
only for the remainder of that term. Of the members of
the archives and history commission first appointed, three
shall be appointed for a term ending the thirtieth day of
June, one thousand nine hundred seventy-eight, and three
each for terms ending one and two years thereafter:
Provided, That each person serving as a member of the
West Virginia antiquities commission, for a term which
has not expired on the effective date of this article, shall
be appointed by the governor without Senate confirm-
tion to the archives and history commission, as one of
the nine appointed members, for the term ending the
thirtieth day of June in the year in which his term
would expire as a member of the West Virginia anti-
quities commission.

No more than five of the appointed members may be
of the same political party. Members of the commission
shall be appointed so as to fairly represent both sexes,
the ethnic and cultural diversity of the state and the
geographic regions of the state. At least one of the
appointed members shall be an archaeologist, one an archi-
tect and one an historian.

The commission shall elect one of its members chairman.
It shall meet at such time as shall be specified by the
chairman. Notice of each meeting shall be given to each
member by the chairman at least five days in advance
of the meeting. A majority of the members shall constitute
a quorum for the transaction of business. The director
of the archives and history division shall be an ex
officio nonvoting member of the commission and shall
serve as secretary. The director, or a majority of the
members, may also call a meeting upon such notice as
provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reim-
bursed for all reasonable and necessary expenses actually
incurred in the performance of his duties; except that
in the event the expenses are paid, or are to be paid, by a
third party, the member or ex officio member, as the case may be, shall not be reimbursed by the state.

In addition to the nine appointed members, the president of the state historical society and the president of the state historical association of college and university teachers shall serve as ex officio voting members of the archives and history commission. The director of the state geological and economic survey and the state historic preservation officer shall serve as ex officio non-voting members of the archives and history division.

The commission shall have the following powers:

1. To advise the commissioner and the director of the archives and history division concerning the accomplishment of the purposes of that division and to establish a state plan with respect thereto;

2. To approve and distribute grants-in-aid and awards from federal and state funds relating to the purposes of the archives and history division;

3. To request, accept or expend federal funds to accomplish the purposes of the archives and history division when federal law or regulations would prohibit the same by the commissioner or division director, but would permit the same to be done by the archives and history commission;

4. To otherwise encourage and promote the purposes of the archives and history division;

5. To approve rules and regulations concerning the professional policies and functions of the division as promulgated by the director of the archives and history division; and

6. To advise and consent to the appointment of the director by the commissioner.

§29-1-5b. Protection of archaeological sites; penalties.

Archaeological sites and districts, identified as such by the archives and history division, on lands owned or leased by the state, or on private lands where investigation and development rights have been acquired by the state by lease or contract, shall not be disturbed, de-
veloped or destroyed except with permission of the com-
missioner.

Any person violating the provisions of this section
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not more than five hundred dol-
lars, or imprisoned in the county jail not more than six
months, or both fined and imprisoned.

§29-1-6. Arts and humanities division; director.

The purposes and duties of the arts and humanities
division are to stimulate, encourage, assist, promote,
foster and develop the performing and creative arts and
 crafts in the state; and in furtherance thereof to make
awards, prizes and grants to individual performers,
artists or craftsmen and to public or private corporations
or associations in the field of either the performing or crea-
tive arts and crafts that would tend to encourage and
foster the advancement of such arts and crafts; to present
cultural, artistic or craft exhibits or performances at the
department's facilities or on tour; and to perform such
other duties as may be assigned to said division by the
commissioner.

With the advice and consent of the arts and humani-

ties commission, the commissioner shall appoint a direc-
tor of the arts and humanities division, who shall have:
(1) a bachelor's degree in the fine arts or related field or
equivalent training and experience; or (2) three years' ex-
perience in administration of the fine arts or a related
field. Notwithstanding these qualifications, the person
serving as the executive director of the arts and humani-
ties council on the date of the enactment of this article
shall be eligible for appointment as the director of the arts
and humanities division.

With the approval of the commissioner, the director
shall establish professional positions within the division.
The director shall employ the personnel within these
professional positions for the division.

The director may promulgate rules and regulations
concerning the professional policies and functions of
the arts and humanities division, subject to the approval of the arts and humanities commission.

§29-1-6a. Arts and humanities commission.

The West Virginia arts and humanities council established by article seventeen, chapter twenty-nine of this code shall continue in existence until the first day of July, one thousand nine hundred seventy-seven, at which time it shall be abolished, and replaced by an arts and humanities commission which is hereby created and which shall be composed of fifteen appointed members.

The governor shall nominate, and by and with the advice and consent of the Senate, appoint the members of the commission for staggered terms of three years. A person appointed to fill a vacancy shall be appointed only for the remainder of that term. Of the members of the arts and humanities commission first appointed, five shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred seventy-eight, and five each for terms ending one and two years thereafter: Provided, That each person serving as a member of the West Virginia arts and humanities council, for a term which has not expired on the effective date of this article, shall be appointed by the governor without Senate confirmation to the arts and humanities commission as one of the fifteen appointed members, for the term ending the thirtieth day of June in the year in which his term would expire as a member of the West Virginia arts and humanities council.

Effective the first day of July, one thousand nine hundred seventy-eight, no more than eight members may be of the same political party. Members of the commission shall be appointed so as to fairly represent both sexes, the ethnic and cultural diversity of the state and the geographic regions of the state.

The commission shall elect one of its members chairman. It shall meet at such time as shall be specified by the chairman. Notice of each meeting shall be given to each member by the chairman at least five days in
advance of the meeting. A majority of the members
shall constitute a quorum for the transaction of business.
The director of the arts and humanities division shall be
an ex officio nonvoting member of the commission and
shall serve as secretary. The director or a majority of
the members may also call a meeting upon such notice
as provided in this section.

Each member or ex officio member of the commission
shall serve without compensation, but shall be reim-
bursed for all reasonable and necessary expenses ac-
tually incurred in the performance of his duties; except
that in the event the expenses are paid, or are to be paid,
by a third party, the member or ex officio member, as
the case may be, shall not be reimbursed by the state.

Upon recommendation of the commissioner, the gov-
ernor may also appoint such officers of the state as may
be appropriate to serve on the commission as ex officio
nonvoting members.

The commission shall have the following powers:

(1) To advise the commissioner and the director of
the arts and humanities division concerning the accom-
plishment of the purposes of that division and to es-

tablish a state plan with respect thereto;

(2) To approve and distribute grants-in-aid and
awards from federal and state funds relating to the
purposes of the arts and humanities division;

(3) To request, accept or expend federal funds to
accomplish the purposes of the arts and humanities divi-
sion when federal law or regulations would prohibit the
same by the commissioner or division director, but
would permit the same to be done by the arts and
humanities commission;

(4) To otherwise encourage and promote the purposes
of the arts and humanities division;

(5) To approve rules and regulations concerning the
professional policies and functions of the division as
promulgated by the director of the arts and humanities
division; and
75 (6) To advise and consent to the appointment of the
76 director by the commissioner.

§29-1-7. Publication of materials; agreements.
1 The department of culture and history shall have the
2 power, responsibility and duty to publish or republish
3 material of prehistorical, historical, archaeological, archi-
4 tectural or cultural interest. The department of culture
5 and history may sell such publications as well as postcards
6 and other items of such interest at the state museum or
7 any other site or property administered by the state or at
8 any special event sponsored by the state; and any revenue
9 derived therefrom shall be paid into the treasury of the
10 state and disbursed upon warrant by the state auditor
11 following requisition by the department, as provided in
12 section three of this article. The department shall have
13 the right to enter into agreements with responsible
14 private historical, archaeological, architectural or cultural
15 associations, foundations or similar organizations or the
16 national park service, the national endowment for the arts
17 or any agency of the federal or state government for the
18 purpose of carrying out its purposes or for raising money
19 to fund the functions of the department.

§29-1-8. Land; control and disposal; rules and regulations.
1 All land owned or leased by the department shall be
2 titled in the name of the public land corporation of West
3 Virginia but shall be controlled, administered and super-
4 vised by the department. The department, in the discre-
5 tion of its commissioner, may sell or dispose of any real
6 or personal property which, in his or her opinion, does
7 not have sufficient prehistorical, historical, archaeological,
8 architectural or cultural value to justify its retention.
9 The commissioner shall have the power to make and
10 promulgate rules and regulations relating to the general
11 management and administration of the department.

§29-1-9. Department employees classified by civil service;
exceptions.
1 Effective the first day of July, one thousand nine
2 hundred seventy-seven, any person employed in any of
the agencies consolidated by this article who is a classified
civil service employee shall, within the limits provided in
article six of this chapter, remain in the civil service
system as a covered employee; and all persons employed
by the department of culture and history shall be em-
ployed under the classified service of the civil service
system within the limits provided in article six of this
chapter.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-1. Creation; composition; qualifications.

There is continued 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 per-
sons who are interested in the historical beauty, value and
preservation of the capitol building recommended by the
commissioner of culture and history and two members
shall be selected from the public at large.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5-8-6. Records management and preservation advisory committee.

§5-8-17. Disposal of records.

§5-8-6. Records management and preservation advisory com-
mittee.

A records management and preservation advisory
committee is continued, to advise the administrator and to perform such other duties as this article requires. The records management and preservation advisory committee shall be composed of the following members: The governor, auditor, attorney general, president of the Senate, speaker of the House of Delegates, the chief justice of the supreme court of appeals, a judge of a circuit court to be appointed by the governor, the director of the office of emergency services, and the director of the division of archives and history of the department of culture and history, or their respective designated representatives. The advisory committee shall designate one of its members to be chairman, and it shall adopt rules for the conduct of its business. The advisory committee shall meet whenever called by its chairman or the administrator. The members of the advisory committee shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the advisory committee; except that in the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

§5-8-17. Disposal of records.

No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the director of the division of archives and history of the department of culture and history that the record has no further administrative, legal, fiscal, research or historical value.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 4A. GOVERNOR'S MANSION ADVISORY COMMITTEE.

§5A-4A-1. Committee created; appointment, terms, etc., of members; meetings and responsibilities; annual report.

There is hereby created the governor's mansion advisory committee. The commissioner of finance and administration, the commissioner of culture and history
and the spouse of any governor during the term of office
of that governor, or the designated representative of
such governor, shall be ex officio members of the com-
mittee. In addition, the governor shall appoint three
additional members of the committee, one to be a
curator in the field of fine arts, one to be an interior
decorator who is a member of the American institute
of decorators, and one to be a building contractor. The
appointive members of the committee shall serve for a
term of four years. The members of the committee shall
serve without compensation but shall be reimbursed for
reasonable and necessary expenses actually incurred
in the performance of their duties; except that in the
event the expenses are paid, or are to be paid, by a third
party, the member shall not be reimbursed by the state.
The governor shall designate from the committee a chair-
man to serve for a term of one year. The commissioner
of finance and administration shall serve as secretary.
The committee shall meet upon the call of the chairman
annually and may meet at such other times as may be
necessary for the performance of its functions.

The committee shall be charged with the following
responsibilities:

(1) To make recommendations to the governor for the
maintaining, preserving and replenishing of all articles of
furniture, fixtures, decorative objects, linens, silver,
china, crystal and objects of art used or displayed in the
state rooms of the governor's mansion, which state rooms
shall consist of the front hall, the reception room, the
ballroom and its sitting room, the state dining room, the
front upstairs hall and the music room;

(2) To make recommendations to the governor as to
the decor and arrangements best suited to enhance the
historic and artistic values of the mansion in keeping
with the architecture thereof and of such articles of
furniture, fixtures, decorative objects, linens, silver,
china, crystal and objects of art, which recommendations
shall be considered by the governor in decorating said
mansion; and
(3) To invite interested persons to attend its meetings or otherwise to assist in carrying out its functions.

All departments, boards, agencies, commissions, officials and employees of the state are hereby authorized to cooperate with and assist the committee in the performance of its functions and duties whenever possible. As soon after the close of each fiscal year as possible, the committee shall make an annual report to the governor and the Legislature with respect to its activities and responsibilities.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 26A. MUNICIPAL AND COUNTY HISTORIC LANDMARKS COMMISSIONS.

§8-26A-6. Assistance of state agencies; coordination.

Upon the request of any such commission, all agencies of the state shall assist such commission in the discharge of its duties and functions.

Every such commission shall cooperate and coordinate its activities with the West Virginia historical society and the West Virginia department of culture and history, with the view of developing a unified program for the identification, study, preservation and protection of all historic buildings, structures and sites in this state.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.


The public land corporation of West Virginia, here-tofore created and established, shall be continued as an activity of the department of natural resources. The corporation may sue and be sued, contract and be contracted with, plead and be impleaded, and have and use a common seal. It shall be a public benefit corporation composed of the governor as chairman, the director of the department of natural resources as secretary, the commissioner of agriculture, the attorney general, the director of the engineering experiment station at West Virginia University and the commissioner of culture and
history, none of whom shall receive additional compensation as members of the corporation.

The corporation shall be vested with the title of the state in public land, the title to which now is or may hereafter become absolutely vested in the state of West Virginia by reason of any law governing the title of lands within the state, except such public lands of the state as may be by law specifically allocated to and used by other state agencies, institutions and departments.

The corporation is hereby authorized and empowered to:

1. Acquire from any persons or the state commissioner of forfeited lands, by purchase, lease or other agreement, any lands necessary and required for public use;

2. Acquire by purchase, condemnation, lease, or agreement, receive by gifts and devises, or exchange, rights-of-way, easements, waters and minerals suitable for public use;

3. Sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under state or federal government administration;

4. Negotiate and effect loans or grants from the government of the United States or any agency thereof for acquisition and development of such lands as may be authorized by law to be acquired for public use;

5. Expend the income from the use and development of public lands for the purpose of liquidating obligations incurred in the acquisition, development and administration of such lands, until all such obligations have been fully discharged, and thereafter pay such income into the state fund for general revenue purposes and uses;

6. Expend the income from the use and development of public lands for the purchase, development, restoration and preservation for public use, of sites, structures, objects and documents of prehistoric, historical, archae-
ological, architectural and cultural significance to the state of West Virginia; and

(7) Expend the income from the use and development of public lands for the purpose of obtaining grants or matching moneys available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, architectural and cultural purposes.

The corporation shall have the authority to designate lands to which it has title for development and administration for the public use including forestation, recreation, wildlife, stock grazing, agricultural rehabilitation and homesteading or other conservation activities and may contract or lease for the proper development of oil, gas or minerals, except that no contract or lease may be entered into for the extraction and removal by stripping or auger mining of coal, and water rights within or upon the lands or property under its control. It shall convey, assign, or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of such departments or other agencies as provided by law. The corporation shall make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship or for any other public purpose. The corporation shall report annually to the Legislature on its public land holdings, its financial condition and its operations and shall make such recommendations to the Legislature as deemed proper concerning the acquisition, development, disposition and use of public lands.

During the continuance of the Blennerhassett historical park commission, the public land corporation and its members shall consult with and keep the said Blennerhassett historical park commission fully informed as to any official action to be taken or proposed to be taken pursuant to this act regarding or affecting Blennerhassett Island and its prehistoric, historic, archaeological, architectural, cultural and recreational significance or development or any of the powers and duties of the Blennerhassett historical park commission.
AN ACT to amend and reenact sections one and two, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of public school teachers; redefining the salary classification of "doctorate"; and increasing the "state minimum salary schedule".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.

§18-A-4-2. State minimum salaries.

§18A-4-1. Definitions.

For the purpose of this section, salaries shall be defined as:

(a) "basic salaries" which shall mean the salaries paid to teachers with zero years of experience and in accordance with the classification of certification and of training of said teachers; and (b) "advanced salaries" which shall mean the basic salary plus an experience increment based on the allowable years of experience of the respective teachers in accordance with the schedule established herein for the applicable classification of certification and of training of said teachers.

"Classification of certification" means the class or type of certificate issued by the state superintendent of schools under the statutory provisions of this chapter. "Classification of training" means the number of collegiate or graduate hours necessary to meet the requirements stipulated in the definitions set forth in the next paragraph in items (2) to (10) inclusive.

The column heads of the state minimum salary schedule set forth in section two are defined as follows:
(1) "Years of experience" means the number of years the teacher has been employed in the teaching profession, including active work in educational positions other than the public schools, and service in the armed forces of the United States if the teacher were under contract to teach at the time of his induction. For the purpose of section two of this article, the teacher's experience shall be limited to that allowed under his training classification as found in the minimum salary schedule.

(2) "Fourth class" means all certificates previously identified as (a) "certificates secured by examination," (b) "other first grade certificates."

(3) "Third class" means all certificates previously identified as (a) "standard normal certificates" and (b) "third class temporary (sixty-four semester hours) certificates."

(4) "Second class" means all certificates previously identified as "second class temporary certificates based upon the required ninety-six hours of college work."

(5) "A.B." means a bachelor's degree, from an accredited institution of higher education, which has been issued to, or for which the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(6) "A.B. +15" means a bachelor's degree as defined above plus fifteen hours of graduate work, from an accredited institution of higher education certified to do graduate work, in an approved planned program at the graduate level which requirements have been met by a person who qualifies for or holds a professional certificate or its equivalent.

(7) "M. A." means a master's degree, earned in an institution of higher education approved to do graduate work, which has been issued to, or the requirements for such have been met by, a person who qualifies for or holds a professional certificate or its equivalent.

(8) "M. A. + 15" means the above-defined master’s degree plus fifteen hours of graduate work, earned in an institution of higher education approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.
“M. A. + 30” means the above-defined master’s degree plus thirty graduate hours, earned in an institution approved to do graduate work, if the person is qualified for or holds a professional certificate or its equivalent.

“Doctorate” means a doctor’s degree, earned from a university qualified and approved to confer such a degree, which has been issued to or the requirements for such have been met by a person who qualifies for or holds a professional certificate or its equivalent.

§18A-4-2. State minimum salaries.

STATE MINIMUM SALARY SCHEDULE

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On and after the first day of July, one thousand nine hundred seventy-seven, each teacher shall receive the amount prescribed in the “state minimum salary schedule” as set forth in this section, specific additional amounts prescribed in this article, and any county supplement in effect in a county during the contract year.
AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing, continuing or increasing the salaries of certain appointive state officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 Notwithstanding any other provision of this code to the contrary, each of the appointive state officers named in this section shall be appointed by the governor, by and with the advice and consent of the Senate. Each of such appointive state officers shall serve at the will and pleasure of the governor for the term for which the governor was elected and until the respective state officers' successors have been appointed and qualified. Each of such appointive state officers shall hereafter be subject to the existing qualifications for holding each such respective office and each shall have and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each such office.

(a) Each of the following named state appointive officers shall continue to receive an annual salary as follows: members of the board of review of employment security and members of workmen's compensation appeal board, fourteen thousand dollars; and members of the board of probation and parole, sixteen thousand dollars.
(b) Effective the first day of July, one thousand nine hundred seventy-seven, the annual salary of each of the following named state appointive officers shall be as follows:

- The commissioner of highways, thirty-nine thousand dollars;
- Commissioner of finance and administration, thirty-seven thousand five hundred dollars; tax commissioner, thirty-nine thousand dollars; director of the department of natural resources, thirty-seven thousand five hundred dollars; commissioner of the department of welfare, thirty-seven thousand five hundred dollars; superintendent of department of public safety, thirty-five thousand dollars; alcohol beverage control commissioner, thirty thousand dollars; commissioner of banking, thirty thousand dollars; director of the department of mines, thirty-five thousand dollars; state workmen's compensation commissioner, thirty thousand dollars; director of personnel, civil service commission, thirty thousand dollars; commissioner of corrections, thirty thousand dollars; commissioner of culture and history, thirty thousand dollars; labor commissioner, twenty-eight thousand dollars; commissioner of employment security, twenty-eight thousand dollars; insurance commissioner, twenty-eight thousand dollars; commissioner of motor vehicles, thirty thousand dollars; adjutant general, twenty-six thousand dollars; director of emergency services, twenty-five thousand dollars; nonintoxicating beer commissioner, twenty-five thousand dollars; and the director of veterans affairs, twenty-five thousand dollars.

CHAPTER 10

(H. B. 103—By Mr. Speaker, Mr. Kopp, and Mr. Tompkins)

[Passed May 5, 1977; in effect July 1, 1977. Approved by the Governor.]

AN ACT to amend and reenact section one, article four-a, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing benefits under the disabled workmen's relief fund.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. DISABLED WORKMEN'S RELIEF FUND.

§23-4A-1. Disabled workmen's relief fund created.

For the relief of persons who are receiving benefits pursuant to a permanent total disability award in amounts less than two hundred seventy-four dollars per month, and for the relief of widows who are receiving benefits on account of the death of an employee in amounts less than two hundred sixty dollars per month, and for the relief of other persons who are receiving dependents' benefits on account of the death of an employee in amounts less than the specific monetary amounts set forth in section ten, article four of this chapter and in effect as of July one, one thousand nine hundred seventy-three, there is hereby created a separate fund to be known as the "Disabled Workmen's Relief Fund," which fund shall consist of such sums as are from time to time made available to carry out the objects and purposes of this article. Said fund shall be in the custody of the state treasurer and disbursements therefrom shall be made upon requisition signed by the commissioner to those persons entitled to participate therein and in such amounts to each participant as is provided in section three of this article.
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 Concurrent Resolutions.)

House Concurrent

2. Civil Procedure; Coal Mining; Criminal Laws; Employee Classification, Salary and Benefits; Health and Social Services and Nursing Homes; State Park System and Recreational Facilities; Public Safety Administration; State Tax Structure; and the Study of Funding Public Education by the Education Finance Study Commission.

3. Construction and Furnishing State Buildings and Facilities; Coal Mine Subsidence Insurance Fund; Funeral Services, Sale of Cemetery Lots, Operation of Cemeteries, etc.; Higher Education Programs; State and Political Subdivisions Retirement Systems; Customer Bank Communication Terminals; and Education of Handicapped Children.
**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, 1977**

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### Disposition of Bills Enacted

#### Second Extraordinary Session, 1976

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#### Education

- **Davis Center, personal services**
  - **State Board**
    - Rehabilitation Division
    - Vocational education facilities
  - **State Department of**
    - Salary increases for school auxiliary and service personnel
    - Salary increases of professional educators

#### Farm Management Commission

- **Fire prevention**

#### Governor's Office

- **Civil Contingent Fund**
  - **Current expenses**
  - **Custodial Fund**
  - **Emergency flood disaster relief**
    - **Emergency relief for water systems**
  - **Federal-State coordination**
  - **Greenbrier School for mentally retarded children**

#### Health, Department of

- **Early childhood development program**
- **Swine flu innoculation**
- **Tri-State Red Cross Blood Center**

#### Highways, Department of

- **From general revenue for road construction and equipment**
- **From state road fund for road construction and equipment**
- **Hopemont State Hospital**
- **Huntington State Hospital**
- **Huttonsville Correctional Center**
- **Industrial School for Boys**
- **Insurance board, public employees**
- **Lakin State Hospital**
- **Medical School, WVU**
- **Mental Health, Department of**
- **Mentally retarded children**
- **Motor Vehicles, Department of**
- **Natural Resources, Department of**
  - **Fire prevention**
  - **Personal services and current expenses**
- **State parks, forests, hunting and fishing areas, campgrounds, etc.**
- **Parks, state**
- **Penitentiary**
- **Prison industries**
- **Public Employees Insurance Board**
- **Red Cross, Tri-State Blood Center**
- **Rehabilitation Division, State Board of Education**
- **Rehabilitation facilities**
- **Roney's Point Branch Hospital**
- **Scholarships, Board of Regents**
- **Schools**
  - Salaries of auxiliary and service personnel
  - Salaries of teachers
  - Secretary of State
  - **State Board of Education**
    - Rehabilitation Division
    - Vocational education facilities
  - **Swine flu innoculation**
  - **Teachers, salaries**
  - **Treasurer, State, current expenses**

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### WELCH EMERGENCY HOSPITAL:

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### WELFARE:

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### WEST LIBERTY STATE COLLEGE:

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See Energy.

### WEST VIRGINIA STATE COLLEGE:

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See Universities and Colleges.

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