BJW Printers, Beckley, W. Va.  
C-641
FOREWORD

This volume contains the Acts of the Second Regular Session of the 64th Legislature.

Regular Session, 1980

The second regular session of the 64th Legislature convened on January 9, 1980. The constitutional 60-day limit on the duration of the session being midnight on March 8, 1980, however, by proclamation of the Governor, the Legislature was extended until March 11, 1980, solely for action on the budget bill, and sine die adjournment came on March 11, 1980.

Bills totaling 1,611 were introduced in the two houses during the session (1008 House and 603 Senate). The Legislature passed 136 bills, 75 House and 61 Senate. The Governor approved 134 bills and vetoed two. However, one bill disapproved was repassed, notwithstanding the Governor's objections, leaving a net total of one bill lost through veto.

There were 92 concurrent resolutions introduced during the session, 53 House and 39 Senate, of which thirteen House and four Senate were adopted. Forty-one House Joint and 18 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted two House Joint Resolutions — H. J. R. 13, West Virginia Bingo Amendment and H. J. R. 39, Homestead and Taxation Exemption Amendment. The House had 29 House Resolutions and the Senate had 23 Senate Resolutions, of which 21 House and 20 Senate were adopted.

The Senate failed to pass 85 House bills passed by the House and 79 Senate bills failed passage by the House. Three House bills and three Senate bills died in conference.

This volume will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the code of West Virginia. These acts may be purchased from the Division of Purchases, Department of Finance and Administration, State Capitol, Charleston, West Virginia.

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

REGULAR SESSION, 1980  

OFFICERS  
President—W. T. Brotherton, Jr., Charleston  
President Pro Tem—Carl E. Gainer, Richwood  
Clerk—Todd C. Willis, Logan  
Sergeant at Arms—John E. Howell, Charleston  
Doorkeeper—E. L. Bevins, Williamson

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* Elected in 1976. All others elected in 1978.

(D) Democrats ............................................. 26
(R) Republicans ........................................... 8
Total ..................................................... 34

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REGULAR SESSION, 1980

OFFICERS

Speaker—Clyde M. See, Jr., Moosefield
Speaker Pro Tem—Clarence C. Christian, Jr., Princeton
Clerk—C. A. Blankenship, Pineville
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

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1 Appointed January 17, 1979, to fill the vacancy created by the resignation of the Honorable Ted T. Stacy.
2 Appointed January 9, 1980, to fill the vacancy created by the death of the Honorable Robert L. Ward.
3 Appointed January 17, 1980, to fill the vacancy created by the resignation of the Honorable Clyde H. Richey.

(D) Democrats ........................................ 74
(R) Republicans ...................................... 26
Total ............................................... 100
STANDING COMMITTEES OF THE SENATE

1980

Agriculture

Williams (Chairman), Oates (Vice Chairman), Baylor, Benson, Hamilton, Hanlon, McGraw, Steptoe, Susman, Jones and Shaw.

Banking and Insurance

Rogers (Chairman), Williams (Vice Chairman), Baylor, Benson, Hamilton, Huffman, Moreland, Rollins, Steptoe, Susman, Ward, Gilligan and Kusic.

Confirmations

Benson (Chairman), Galperin (Vice Chairman), Colombo, Davis, Hamilton, McGraw, Oates, Rogers, Tonkovich, Williams, Gilligan, Herndon and Kusic.

Education

Nelson (Chairman), Oates (Vice Chairman), Boettner, Galperin, Grubb, McGraw, Moreland, Rogers, Rollins, Sharpe, Steptoe, Deem, Gilligan, Herndon and Jones.

Elections

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

Energy, Industry and Mining

Susman (Chairman), Rogers (Vice Chairman), Baylor, Benson, Boettner, Gainer, Grubb, Hamilton, Williams, Hinkle and Kusic.

Finance

Fanning (Chairman), Susman (Vice Chairman), Boettner, Colombo, Gainer, Grubb, Hanlon, McGraw, Oates, Rollins, Sharpe, Steptoe, Tonkovich, Williams, Gilligan, Harman, Herndon and Hinkle.

Health

Huffman (Chairman), Tonkovich (Vice Chairman), Boettner, Davis, Galperin, Hamilton, Hanlon, Moreland, Sharpe, Jones and Shaw.
Interstate Cooperation

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

Judiciary

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

Labor

Davis (Chairman), Hamilton (Vice Chairman), Hanlon, Huffman, Sharpe, Steptoe, Tonkovich, Deem and Kusic.

Local Government

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

Military

Moreland (Chairman), McGraw (Vice Chairman), Baylor, Boettner, Colombo, Ward, Williams, Harman and Hinkle.

Natural Resources

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

Public Institutions

Sharpe (Chairman), Rollins (Vice Chairman), Colombo, Davis, Hamilton, Hanlon, Nelson, Oates, Tonkovich, Hinkle and Shaw.

Rules

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

Transportation

Steptoe (Chairman), Davis (Vice Chairman), Colombo, Gainer, Hamilton, Hanlon, Huffman, McGraw, Nelson, Palumbo, Sharpe, Tonkovich, Williams, Deem, Jones, Kusic and Shaw.
Enrolled Bills
Davis (Chairman), Baylor, Rogers, Hinkle and Jones.

Government and Finance
Brotherton (Cochairman), Fanning, Palumbo, Sharpe, Ward, Gilligan and Harman.

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

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

PURCHASING PRACTICES AND PROCEDURES COMMISSION
Brotherton (Chairman), McGraw, Nelson, Gilligan and Jones.
STANDING COMMITTEES OF THE
HOUSE OF DELEGATES
1980

Agriculture and Natural Resources

Neal (Chairman of Agriculture), Milleson (Vice Chairman of Agriculture), Ballouz (Chairman of Natural Resources), Worden (Vice Chairman of Natural Resources), Arnold, Brenda, Brown, Bryan, Cook, Damron, Fry, Goodwin, Harden, Hendricks, Reed (23rd Dist.), Shiflet, Smith, Underwood, Whitlow, Atkinson, Clark, Rubin, Shaffer, Springston and Swann.

Banking and Insurance

Shepherd (Chairman of Banking), Tomblin (Vice Chairman of Banking), Martin (35th Dist.) (Chairman of Insurance), Karras (Vice Chairman of Insurance), Anello, Bryan, Fry, Goff, Hartman, Holmes, Milleson, Moler, Schifano, Scott, Shiflet, Shingleton, Toney, Tucker, Wright, Greer, Kopelman, McCuskey, Reed (10th Dist.), Warner and Warner.

Constitutional Revision

Wehrle (Chairman), Wooton (Vice Chairman), Ballouz, Caudle, Chambers, Dalton, Farley, Fox, Ketchum, Knight, Martin (30th Dist.), Martin (35th Dist.), Mathis, Neal, Shuman, Spears, Stephens, Tucker, Wright, Harman, Kopelman, McCuskey, Reed (10th Dist.), Warner and White.

Education

Sattes (Chairman), Hartman (Vice Chairman), Ballouz, Barley, Blackwell, Burdette, Cook, Dalton, Fox, Fry, Givens, Goodwin, Ketchum, Kidd, Moler, Shumate, Underwood, Worden, Yanni, Atkinson, Clark, Dober, Prunty, Springston and Warner.

Finance

Polan (Chairman), Farley (Vice Chairman), Anello, Brenda, Brown, Harden, Holmes, Karras, Lewis, Mathis, Milleson, Neal, Reed (23rd Dist.), Spears, Tomblin, Toney, Van Meter, Wehrle, Wright, Harman, Kopelman, McCuskey, Otte, Swann and Wells.

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HOUSE COMMITTEES

Government Organization

Shuman (Chairman), Whitlow (Vice Chairman), Burdette, Crabtree, Fox, Fry, Goff, Hendricks, Holt, Knight, Moler, O’Neal, Presley, Schifano, Shumate, Vincent, Wiedebusch, Worden, Biddle, McKenzie, Price, Reed (10th Dist.), Richards, Rubin and Wedge.

Health and Welfare

Schifano (Chairman), Ketchum (Vice Chairman), Arnold, Ballouz, Caudle, Crookshanks, Goff, Gvoyich, Harden, Hartman, Knight, Lewis, Moler, Shumate, Smith, Spears, Tomblin, Wehrle, Worden, Harman, Lane, Louden, McKenzie, Otte and Price.

Industry and Labor

Wiedebusch (Chairman), Hendricks (Vice Chairman), Blackwell, Caudle, Christian, Damron, Gilliam, Gvoyich, Holmes, Holt, Kidd, Knight, O’Neal, Presley, Riffle, Starcher, Underwood, Whitlow, Yanni, Atkinson, Biddle, Carmichael, Greer, Prunty and Richards.

Interstate Cooperation

Bryan (Chairman), Brenda, Christian, Gilliam, Scott, Harman and Swann. (Speaker is ex officio nonvoting member).

Judiciary

Albright (Chairman), Tucker (Vice Chairman), Bryan, Caudle, Chambers, Christian, Crookshanks, Damron, Gilliam, Gvoyich, Martin (30th Dist.), Martin (35th Dist.), Riffle, Scott, Shepherd, Singleton, Starcher, Stephens, Wooton, Carmichael, Greer, Lane, Louden, Shaffer and White.

Political Subdivisions

Toney (Chairman), Yanni (Vice Chairman), Anello, Brown, Burdette, Cook, Fox, Fry, Hendricks, Ketchum, Lewis, Mathis, Shepherd, Shuman, Stephens, Van Meter, Vincent, Wiedebusch, Wooton, Biddle, Dober, Lane, Richards, Wells and White.

Roads and Transportation

Goodwin (Chairman), Gvoyich (Vice Chairman), Arnold, Barley, Blackwell, Chambers, Christian, Crabtree, Crookshanks, Dalton, Givens, Harden, Holt, Presley, Shumate, Smith, Starcher, Tomblin, Vincent, McKenzie, Price, Prunty, Rubin, Swann and Wedge.
HOUSE COMMITTEES

Rules

See (Ex officio Chairman), Albright, Brenda, Mathis, Polan, Sattes, Shiflet, Tompkins, Tucker, Greer, Swann and Teets.

State and Federal Affairs

Scott (Chairman), Van Meter (Vice Chairman), Barley, Chambers, Crabtree, Dalton, Farley, Fry, Givens, Karras, Kidd, Martin (30th Dist.), O'Neal, Reed (23rd Dist.), Riffle, Shuman, Stephens, Underwood, Whitlow, Carmichael, Clark, Dober, Louden, Springston and Wedge.

JOINT COMMITTEES

Enrolled Bills

Christian (Chairman), Holmes (Vice Chairman), Spears, Otte, and Wells.

Government and Finance

See (Cochairman), Albright, Polan, Shiflet, Tompkins, Greer and Teets.

Joint Rules

See (Chairman ex officio), Tompkins and Teets.

Legislative Rule-Making Review Committee

Shingleton (Chairman), Bryan, Shiflet, Wiedebusch, Shaffer and Teets. (Speaker is ex officio nonvoting member).

PURCHASING PRACTICES AND PROCEDURES COMMISSION

See (Chairman), Sattes, Tucker, Harman and Teets.
AN ACT to amend and reenact sections one and eight, article two-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two-a by adding thereto a new section, designated section sixteen-a, all relating to public markets; definition; surety bond for benefit of consignors; separate account required; prompt payment required; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PUBLIC MARKETS.


§19-2A-16a. Separate account required; prompt payment required; penalties.


A public market is (1) any place of business where livestock, poultry, and other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold, or offered for sale, by any method including, but not limited to,
public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times.


Before the granting of any such permit, the applicant shall execute and deliver to the commissioner a surety bond conditioned as the commissioner may require and acceptable to him, payable to the state of West Virginia, for the benefit of the consignors at said market of livestock, poultry, and other agricultural and horticultural products, who have been wronged or damaged by any fraud or fraudulent practices of the market and so adjudged by a court of competent jurisdiction and who shall have the right of action for damage for compensation against such bond. A holder of a permit, who shall have been in operation not less than twelve months, shall maintain and deliver such bond to said commissioner as aforesaid in an amount not to exceed one hundred twenty percent of the average of its sales during the preceding calendar year. A holder of a permit, who shall have been in operation less than twelve months, shall maintain and deliver such bond to said commissioner as aforesaid in an amount established by the commissioner, but in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

§19-2A-16a. Separate account required; prompt payment required; penalties.

Every public market, as defined in section one of this article, shall maintain a separate bank account for the deposit of sale proceeds due to shippers and producers of the products and sales subject to the provisions of this article. All payments due to shippers and producers for such products and sales shall be drawn upon the separate account herein required and such payments shall be made within seventy-two hours following the conclusion of the daily activities at such market. Anyone violating the provisions of
AN ACT to amend and reenact section eight, article twelve-d, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishment of program for eradication of the noxious weed known as multiflora rose; providing for a pilot research and testing program; and providing for cooperation among state agencies for purposes of control and ultimate eradication of multiflora rose.

Be it enacted by the Legislature of West Virginia:

That section eight, article twelve-d, 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 12D. WEST VIRGINIA NOXIOUS WEED ACT.

§19-12D-8. Cooperation with federal and state agencies; drug producing plants declared noxious; establishment of program for eradication of multiflora rose.

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

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

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

(d) It is hereby declared to be the policy of the Legislature to control, and ultimately to eradicate, in West Virginia the noxious weed known as multiflora rose, which, having been introduced into West Virginia, multiplied and infested fields and meadows to the point where it defies eradication or control by means available to the average landowner.

The commissioner shall take any and all action necessary to eradicate the multiflora rose, Rosa multiflora, including, but not limited to, the commissioner's initiating a research and testing program.

The commissioner is therefore authorized to initiate a research and testing program for the control, and ultimately the eradication, of multiflora rose on suitable lands, public or private, which are infested by that noxious weed. The program may include control of any and all means by which multiflora rose is spread, whether by plant, animal or fowl, or by any other means. If the land to be used for the program is privately owned, then the owner must give his consent in writing to such use. In selecting the site for, and in conducting the program on the land the commissioner shall solicit the opinion of persons and groups affected by, or concerned about the proliferation of multiflora rose.

In conducting the program the commissioner shall use only such chemicals and other means that have been tested and determined to be reasonably safe for the purposes stated herein, and shall take all due care to avoid injury and damage to plant, animal and human life and health and to all structures of any kind on or near the site of the test program.
50 All agencies of state government and its political subdivisions shall cooperate with the commissioner for the purposes stated herein, and the commissioner shall use any public moneys available or appropriated for the pilot program. The commissioner may also use, as part of a cost-sharing program, any moneys contributed voluntarily by landowners, including persons whose land may be used for the program. The results of such programs shall be reported to the Legislature at its next regular session.

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CHAPTER 3
(Com. Sub. for S. B. 100—By Mr. Brotherton, Mr. President)

(Passed March 11, 1980; in effect from passage. Approved by the Governor after deleting salary increase for the Governor.)

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

Be it enacted by the Legislature of West Virginia:

Title
2. Appropriations.
3. Administration.

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

1 Section 1. General policy.—The purpose of this bill 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 eighty-one.

1 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 eighty-one" shall mean the period from July first, one thousand nine hundred eighty through June thirtieth, one thousand nine hundred eighty-one.

"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 5A, Article 2 of the Code of West Virginia.

Sec. 3. Classification of appropriations.—An appropriation for:

"Personal services" shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit, but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

From 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 mean operating costs other than personal services, and shall not include equipment, repairs and alterations, buildings or lands.

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

"Repairs and alterations" shall mean repairs to struc-
tures and improvements to property which do not increase
the capital assets.

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

"Lands" shall mean the purchase of real property or
interests in real property.

Appropriations classified in any of the above categories
shall be expended only for the purposes as defined above.

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
classifications.

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

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.

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| Council of State Governments—Acct. No. 4720 | 43 |
| Department of banking—Acct. No. 4800 | 44 |
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| Interstate commission on Potomac river basin—Acct. No. 4730 | 43 |
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## Appropriations

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<td>Leckie Center</td>
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<td>Department of education (support personnel)</td>
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<td>Educational broadcasting authority</td>
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<td>West Virginia Board of Regents (control)</td>
<td>2790</td>
</tr>
<tr>
<td>West Virginia College of Osteopathic Medicine</td>
<td>2810</td>
</tr>
<tr>
<td>West Virginia Library Commission</td>
<td>3500</td>
</tr>
<tr>
<td>West Virginia Schools for the Deaf and the Blind</td>
<td>3330</td>
</tr>
<tr>
<td>West Virginia University (medical school)</td>
<td>2850</td>
</tr>
</tbody>
</table>

### Executive

<table>
<thead>
<tr>
<th>Agency and Commission</th>
<th>Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor's office</td>
<td>1200</td>
</tr>
<tr>
<td>Governor's office (civil contingent fund)</td>
<td>1240</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Agency</th>
<th>Account No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governor's office (custodial fund)</td>
<td>1230</td>
</tr>
<tr>
<td>Governor's office (disaster relief-matching)</td>
<td>1260</td>
</tr>
<tr>
<td>Governor's office (McMechen and Stonewood relief)</td>
<td>1270</td>
</tr>
<tr>
<td>Office of economic and community development</td>
<td>1210</td>
</tr>
<tr>
<td>Office of emergency services</td>
<td>1300</td>
</tr>
<tr>
<td><strong>FISCAL</strong></td>
<td></td>
</tr>
<tr>
<td>Auditor's office (general administration)</td>
<td>1500</td>
</tr>
<tr>
<td>Auditor's office (social security)</td>
<td>1510</td>
</tr>
<tr>
<td>Department of finance and administration</td>
<td>2100</td>
</tr>
<tr>
<td>Municipal bond commission</td>
<td>1700</td>
</tr>
<tr>
<td>State board of insurance</td>
<td>2250</td>
</tr>
<tr>
<td>State tax department</td>
<td>1800</td>
</tr>
<tr>
<td>State tax department (property appraisal)</td>
<td>1850</td>
</tr>
<tr>
<td>Treasurer's office</td>
<td>1600</td>
</tr>
<tr>
<td>Treasurer's office (school building sinking fund)</td>
<td>1650</td>
</tr>
<tr>
<td><strong>HEALTH AND WELFARE</strong></td>
<td></td>
</tr>
<tr>
<td>Andrew S. Rowan memorial home</td>
<td>4270</td>
</tr>
<tr>
<td>Colin Anderson Center</td>
<td>4190</td>
</tr>
<tr>
<td>Denmar state hospital</td>
<td>4320</td>
</tr>
<tr>
<td>Department of veterans affairs</td>
<td>4040</td>
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<tr>
<td>Department of veterans affairs (patriotic exercises)</td>
<td>4030</td>
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<tr>
<td>Department of veterans affairs (veterans home)</td>
<td>4010</td>
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<tr>
<td>Department of welfare</td>
<td>4050</td>
</tr>
<tr>
<td>Fairmont emergency hospital</td>
<td>4250</td>
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<tr>
<td>Greenbrier school for mentally retarded children</td>
<td>4140</td>
</tr>
<tr>
<td>Hopemont state hospital</td>
<td>4300</td>
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<tr>
<td>Pinecrest state hospital</td>
<td>4310</td>
</tr>
<tr>
<td>Solid waste disposal</td>
<td>4020</td>
</tr>
<tr>
<td>State board of education (rehabilitation division)</td>
<td>4400</td>
</tr>
<tr>
<td>State commission on aging</td>
<td>4060</td>
</tr>
<tr>
<td>State health department</td>
<td>3900</td>
</tr>
<tr>
<td>State health department—mental hospitals</td>
<td>4160</td>
</tr>
<tr>
<td>Welch emergency hospital</td>
<td>4260</td>
</tr>
<tr>
<td><strong>INCORPORATING AND RECORDING</strong></td>
<td></td>
</tr>
<tr>
<td>Secretary of state</td>
<td>2500</td>
</tr>
<tr>
<td><strong>JUDICIAL</strong></td>
<td></td>
</tr>
<tr>
<td>Supreme Court—General Judicial</td>
<td>1110</td>
</tr>
<tr>
<td><strong>LEGAL</strong></td>
<td></td>
</tr>
<tr>
<td>Attorney general</td>
<td>2400</td>
</tr>
<tr>
<td>Commission on uniform state laws</td>
<td>2450</td>
</tr>
<tr>
<td><strong>LEGISLATIVE</strong></td>
<td></td>
</tr>
<tr>
<td>House of Delegates</td>
<td>1020</td>
</tr>
<tr>
<td>Joint expenses</td>
<td>1030</td>
</tr>
<tr>
<td>Senate</td>
<td>1010</td>
</tr>
<tr>
<td><strong>MISCELLANEOUS BOARDS AND COMMISSIONS</strong></td>
<td></td>
</tr>
<tr>
<td>Board of architects</td>
<td>5950</td>
</tr>
<tr>
<td>Board of chiropractic examiners</td>
<td>5880</td>
</tr>
</tbody>
</table>
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§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.
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 5A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-one.

LEGISLATIVE
Acct. No. 1010
1—Senate

Fiscal Year 1980-1981

1 Compensation of Members $ 275,000
2 Compensation and per diem of officers and employees 750,000
4 Expenses of Members 250,000
5 Current Expenses and Contingent Fund 300,000
6 Printing Blue Book 175,000

7 Total $ 1,750,000

8 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.

15 The appropriations for the Senate for the fiscal year 1979-80 are to remain in full force and effect, and are hereby reappropriated to June 30, 1981.

19 Any balances so reappropriated may be transferred and credited to the 1980-81 accounts.

21 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 written 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 payment 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 a monthly
salary as provided in Senate resolution adopted January, 1980, and payable out of the amount appropriated for Compensation and per diem of officers and employees.

2—House of Delegates

Acct. No. 1020

1 Compensation of Members $ 750,000
2 Compensation and per diem of officers
3 and employees $ 550,000
4 Expenses of Members $ 420,000
5 Current Expenses and Contingent Fund $ 550,000

6 Total $ 2,270,000

7 The appropriations for the House of Delegates for the fiscal year 1979-80 are to remain in full force and effect, and are hereby reappropriated to June 30, 1981.

8 Any balances so reappropriated may be transferred and credited to the 1980-81 accounts.

9 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.

10 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 January, 1980, 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. 1030

1 Joint Committee on Government and Finance ........................................... $ 5,059,062
2 To pay cost of Legislative Printing ........................................... 700,000
3 Other Legislative Committees ........................................... 50,000
4 Commission on Interstate Cooperation ........................................... 80,000

6 Total ................................................................. $ 5,889,062

The appropriations for Joint Expenses for the fiscal year 1979-80 are to remain in full force and effect and are hereby reappropriated to June 30, 1981. Any balances so reappropriated may be transferred and credited to the 1980-81 accounts.

Upon written request of the Clerk of the Senate and the Clerk of the House of Delegates, the
15 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. 1110

1 Personal Services $ 11,732,926
2 Other Expenses 1,660,730
3 Judges Retirement System 750,000
4 Other Court Costs 1,725,000
5 Judicial Training Program 50,000
6 Mental Hygiene Fund 325,000

8 Total $ 16,243,656

9 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.

15 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.

21 Any unexpended balance remaining in this appropriation at the close of fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.
Ch. 3] APPROPRIATIONS

EXECUTIVE

5—Governor’s Office

Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Salary of Governor</td>
<td>$50,000</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$881,920</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$238,969</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,660</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,175,549</strong></td>
</tr>
</tbody>
</table>

6—Office of Economic and Community Development

Acct. No. 1210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,295,762</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$2,269,327</td>
</tr>
<tr>
<td>Equipment</td>
<td>$14,819</td>
</tr>
<tr>
<td>Office of Criminal Justice and Highway Safety</td>
<td>$285,165</td>
</tr>
<tr>
<td>The Economic Development Loan Fund</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Regional Council—to match Federal Funds</td>
<td>$220,000</td>
</tr>
<tr>
<td>A.R.C. Assessment</td>
<td>$375,000</td>
</tr>
<tr>
<td>E.D.A. 304</td>
<td>$138,185</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,598,258</strong></td>
</tr>
</tbody>
</table>

10 Any unexpended balance remaining in accounts
11 “Federal-State Coordination,” “Office of
12 Criminal Justice and Highway Safety,”
13 “Regional Council to match Federal Funds,”
14 and “National Youth Science Camp” at the
15 close of the fiscal year 1979-80 is hereby re-
16 appropriated for expenditure during the fiscal
17 year 1980-81.

7—Governor’s Office—Custodial Fund

Acct. No. 1230

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$213,194</td>
</tr>
</tbody>
</table>

2 To be used for current general expenses, in-
3 cluding compensation of employees, house-

* Governor deleted the salary increase for the Governor of $4,504, and reduced the total appropriation to correspond thereto.
hold maintenance, cost of official functions,
and any additional household expenses oc-
casioned by such official functions.

8—Governor's Office—Civil Contingent Fund
Acct. No. 1240

1 Unclassified—Total ........................................ $ 1,000,000

2 Of the appropriation there may be expended,
at the discretion of the Governor, an amount
not to exceed $1,000 as West Virginia's
contribution to the Interstate Oil Compact
Commission.

7 Any unexpended balance remaining in this ap-
nropriation at the close of the fiscal year
1979-80 is hereby reappropriated for expendi-
ture during the fiscal year 1980-81.

9—Governor's Office—Disaster Relief-Matching
Acct. No. 1260

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—McMechen and Stonewood Relief
Acct. No. 1270

1 Any unexpended balance remaining in the ap-
nropriation for "Governor's Office—Stone-
wood Relief" at the close of the fiscal year
1979-80 is hereby reappropriated for expendi-
ture during the fiscal year 1980-81.

11—Office of Emergency Services
Acct. No. 1300

1 Personal Services ........................................ $ 175,506
2 Current Expenses ........................................... 40,449

3 Total .............................................................. $ 215,955
## FISCAL

### 12—Auditor’s Office—General Administration

Acct. No. 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>$35,428</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$1,186,114</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$434,753</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$39,699</td>
</tr>
<tr>
<td>5 Microfilm</td>
<td>$20,000</td>
</tr>
<tr>
<td>6 Representation of Needy Persons Fund</td>
<td>$1,750,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,465,994</strong></td>
</tr>
</tbody>
</table>

### 13—Auditor’s Office—Social Security

Acct. No. 1510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To match contributions of state employees for Social Security—Total</td>
<td>$11,000,000</td>
</tr>
<tr>
<td>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 Funds and/or Federal Funds shall pay their proportionate share of the social security cost for their respective divisions.</td>
<td></td>
</tr>
<tr>
<td>14 Any unexpended balance remaining in the appropriation for “Auditor’s Office—Social Security” at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.</td>
<td></td>
</tr>
</tbody>
</table>

### 14—Treasurer’s Office

Acct. No. 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Treasurer</td>
<td>$38,153</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$601,332</td>
</tr>
<tr>
<td>Appropriation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
</tr>
</tbody>
</table>

15—Treasurer's Office—School Building Sinking Fund
Acct. No. 1650

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>16,136,500</td>
</tr>
</tbody>
</table>

2 Any unexpended balance remaining in the appropriation for "Treasurer's Office—School Building Sinking Fund" at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

16—Municipal Bond Commission
Acct. No. 1700

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>77,768</td>
</tr>
</tbody>
</table>

17—State Tax Department
Acct. No. 1800

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>6,777,028</td>
</tr>
</tbody>
</table>

6 Items 1, 2 and 3 of the above appropriation includes funds to be used per Enrolled Senate Bill No. 122, Acts of the Legislature, Regular Session, 1979.
### 18—State Tax Department

#### Property Appraisal

**Acct. No. 1850**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,676,320</td>
</tr>
<tr>
<td>2 Other Expenses</td>
<td>$606,300</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$25,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,308,120</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for "Other Expenses" at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

### 19—Department of Finance and Administration

**Acct. No. 2100**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,521,891</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$818,708</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$277,700</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$5,306</td>
</tr>
<tr>
<td>5 Postage</td>
<td>$650,000</td>
</tr>
<tr>
<td>6 Utilities</td>
<td>$350,000</td>
</tr>
<tr>
<td>7 Fire Service Fee</td>
<td>$73,965</td>
</tr>
<tr>
<td>8 Building Equipment and Supplies</td>
<td>$10,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,707,570</strong></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 insufficient to meet the mailing requirements of the state spending units as set out above, any excess postage meter service requirements shall be a proper charge against the units, and each spending unit shall refund to the Postage appropriation of the Department of Finance and Administration any amounts required for the Department for postage in excess of this appropriation.

Any unexpended balance remaining in the "Postage Account" at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

Any unexpended balances remaining at the close of the fiscal year 1979-80 for "Major Building Repairs" is hereby reappropriated for expenditure during the fiscal year 1980-81 (Major Building Repairs to include maintenance and repairs to Governor's Mansion).

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

20—State Board of Insurance

Acct. No. 2250

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$89,375</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$23,877</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>1,270</td>
</tr>
<tr>
<td>4 Insurance Fund</td>
<td>2,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,114,522</strong></td>
</tr>
</tbody>
</table>
6 The above appropriation on line 4 is for the purpose of paying premiums, self-insurance losses, loss adjustment expenses and loss prevention engineering fees for property, casualty and fidelity insurance for the various state agencies. Should this appropriation be insufficient to meet the requirements of the state spending units, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Board of Insurance any amounts required for that department for costs in excess of this appropriation.

19 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.

24 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**

**21—Attorney General**

**Acct. No. 2400**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Attorney General</td>
<td>$38,153</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>1,342,593</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>188,638</td>
</tr>
<tr>
<td>Publication of Reports and Opinions</td>
<td>20,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>35,000</td>
</tr>
<tr>
<td>To protect the resources or tax structure of the state in controversies or legal proceedings</td>
<td>3,250</td>
</tr>
<tr>
<td>Consumer Protection</td>
<td>236,692</td>
</tr>
<tr>
<td>Personal Services</td>
<td>181,850</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>48,542</td>
</tr>
<tr>
<td>Equipment</td>
<td>6,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,864,326</strong></td>
</tr>
</tbody>
</table>
11 When legal counsel or secretarial help is ap-
12 pointed by the Attorney General, for any
13 state spending unit, this account shall be
14 reimbursed from such unit's appropriated
15 account in an amount agreed upon by the
16 Attorney General and the proper authority
17 of said spending unit.

22—Commission on Uniform State Laws
User Acct. No. 2450

1 Unclassified—Total $ 11,000

2 To pay expenses of members of the Commis-
3 sion on Uniform State Laws.

INCORPORATING AND RECORDING

23—Secretary of State
User Acct. No. 2500

1 Salary of Secretary of State $ 32,702
2 Other Personal Services 344,714
3 Current Expenses 118,267
4 Equipment 5,499
5 Certification of Primary and General Elections 4,725
6 Publication of State Register 1,500
7 Rules and Regulations Division 25,000

8 Total $ 532,407

9 The above appropriation for Rules and Regu-
10 lations Division shall be expended for the
11 implementation of Section 4, Article 3,
12 Chapter 29A of the Code.

EDUCATIONAL

24—State Department of Education
User Acct. No. 2770

1 Teacher Education Centers—Total $ 140,000

25—West Virginia Board of Regents (Control)
User Acct. No. 2790

1 Personal Services $ 96,451,291
### 26—West Virginia Board of Regents

**Acct. No. 2800**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$503,565</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$178,567</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$10,000</td>
</tr>
<tr>
<td>4 Scholarship Program</td>
<td>$2,600,000</td>
</tr>
<tr>
<td>5 Tuition Contract Programs</td>
<td>$720,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,012,132</strong></td>
</tr>
</tbody>
</table>

### 27—West Virginia College of Osteopathic Medicine

**Acct. No. 2810**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,565,210</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$454,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,019,210</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Unclassified” at the close of the 1979-80 fiscal year is hereby reappropriated for expenditure during the fiscal year 1980-81.

### 28—Marshall University—Medical School

**Acct. No. 2840**

<table>
<thead>
<tr>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,867,706</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$869,544</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$86,172</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$116,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,939,922</strong></td>
</tr>
</tbody>
</table>
## Appointments

### 29—West Virginia University—Medical School

**Acct. No. 2850**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,411,720</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,475,917</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$428,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$267,500</td>
</tr>
<tr>
<td>5 Family Practice Residency Support Program</td>
<td>$457,960</td>
</tr>
<tr>
<td>6 Intern and Residency Support Program for Community Hospitals</td>
<td>$944,542</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$17,985,639</strong></td>
</tr>
</tbody>
</table>

9 To be transferred to the West Virginia University—Medical School Fund upon the request of the Governor.

### 30—State Department of Education

**Acct. No. 2860**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,180,336</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$631,950</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$10,400</td>
</tr>
<tr>
<td>4 National Defense Education Act</td>
<td>$555,212</td>
</tr>
<tr>
<td>5 Statewide Testing Program</td>
<td>$148,485</td>
</tr>
<tr>
<td>6 Driver Education</td>
<td>$216,000</td>
</tr>
<tr>
<td>7 Aid to Children's Home</td>
<td>$50,000</td>
</tr>
<tr>
<td>8 Regional Education Service Agencies</td>
<td>$440,000</td>
</tr>
<tr>
<td>9 Project 0629-061—Identification and Remediation of Learning Disabilities</td>
<td>$114,316</td>
</tr>
<tr>
<td>10 Project 0629-062—Diagnostic and Remediation of Learning Disabilities</td>
<td>$133,928</td>
</tr>
<tr>
<td>11 Early Learning and Child Care Systems—(Project Nos. 0629-067, 0629-077 and 0629-078)</td>
<td>$300,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,780,627</strong></td>
</tr>
</tbody>
</table>
17 The above appropriation includes the State
18 Board of Education and their executive
19 offices.

20 Any part or all of the appropriation for “Na-
21 tional Defense Education Act” may be trans-
22 ferred to a Special Revenue Fund for the pur-
23 pose of matching Federal Funds for this
24 program.

31—State Department of Education—School Lunch Program
   Acct. No. 2870

   1 Personal Services ........................................... $ 148,525
   2 Current Expenses ...........................................  14,071
   3 Aid to Counties—Includes hot lunches and
   4 canning for hot lunches ...................................  1,944,000

   5 Total ................................................................ $ 2,106,596

32—State Board of Education—Vocational Division
   Acct. No. 2890

   1 Personal Services ........................................... $ 239,671
   2 Current Expenses ...........................................  83,788
   3 Equipment .....................................................  6,000
   4 Vocational Aid ...................................................  8,948,145
   5 Adult Basic Education .........................................  700,000
   6 Replacement of Equipment ...................................  750,000
   7 Equipment for New Vocational Facilities ...................  375,000

   8 Total ................................................................ $ 11,102,604

33—State Department of Education—Professional Educators
   Acct. No. 2900

   1 Total ................................................................ $ 90,756,904

34—Educational Broadcasting Authority
   Acct. No. 2910

   1 Personal Services ........................................... $  72,264
   2 Current Expenses .............................................  35,585
   3 Equipment .....................................................  5,000
4 Regional ETV .............................................. $1,908,907
5 WWVU—TV .................................................. 887,550

6 Total ................................................................... $2,909,306

7 “Regional ETV” is for participation in the con-
struction and operation of Regional ETV
stations by Marshall University, Concord
College, Bluefield State College, West Vir-
ginia Institute of Technology and West
Virginia State College, and the acquisition
of a new FM radio station to serve the north-
eran panhandle; and such funds may be trans-
ferred to Special Revenue Accounts for
matching County and/or Federal Funds.

35—State Board of Education—Vocational Division

Acct. No. 2940

1 Other Expenses—Total ........................................... $546,500

2 Any unexpended balance remaining in this
appropriation at the close of the fiscal year
1979-80 is hereby reappropriated for expendi-
ture during the fiscal year 1980-81.

36—State Department of Education—State Aid to Schools

Acct. No. 2950

1 Professional Educators ........................................ $229,073,740
2 Other Personnel .................................................. 45,814,748
3 Fixed Charges ..................................................... 23,063,144
4 Transportation Charges ...................................... 15,586,791
5 Administration .................................................... 2,290,750
6 Other Current Expenses ...................................... 27,488,849
7 National Average Attainment ............................... 28,986,884
8 Program Improvement ......................................... 1,450,159
9 Increased Enrollment ......................................... 250,000

10 Subtotal ............................................................. $374,005,065
11 Less Local Share ................................................ 63,768,281

12 Total ................................................................... $310,236,784
37—State Department of Education—Aid for Exceptional Children

Acct. No. 2960

1 Personal Services ........................................... $  231,300
2 Current Expenses ............................................ 67,448
3 Out-of-State Instruction ..................................... 428,000
4 Aids to Counties ............................................ 6,800,000
   County Grant Awards .......................... 6,309,995
   Regional Education Service
      Agency Grants .................................. 212,000
      Special State Projects ..................... 278,005

5 Total ............................................................. $  7,526,748

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.

7 The appropriation for "Aid to Counties" may be expended for the initiation, maintenance and/or improvement of special education programs including: employment of new professional education personnel solely serving exceptional children; training of educational personnel to work with exceptional children; and supportive costs such as materials, transportation, contracted services, minor renovation and other cost directly related to the special education delivery process prescribed by the State Board of Education.

38—State Board of Education—Early Childhood Aides

Acct. No. 2970

1 Early Childhood Aides—Total ............................. $  3,208,338

39—Teachers Retirement Board

Acct. No. 2980

1 Teachers Retirement Fund ................................. $ 32,000,000
### 30 Appropriations

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Supplemental Benefits for Annuitants</td>
<td>3,200,000</td>
</tr>
<tr>
<td>3 Total</td>
<td>$35,200,000</td>
</tr>
</tbody>
</table>

4 The line item “Supplemental Benefits for Annuitants” may be transferred as required and shall be expended in accordance with the provisions of Enrolled Committee Substitute for House Bill No. 878, 1980 Regular Session of the Legislature.

#### 40—State Department of Education

**Acct. No. 2990**

1 To fund minimum salaries for Support Personnel—Total $42,630,269

#### 41—West Virginia Schools for the Deaf and the Blind

**Acct. No. 3330**

1 Personal Services $2,484,304
2 Current Expenses $568,290
3 Repairs and Alterations $143,327
4 Equipment $97,621

5 Total $3,293,542

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

**Acct. No. 3360**

1 Personal Services $105,500
2 Current Expenses $25,000
3 Repairs and Alterations $19,500
4 Equipment $13,900

5 Total $163,900

#### 43—West Virginia Library Commission

**Acct. No. 3500**

1 Personal Services $820,170
2 Current Expenses $182,936
3 Repairs and Alterations $3,500
Ch. 3] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 Equipment</td>
<td>5,000</td>
</tr>
<tr>
<td>5 Grants-in-Aid</td>
<td>2,872,102</td>
</tr>
<tr>
<td>6 Books and Periodicals</td>
<td>232,000</td>
</tr>
<tr>
<td>7 Total</td>
<td>$4,115,708</td>
</tr>
</tbody>
</table>

8 Any unexpended balance remaining in the appropriation for "Library Matching Fund (Construction)" at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

44—Department of Culture and History

Acct. No. 3510

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$940,863</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>233,903</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>25,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>35,000</td>
</tr>
<tr>
<td>5 Arts and Humanities Fund</td>
<td>450,839</td>
</tr>
<tr>
<td>Personal Services</td>
<td>87,182</td>
</tr>
<tr>
<td>Grants and Contractual Services</td>
<td>363,657</td>
</tr>
<tr>
<td>6 Department Programming Funds</td>
<td>300,000</td>
</tr>
<tr>
<td>Outreach and Education</td>
<td>75,000</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>65,000</td>
</tr>
<tr>
<td>Cultural Center Programs</td>
<td>160,000</td>
</tr>
<tr>
<td>7 Washington-Carver Camp</td>
<td>90,000</td>
</tr>
<tr>
<td>8 Grants, Fairs and Festivals</td>
<td>636,300</td>
</tr>
<tr>
<td>9 Total</td>
<td>$2,711,905</td>
</tr>
</tbody>
</table>

10 The above appropriations for "Arts and Humanities Fund," Department Programming Funds," "Grants, Fairs and Festivals" and "Washington-Carver Camp" shall be expended only upon authorization 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.

18 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 1979-80 is hereby reappropriated
for expenditure during the fiscal year 1980-81.

Any unexpended balance remaining in the ap-
propriation “Washington-Carver Camp” at
the close of the fiscal year 1979-80 is hereby
reappropriated for expenditure during the
fiscal year 1980-81.

CORRECTION

45—Department of Corrections
Probation and Parole
Acct. No. 3650

1 Salaries of Members of Board of $ 48,000
2 Probation and Parole
3 Other Personal Services $ 27,075
4 Current Expenses $ 21,534
5 Equipment $ 890

6 Total $ 97,499

46—Department of Corrections
Community Service
Northern Region
Acct. No. 3660

1 Personal Services $ 416,924
2 Current Expenses $ 90,245
3 Repairs and Alterations $ 1,000
4 Equipment $ 500

5 Total $ 508,669
### 47—Department of Corrections
#### Community Service
##### Southern Region

<table>
<thead>
<tr>
<th>Account No. 3670</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
</tr>
<tr>
<td><strong>2</strong> Current Expenses</td>
</tr>
<tr>
<td><strong>3</strong> Repairs and Alterations</td>
</tr>
<tr>
<td><strong>4</strong> Equipment</td>
</tr>
<tr>
<td><strong>5</strong> Total</td>
</tr>
</tbody>
</table>

### 48—Department of Corrections

<table>
<thead>
<tr>
<th>Account No. 3680</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Salary of Commissioner</td>
</tr>
<tr>
<td><strong>2</strong> Other Personal Services</td>
</tr>
<tr>
<td><strong>3</strong> Current Expenses</td>
</tr>
<tr>
<td><strong>4</strong> Repairs and Alterations</td>
</tr>
<tr>
<td><strong>5</strong> Total</td>
</tr>
</tbody>
</table>

### 49—Anthony Center

<table>
<thead>
<tr>
<th>Account No. 3690</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
</tr>
<tr>
<td><strong>2</strong> Current Expenses</td>
</tr>
<tr>
<td><strong>3</strong> Repairs and Alterations</td>
</tr>
<tr>
<td><strong>4</strong> Equipment</td>
</tr>
<tr>
<td><strong>5</strong> Total</td>
</tr>
</tbody>
</table>

### 50—West Virginia Industrial School for Boys

<table>
<thead>
<tr>
<th>Account No. 3700</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> Personal Services</td>
</tr>
<tr>
<td><strong>2</strong> Current Expenses</td>
</tr>
<tr>
<td><strong>3</strong> Repairs and Alterations</td>
</tr>
<tr>
<td><strong>4</strong> Equipment</td>
</tr>
<tr>
<td><strong>5</strong> Total</td>
</tr>
</tbody>
</table>
**51—Davis Center**

**Acct. No. 3710**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$406,719</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$130,484</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$541,003</strong></td>
</tr>
</tbody>
</table>

**52—West Virginia Industrial Home for Girls**

**Acct. No. 3720**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$430,203</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$86,545</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$520,248</strong></td>
</tr>
</tbody>
</table>

**53—Leckie Center**

**Acct. No. 3730**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$423,542</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$133,782</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$561,324</strong></td>
</tr>
</tbody>
</table>

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

**Acct. No. 3740**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$381,534</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$127,664</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$5,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$515,198</strong></td>
</tr>
</tbody>
</table>
### 55—West Virginia Penitentiary

Acct. No. 3750

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,096,207</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,394,809</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$30,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>5</td>
<td>Prison Industries—Purchase of Equipment</td>
<td>$35,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$4,563,016</td>
</tr>
</tbody>
</table>

### 56—Huttonsville Correctional Center

Acct. No. 3760

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,960,955</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$1,036,460</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$40,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>5</td>
<td>Boiler Conversion to Coal</td>
<td>$100,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$3,144,415</td>
</tr>
</tbody>
</table>

### HEALTH AND WELFARE

### 57—State Health Department

Acct. No. 3900

**Administrative Services (3900)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$1,029,149</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$568,426</td>
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<tr>
<td>3</td>
<td>Equipment</td>
<td>$22,000</td>
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<tr>
<td>4</td>
<td>Subtotal</td>
<td>$1,619,575</td>
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</table>

**Preventive Health Services (3905)**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Personal Services</td>
<td>$906,450</td>
</tr>
<tr>
<td>6</td>
<td>Current Expenses</td>
<td>$685,263</td>
</tr>
<tr>
<td>7</td>
<td>Equipment</td>
<td>$69,030</td>
</tr>
<tr>
<td>8</td>
<td>Subtotal</td>
<td>$1,660,743</td>
</tr>
</tbody>
</table>
### Maternal and Child Health (3915)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>9 Personal Services</td>
<td>616,457</td>
</tr>
<tr>
<td>10 Current Expenses</td>
<td>1,453,992</td>
</tr>
<tr>
<td>11 Subtotal</td>
<td>2,070,449</td>
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</table>

### Environmental Health (3920)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
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</thead>
<tbody>
<tr>
<td>12 Personal Services</td>
<td>898,114</td>
</tr>
<tr>
<td>13 Current Expenses</td>
<td>214,502</td>
</tr>
<tr>
<td>14 Equipment</td>
<td>25,905</td>
</tr>
<tr>
<td>15 Subtotal</td>
<td>1,138,521</td>
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</table>

### Behavioral Health Services (3965)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 Personal Services</td>
<td>569,527</td>
</tr>
<tr>
<td>17 Current Expenses</td>
<td>1,278,919</td>
</tr>
<tr>
<td>18 Reimbursement to Community Mental Health and Mental Retardation Centers</td>
<td>13,496,196</td>
</tr>
<tr>
<td>19 Study of Rehabilitation Centers</td>
<td>50,000</td>
</tr>
<tr>
<td>20 Special Olympics</td>
<td>28,000</td>
</tr>
<tr>
<td>22 Subtotal</td>
<td>15,422,642</td>
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### Institutional Service (3935)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Personal Services</td>
<td>512,369</td>
</tr>
<tr>
<td>24 Current Expenses</td>
<td>130,720</td>
</tr>
<tr>
<td>25 Equipment</td>
<td>1,000</td>
</tr>
<tr>
<td>26 Subtotal</td>
<td>644,089</td>
</tr>
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</table>

### Office of Chief Medical Examiner (3950)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>27 Personal Services</td>
<td>353,485</td>
</tr>
<tr>
<td>28 Current Expenses</td>
<td>414,189</td>
</tr>
<tr>
<td>29 Repairs and Alterations</td>
<td>4,000</td>
</tr>
<tr>
<td>30 Equipment</td>
<td>15,000</td>
</tr>
<tr>
<td>31 Subtotal</td>
<td>786,674</td>
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</table>

### Health Planning and Evaluation (3970)

<table>
<thead>
<tr>
<th>Item</th>
<th>Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>32 Personal Services</td>
<td>738,914</td>
</tr>
<tr>
<td>33 Current Expenses</td>
<td>144,653</td>
</tr>
<tr>
<td>34 Equipment</td>
<td>600</td>
</tr>
<tr>
<td>35 Subtotal</td>
<td>884,167</td>
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</tbody>
</table>
Public Health Services (3975)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>Personal Services</td>
<td>888,822</td>
</tr>
<tr>
<td>37</td>
<td>Current Expenses</td>
<td>653,633</td>
</tr>
<tr>
<td>38</td>
<td>Equipment</td>
<td>52,488</td>
</tr>
<tr>
<td>39</td>
<td>State Aid to Local Agencies</td>
<td>3,000,000</td>
</tr>
<tr>
<td>41</td>
<td>Grants to Counties and E.M.S Entities</td>
<td>1,948,051</td>
</tr>
<tr>
<td>42</td>
<td>Subtotal</td>
<td>6,542,994</td>
</tr>
<tr>
<td>44</td>
<td>Total</td>
<td>$30,769,854</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Logan-Mingo Area Mental Health Center” at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

58—Department of Veterans Affairs

Veterans Home
Acct. No. 4010

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$277,729</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>270,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>1,500,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>302,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$2,349,729</td>
</tr>
</tbody>
</table>

59—Solid Waste Disposal
Acct. No. 4020

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$76,781</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>37,089</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>500</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$114,370</td>
</tr>
</tbody>
</table>

60—Department of Veterans Affairs
Acct. No. 4030

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>In aid of Veterans Day Patriotic Exercises</td>
<td>$5,000</td>
</tr>
</tbody>
</table>
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.

61—Department of Veterans Affairs

Acct. No. 4040

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$551,029</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$87,662</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$3,000</td>
</tr>
<tr>
<td>4</td>
<td>Educational opportunities for children of War</td>
<td>$10,000</td>
</tr>
<tr>
<td>5</td>
<td>Veterans</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$651,691</td>
</tr>
</tbody>
</table>

62—Department of Welfare

Acct. No. 4050

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$10,419,997</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$4,586,509</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$55,675</td>
</tr>
<tr>
<td>4</td>
<td>Assistance Payments</td>
<td>$17,257,363</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching Fund</td>
<td>$659,293</td>
</tr>
<tr>
<td>6</td>
<td>Social Services</td>
<td>$15,551,131</td>
</tr>
<tr>
<td>7</td>
<td>Indigent Burials</td>
<td>$540,000</td>
</tr>
<tr>
<td>8</td>
<td>Emergency Assistance</td>
<td>$630,000</td>
</tr>
<tr>
<td>9</td>
<td>Medical Services</td>
<td>$40,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$89,699,968</td>
</tr>
</tbody>
</table>

11 Items 1, 2 and 3 above includes funds to be used for the West Virginia Childrens Home, Southern Regional Detention Center and West Central Regional Detention Center.

15 Item 6 above includes the funds to be used for juveniles in accordance with H. B. 1484, enacted by Acts of the Legislature, Regular Session, 1979.
None of the funds in item 9 above is to be used in funding the program known as the “Medicaid for the Medically Needy” program. There shall be no transfers to this account or any item thereof of state appropriated revenues, except reimbursements, as such.

63—State Commission on Aging
Acct. No. 4060

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$85,131</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$55,186</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$300</td>
</tr>
<tr>
<td>4 Programs for Elderly</td>
<td>$1,900,000</td>
</tr>
<tr>
<td>5 Golden Mountaineer Program</td>
<td>$175,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,215,617</strong></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Senior Citizens Center” at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81, with the purpose of such item to be redesignated: “Senior Citizens Center—land acquisition, construction, repairs or alterations.”

64—Greenbrier School for Mentally Retarded Children
Acct. No. 4140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$843,116</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$215,283</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$35,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$13,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,106,599</strong></td>
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</tbody>
</table>

65—State Health Department—Mental Hospitals
Acct. No. 4160

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$18,017,941</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$5,221,940</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$589,626</td>
</tr>
<tr>
<td>Line</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>Student Nurse Affiliation Program (Huntington)</td>
</tr>
<tr>
<td>6</td>
<td>Psychiatric Training Center—Student Nurses (Weston)</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
</tr>
</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.

### 66—Colin Anderson Center
**Acct. No. 4190**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$6,477,158</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>913,100</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>150,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>67,063</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$7,607,321</td>
</tr>
</tbody>
</table>

### 67—Fairmont Emergency Hospital
**Acct. No. 4250**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$708,053</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>326,646</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>10,100</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>27,130</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,071,929</td>
</tr>
</tbody>
</table>
### 68—Welch Emergency Hospital

**Acct. No. 4260**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,216,349</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$347,773</td>
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<td>3 Repairs and Alterations</td>
<td>$38,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$23,000</td>
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</tbody>
</table>

**Total** $1,625,122

### 69—Andrew S. Rowan Memorial Home

**Acct. No. 4270**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$872,018</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$499,720</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$40,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$10,000</td>
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</table>

**Total** $1,421,738

### 70—Hopemont Hospital

**Acct. No. 4300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,522,827</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$836,614</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$43,700</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$55,900</td>
</tr>
</tbody>
</table>

**Total** $4,459,041

### 71—Pinecrest Hospital

**Acct. No. 4310**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,127,918</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$1,127,792</td>
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<tr>
<td>3 Repairs and Alterations</td>
<td>$88,500</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$24,300</td>
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</tbody>
</table>

**Total** $4,368,510

### 72—Denmar Hospital

**Acct. No. 4320**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,280,956</td>
</tr>
</tbody>
</table>
### 73—State Board of Education—Rehabilitation Division

**Acct. No. 4400**

<table>
<thead>
<tr>
<th>Description</th>
<th>Budget Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,024,014</td>
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<tr>
<td>Current Expenses</td>
<td>$506,657</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$819</td>
</tr>
<tr>
<td>Equipment</td>
<td>$56,631</td>
</tr>
<tr>
<td>Rehabilitation Center</td>
<td>$2,094,396</td>
</tr>
<tr>
<td><strong>Personal Services</strong></td>
<td><strong>$1,613,300</strong></td>
</tr>
<tr>
<td><strong>Current Expenses</strong></td>
<td><strong>$457,246</strong></td>
</tr>
<tr>
<td><strong>Equipment</strong></td>
<td><strong>$23,850</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,992,007</strong></td>
</tr>
</tbody>
</table>

### BUSINESS AND INDUSTRIAL RELATIONS

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

**Acct. No. 4500**

<table>
<thead>
<tr>
<th>Description</th>
<th>Budget Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$832,107</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$220,329</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$16,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$2,072</td>
</tr>
<tr>
<td>Labor Management Advisory Council</td>
<td>$25,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,095,508</strong></td>
</tr>
</tbody>
</table>

#### 75—Interstate Mining Compact Commission

**Acct. No. 4510**

<table>
<thead>
<tr>
<th>Description</th>
<th>Budget Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>$10,000</td>
</tr>
</tbody>
</table>
### 76—Department of Mines

**Acct. No. 4600**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,914,559</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$906,904</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$73,470</td>
</tr>
<tr>
<td>4 Miner Training, Education and Certification</td>
<td>$118,407</td>
</tr>
<tr>
<td>5 Board of Coal Mine Health and Safety</td>
<td>$115,000</td>
</tr>
<tr>
<td>6 Unclassified</td>
<td>$191,735</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,320,075</strong></td>
</tr>
</tbody>
</table>

8 The above line item “Unclassified” shall be expended only for implementation of the provisions of Enrolled Senate Bill No. 385, 1979 Regular Session of the Legislature.

### 77—Ohio River Basin Commission

**Acct. No. 4690**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$21,000</td>
</tr>
</tbody>
</table>

### 78—Council of State Governments

**Acct. No. 4720**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Total</td>
<td>$31,800</td>
</tr>
</tbody>
</table>

2 The Governor is authorized to use these funds for any other successor organization or successor organizations that may be created.

### 79—Interstate Commission on Potomac River Basin

**Acct. No. 4730**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 West Virginia’s contribution to Potomac</td>
<td>$12,450</td>
</tr>
<tr>
<td>2 River Basin Interstate Commission</td>
<td>$12,450</td>
</tr>
</tbody>
</table>

### 80—Ohio River Valley Water Sanitation Commission

**Acct. No. 4740**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 West Virginia’s contribution to the Ohio River</td>
<td>$40,575</td>
</tr>
<tr>
<td>2 Valley Water Sanitation Commission</td>
<td>$40,575</td>
</tr>
</tbody>
</table>
## Appropriations

**81—Southern Regional Education Board**  
Acct. No. 4750

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

**82—West Virginia Air Pollution Control Commission**  
Acct. No. 4760

1. Personal Services $ 436,404
2. Current Expenses $ 171,768
3. Equipment $ 14,500
4. Total $ 622,672

**83—Interstate Education Compact**  
Acct. No. 4770

1. West Virginia's contribution to Interstate Education Compact $ 21,375
2. To be expended upon requisition of the Governor.

**84—Southern Interstate Nuclear Board**  
Acct. No. 4780

1. West Virginia's contribution to the Southern Interstate Nuclear Board $ 19,171
2. To be expended upon requisition of the Governor.

**85—State Boxing Commission**  
Acct. No. 4790

1. Total $ 5,500

**86—Department of Banking**  
Acct. No. 4800

1. Personal Services $ 424,945
Ch. 3] APPROPRIATIONS

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>231,328</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$656,773</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

87—West Virginia State Aeronautics Commission

Acct. No. 4850

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$56,714</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>17,485</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>1,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Aerial Markers</td>
<td>4,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Civil Air Patrol Expenses</td>
<td>89,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Airport Matching</td>
<td>779,912</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$949,111</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8 Any unexpended balance remaining in the appropriation “Airport Matching Fund” at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during fiscal year 1980-81.

88—West Virginia Nonintoxicating Beer Commissioner

Acct. No. 4900

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$252,064</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>75,204</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>4,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$331,768</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

89—West Virginia Racing Commission

Acct. No. 4950

<p>| | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$662,203</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>79,850</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>5,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$747,053</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### AGRICULTURE

#### 90—Department of Agriculture

**Acct. No. 5100**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$35,428</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$1,648,219</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$722,830</td>
</tr>
<tr>
<td>Equipment</td>
<td>$26,800</td>
</tr>
<tr>
<td>Multiflora Rose Eradication Program</td>
<td>$25,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,458,277</strong></td>
</tr>
</tbody>
</table>

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

#### 91—Farm Management Commission

**Acct. No. 5110**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$894,307</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$697,159</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$215,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$477,323</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$2,283,789</strong></td>
</tr>
</tbody>
</table>

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

**Acct. No. 5120**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$283,001</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$68,753</td>
</tr>
<tr>
<td>Watershed Program</td>
<td>$350,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$701,754</strong></td>
</tr>
</tbody>
</table>

5. Any unexpended balance remaining in the appropriation for “Watershed Program,” “Mud River Flood Control Project,” and “Channelization of Kelley’s Creek,” hereinafter redesignated as “Stream Channelization,” at the close of the fiscal year 1979-80 is hereby
reappropriated for expenditure during the
fiscal year 1980-81.

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

<table>
<thead>
<tr>
<th>Acct. No. 5130</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ........................................ $ 645,657</td>
</tr>
<tr>
<td>2 Current Expenses .............................................. 153,000</td>
</tr>
<tr>
<td>3 Equipment .......................................................... 14,000</td>
</tr>
<tr>
<td>4 Total .............................................................. $ 812,657</td>
</tr>
</tbody>
</table>

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.

94—Department of Agriculture—Meat Inspection

<table>
<thead>
<tr>
<th>Acct. No. 5140</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............................................. $ 325,560</td>
</tr>
<tr>
<td>2 Current Expenses .............................................. 117,800</td>
</tr>
<tr>
<td>3 Total ............................................................. $ 443,360</td>
</tr>
</tbody>
</table>

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—Agricultural Awards

<table>
<thead>
<tr>
<th>Acct. No. 5150</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agricultural Awards ............................................ $ 70,000</td>
</tr>
<tr>
<td>2 Fairs and Festivals ........................................... 134,450</td>
</tr>
<tr>
<td>3 Total ........................................................... $ 204,450</td>
</tr>
</tbody>
</table>

CONSERVATION AND DEVELOPMENT

96—Geological and Economic Survey

<table>
<thead>
<tr>
<th>Acct. No. 5200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ............................................. $ 758,832</td>
</tr>
</tbody>
</table>
2 Current Expenses ........................................ 331,333
3 Repairs and Alterations ................................. 73,119
4 Equipment ............................................... 73,540
5 Special Studies ........................................... 636,361

6 Total ...................................................... $1,873,185

97—Department of Natural Resources
Acct. No. 5650

1 Personal Services ....................................... $8,341,996
2 Current Expenses ....................................... 1,493,725
3 Repairs and Alterations ................................. 136,120
4 Equipment ............................................... 79,752
5 Fire Prevention Control ................................. 790,612
   Personal Services .................................... 710,000
   Other Expenses ....................................... 80,612
6 Water Resources Board and Reclamation Board of Review ........................................ 30,000
8 Debt Service ............................................. 1,193,925

9 Total ...................................................... $12,066,130

“Big Ugly Public Hunting Grounds,” “Reeds Creek Hatchery,” “Castleman’s Run Lake,” and “Big Ditch-Improvements” at the close of the fiscal year 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

Any or all funds appropriated for “Fire Prevention Control” may be transferred to Special Revenue Fund to match and aid Federal Funds.

98—Public Land Corporation

Acct. No. 5660

1. 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 1979-80 is hereby reappropriated for expenditure during the fiscal year 1980-81.

7. 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 follows: 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.

99—Water Development Authority

Acct. No. 5670

1. Personal Services ...........................................$ 135,903
2. Current Expenses ........................................... 59,419
3. Construction Grants—Phase III ......................... 3,000,000
4 Hardship Grants ............................................... 1,000,000

5 Total ..................................................................... $ 4,195,322

6 Any unexpended balance remaining in the ap-
7 propriation for "Capital Outlay" and "Phase
8 III Hardship Grants" at the close of the fiscal
9 year 1979-80 is hereby reappropriated for
10 expenditure during the fiscal year 1980-81.

100—West Virginia Railroad Maintenance Authority

Acct. No. 5690

1 Personal Services .............................................. $ 97,013
2 Current Expenses .............................................. 40,560
3 South Branch Valley Railroad
4 (Unclassified) ..................................................... 500,000
5 Greenbrier Line Purchase ................................. 650,000

6 Total ................................................................. $ 1,287,573

7 The moneys appropriated in the item in this
8 account for "South Branch Valley Railroad"
9 purposes may be transferred to special rev-
10 enue account No. 8344 for expenditure and
11 disbursement therefrom.

12 Any unexpended balance remaining in the
13 appropriation for "South Branch Valley Rail-
14 road" (Bridge Renovation and Shop Con-
15 struction) at the close of the fiscal year 1979-
16 80 is hereby reappropriated for expenditure
17 during the fiscal year 1980-81.

PROTECTION

101—Department of Public Safety

Acct. No. 5700

1 Personal Services .............................................. $ 12,255,422
2 Current Expenses .............................................. 5,108,599
3 Repairs and Alterations ..................................... 244,000
4 Equipment ......................................................... 1,844,040
### Ch. 3] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5 Emergency Fund</td>
<td>10,000</td>
</tr>
<tr>
<td>6 Chemistry Lab Addition</td>
<td>200,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$19,662,061</strong></td>
</tr>
</tbody>
</table>

#### 102—Adjutant General—State Militia

**Acct. No. 5800**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$208,123</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>460,746</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>39,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>4,000</td>
</tr>
<tr>
<td>5 Compensation of Commanding Officers, Clerical</td>
<td>102,035</td>
</tr>
<tr>
<td>6 Allowances and Uniform Allowances</td>
<td></td>
</tr>
<tr>
<td>7 Property Maintenance</td>
<td>701,517</td>
</tr>
<tr>
<td>8 State Armory Board</td>
<td>2,000,000</td>
</tr>
<tr>
<td>9 College Education Fund</td>
<td>123,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$3,638,421</strong></td>
</tr>
</tbody>
</table>

#### MISCELLANEOUS BOARDS AND COMMISSIONS

**103—West Virginia Civil Service System**

**Acct. No. 5840**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$666,127</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>275,250</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>4,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$945,377</strong></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 quar-
terly-average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.

This reimbursement is to be deposited in the General Revenue Fund.

104—West Virginia State Board of Land Surveyors
Acct. No. 5850

1 To pay the per diem of members and
2 other general expenses .................................. $ 15,000
3 From Collections ................................................. 15,000

105—State Board of Professional Foresters
Acct. No. 5860

1 To pay the per diem of members and
2 other general expenses .................................. $ 1,400
3 From Collections ................................................. 1,400

106—West Virginia Board of Examiners for Practical Nurses
Acct. No. 5870

1 To pay the per diem of members and
2 other general expenses .................................. $ 78,000
3 From Collections ................................................. 78,000

107—State Board of Chiropractic Examiners
Acct. No. 5880

1 To pay the per diem of members and
2 other general expenses .................................. $ 4,720
3 From Collections ................................................. 4,720

108—State Board of Pharmacy
Acct. No. 5900

1 To pay the per diem of members and
2 other general expenses .................................. $ 75,000
3 From Collections ................................................. 75,000
109—State Board of Osteopathy
Acct. No. 5910
1 To pay the per diem of members and
2 other general expenses $ 8,000
3 From Collections $ 8,000

110—State Board of Embalmers and Funeral Directors
Acct. No. 5930
1 To pay the per diem of members and
2 other general expenses $ 42,115
3 From Collections $ 42,115

111—State Board of Registration for Professional Engineers
Acct. No. 5940
1 To pay the per diem of members and
2 other general expenses $ 97,000
3 From Collections $ 97,000

112—State Board of Architects
Acct. No. 5950
1 To pay the per diem of members and
2 other general expenses $ 16,000
3 From Collections $ 16,000

113—State Veterinary Board
Acct. No. 5960
1 To pay the per diem of members and
2 other general expenses $ 4,000
3 From Collections $ 4,000

114—Human Rights Commission
Acct. No. 5980
1 Personal Services $ 289,093
2 Current Expenses $ 126,023
<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Equipment</td>
<td>3,599</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>418,715</td>
</tr>
</tbody>
</table>

**115—West Virginia State Board of Sanitarians**

Acct. No. 5990

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

**116—Women’s Commission**

Acct. No. 6000

<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>Total</td>
</tr>
</tbody>
</table>

**117—West Virginia Public Employees Retirement Board**

Acct. No. 6140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Employers Accumulation Fund</td>
<td>$ 9,500,000</td>
</tr>
<tr>
<td>2 Expense Fund</td>
<td>$ 125,000</td>
</tr>
<tr>
<td>3 Supplemental Benefits for Annuitants</td>
<td>$ 1,700,000</td>
</tr>
<tr>
<td>4 Total</td>
<td>$ 11,325,000</td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of West Virginia Public Employees 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.
The line item “Supplemental Benefits for An-
nuitants” may be transferred as required and
shall be expended in accordance with the
provisions of Enrolled Committee Substitute
for House Bill No. 904, 1980 Regular Session
of the Legislature.

118—West Virginia Public Employees Insurance Board

Acct. No. 6150

1 Expense Fund ................................................. $ 113,000
2 Public Employees Health Insurance—
3 State Contribution ........................................... 37,350,000

4 Total................................................................. $ 37,463,000

The above appropriation is intended to cover
the state’s share of Public Employees Health
Insurance costs for those spending units
operating from General Revenue Fund. The
State Department of Highways, Department
of Motor Vehicles, Workmen’s Compensation
Commission, Public Service Commission and
other departments operating from Special
Revenue Funds and/or Federal Funds shall
pay their proportionate share of the Public
Employees Health Insurance cost for their
respective divisions. When specific appro-
priations 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. 6160

1 Personal Services ........................................... $ 519,017
2 Current Expenses ............................................. 129,454
3 Equipment ....................................................... 15,000

4 Total................................................................. $ 663,471
### 120—State Fire Commission

**Acct. No. 6170**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$479,355</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$199,495</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>$3,048</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$15,470</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$697,368</strong></td>
</tr>
</tbody>
</table>

### 121—State Department of Highways

**Acct. No. 6410**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td><strong>$35,500,000</strong></td>
</tr>
<tr>
<td>2 Any or all of the above appropriations</td>
<td></td>
</tr>
<tr>
<td>3 transferred to the State Road Fund for</td>
<td></td>
</tr>
<tr>
<td>4 distribution.</td>
<td></td>
</tr>
</tbody>
</table>

1. **Sec. 2. Appropriations from other funds.**
   2 From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Chapter 5A, Article 2 of the Code of West Virginia, the following amounts, as itemized, for expenditure during the fiscal year one thousand eight hundred eighty-one:

### 122—State Department of Highways

**Acct. No. 6700**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Maintenance Expressway, Trunkline and</td>
<td></td>
</tr>
<tr>
<td>2 Feeder</td>
<td><strong>$48,151,000</strong></td>
</tr>
<tr>
<td>3 Maintenance State Local Services</td>
<td><strong>52,843,000</strong></td>
</tr>
<tr>
<td>4 Inventory Revolving</td>
<td><strong>1,500,000</strong></td>
</tr>
<tr>
<td>5 Equipment Revolving</td>
<td><strong>7,000,000</strong></td>
</tr>
<tr>
<td>6 General Operations</td>
<td><strong>17,100,000</strong></td>
</tr>
<tr>
<td>7 Debt Service</td>
<td><strong>85,900,000</strong></td>
</tr>
<tr>
<td>8 Interstate Construction</td>
<td><strong>211,000,000</strong></td>
</tr>
<tr>
<td>9 Other Federal Aid Programs</td>
<td><strong>100,500,000</strong></td>
</tr>
</tbody>
</table>
Ch. 3] Appropriations

10 Appalachian Program .......................... 122,000,000
11 Nonfederal Aid Construction ................. 28,995,000

12 Total .......................................................... $674,989,000

13 The above appropriated line items are to be
14 expended in accordance with the provisions
15 of Chapters 17 and 17C, Code of West Vir-
16 ginia, one thousand nine hundred thirty-one,
17 as amended.

18 The State Commissioner of Highways shall
19 have the authority to operate revolving funds
20 within the state road fund for the operation
21 and purchase of various types of equipment
22 used directly and indirectly in the construc-
23 tion and maintenance of roads and for the
24 purchase of inventories and materials and
25 supplies.

26 There is hereby appropriated within the above
27 items sufficient money for the payment of
28 claims, accrued or arising during this budge-
29 tary period, to be paid in accordance with
30 Chapter 14, Article 2, Sections 17 and 18,
31 Code of West Virginia, one thousand nine
32 hundred thirty-one, as amended.

123—Department of Motor Vehicles

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1 Personal Services ........................................ $ 1,856,314
2 Current Expenses .......................................... 2,506,091
3 Equipment .................................................... 35,000
4 Purchase of License Plates ......................... 496,700
5 Social Security Matching ............................ 112,722
6 Public Employees Retirement Matching .......... 177,173
7 Public Employees Health Insurance ............... 111,898

8 Total .......................................................... $ 5,295,898
124—State Tax Department—Gasoline Tax Division

Acct. No. 6720

TO BE PAID FROM STATE ROAD FUND

| 1 | Personal Services                                      | $440,145 |
| 2 | Current Expenses                                       | 190,455  |
| 3 | Equipment                                              | 3,500    |
| 4 | Total                                                  | $634,100 |

125—Department of Education—Veterans Education

Acct. No. 7020

TO BE PAID FROM GENERAL SCHOOL FUND

| 1 | Personal Services                                      | $156,408 |
| 2 | Other Expenses                                         | 96,916   |
| 3 | Total                                                  | $253,324 |

4 Expenditures from this appropriation shall not
5 exceed the amount to be reimbursed by the
6 federal government.

7 Federal Funds in excess of the amounts hereby
8 appropriated may be made available by
9 budget amendment upon request of the State
10 Superintendent of Schools and approval of
11 the Governor for any emergency which
12 might arise in the operation of this division
13 during the fiscal year.

126—Treasurer's Office—Abandoned and Unclaimed Property

Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

| 1 | Personal Services                                      | $46,219  |
| 2 | Other Expenses                                         | 33,581   |
| 3 | Total                                                  | $79,800  |
3.J Ch. 3] APPROPRIATIONS

127—Real Estate Commission

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ........................................ $ 100,746
2 Current Expenses ........................................... 40,816
3 Equipment .................................................. 4,650
4 Social Security Matching ................................ 6,115
5 Public Employees Retirement Matching ............. 9,476
6 Public Employees Health Insurance .................. 4,264

7 Total ........................................................ $ 166,067

8 The total amount of this appropriation shall be
9 paid out of collections of license fees as pro-
10 vided by law.

128—West Virginia Racing Commission

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

1 Medical Expenses ........................................ $ 5,000

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

129—Auditor’s Office—Land Department Operating Fund

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total ........................................................ $ 12,000

2 The total amount of this appropriation shall be
3 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. 8140

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$657,728</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$263,996</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$22,000</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$42,255</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$48,181</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$47,691</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,081,851</td>
</tr>
</tbody>
</table>

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

14 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>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$2,723,776</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>$4,898,316</td>
</tr>
<tr>
<td>3 Equipment</td>
<td>$67,500</td>
</tr>
<tr>
<td>4 Social Security Matching</td>
<td>$165,327</td>
</tr>
<tr>
<td>5 Public Employees Retirement Matching</td>
<td>$224,931</td>
</tr>
<tr>
<td>6 Public Employees Health Insurance</td>
<td>$133,587</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$8,213,437</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. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$340,332</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$18,680</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>$20,000</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>$32,000</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>$12,744</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$423,756</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. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$103,640</td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$182,840</strong></td>
</tr>
</tbody>
</table>

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

134—Public Service Commission

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Commissioners</td>
<td>$77,900</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$2,612,120</td>
</tr>
</tbody>
</table>
3 Current Expenses .................................................. 913,790
4 Equipment .......................................................... 120,000
5 Social Security Matching ........................................ 162,268
6 Public Employees Retirement Matching ....................... 262,708
7 Public Employees Health Insurance ............................ 113,117
8 Consumer Advocate ................................................ 275,000

9 Total ........................................................................ $ 4,536,903

10 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.

14 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.

135—Public Service Commission—Gas Pipeline Division

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services .................................................... $ 150,153
2 Current Expenses ................................................... 74,030
3 Equipment ............................................................. 3,500
4 Social Security Matching ......................................... 7,370
5 Public Employees Retirement Matching ...................... 14,520
6 Public Employees Health Insurance ............................ 6,270

7 Total ........................................................................ $ 255,843

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

**Acct. No. 8290**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$837,139</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>346,200</td>
</tr>
<tr>
<td>3. Equipment</td>
<td>7,500</td>
</tr>
<tr>
<td>5. Public Employees Retirement Matching</td>
<td>79,448</td>
</tr>
<tr>
<td>6. Public Employees Health Insurance</td>
<td>46,915</td>
</tr>
</tbody>
</table>

| Total                                     | $1,370,222|

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

### 137—Department of Natural Resources

**Acct. No. 8300**

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Personal Services</td>
<td>$2,833,016</td>
</tr>
<tr>
<td>2. Current Expenses</td>
<td>1,509,022</td>
</tr>
<tr>
<td>3. Repairs and Alterations</td>
<td>107,896</td>
</tr>
<tr>
<td>4. Equipment</td>
<td>159,097</td>
</tr>
<tr>
<td>5. Land Purchase and Buildings</td>
<td>481,500</td>
</tr>
</tbody>
</table>

| Total                                     | $5,090,531|

7 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” at the close
of fiscal year 1979-80 and available for capital
improvements and land purchase purposes
are hereby appropriated for expenditure in
fiscal year 1980-81, all in accordance with
Chapter 20, Article 2, Section 34, Code of
West Virginia.

138—Department of Public Safety—Inspection Fees

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>371,836</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>162,056</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>8,700</td>
</tr>
<tr>
<td>Equipment</td>
<td>21,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>2,996</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>20,700</td>
</tr>
</tbody>
</table>

Total $587,288

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

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

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>540,092</td>
</tr>
</tbody>
</table>

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

Any unexpended balances remaining in the ap-
propriations for “Creative Arts” at the close
of the fiscal year 1979-80 are hereby reap-
propriated for expenditure during fiscal year
1980-81.
### 140—Board of Regents—State System Registration Fee

**Special Capital Improvements Fund**

*(Capital Improvement and Bond Retirement Fund)*

Acct. No. 8835

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service and Debt Service Reserve</td>
<td>$2,263,735</td>
</tr>
<tr>
<td>2 Marshall University Campus Development</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>3 (Addition to Science Building and continuing property purchase)</td>
<td></td>
</tr>
<tr>
<td>4 Capital Building Repairs and Alterations</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>5 (Supplements operating budgets at colleges and universities)</td>
<td></td>
</tr>
</tbody>
</table>

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

9 Projects are to be paid on a cash basis and made available from the date of passage.

13 Any unexpended balances remaining in prior years' and 1979-80 appropriations are hereby reappropriated for expenditure during fiscal year 1980-81, with the exception of accounts 8835-12 and 8835-14 which will expire on June 30, 1980.

### 141—Board of Regents—Special Capital Improvement Fund

Acct. No. 8840

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Debt Service</td>
<td>$1,674,958</td>
</tr>
</tbody>
</table>

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

6 Any unexpended balances remaining in prior years' and 1979-80 appropriations are hereby reappropriated for expenditure during fiscal year 1980-81, with the exception of the fol-
10 Iowa accounts, which shall expire on June

142—Board of Regents—State System Registration Fee
Revenue Bond Construction Fund
Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 Any unexpended balances remaining in prior
2 years' and 1979-80 appropriations are hereby
3 reappropriated for expenditure during the
4 fiscal year 1980-81.

143—Board of Regents—State System Tuition Fee
Special Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service and Reserve .................................. $ 4,531,101
2 College of Agriculture and Forestry
3 Livestock Teaching and Research
4 Facilities .................................................. 50,000
5 Miscellaneous Campus Development Projects .. 950,000
6 West Virginia Northern Community College
7 Campus Development ..................................... 229,000
8 (Exercise purchase option on New
9 Martinsville facility)
10 West Liberty State College Campus
11 Development .............................................. 310,000
12 (Major items of equipment for the Dental
13 Hygiene Program)
14 West Virginia University Campus Develop-
15 ment ................................................... 2,000,000
16 (Cost escalation—current projects)
17 West Virginia Institute of Technology Campus
18 Development ............................................. 1,000,000
19 (Engineering and Science Buildings—renova-
20 tion and major items of equipment)
21 West Virginia State College Campus Develop-
22 ment .................................................. 2,000,000
23 (Miscellaneous improvements and Library addition in accordance with Campus Master Plan)
26 Miscellaneous Campus Development Projects

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miscellaneous Campus Development Projects</td>
<td>$750,000</td>
</tr>
</tbody>
</table>

28 The total amount of this appropriation shall be paid from the Special Capital Improvement Fund created by the 1977 Legislature. Projects are to be paid on a cash basis and made available from the date of passage.

33 Any unexpended balances remaining in prior years' and in the 1979-80 appropriations are hereby reappropriated for expenditure in fiscal year 1980-81.

144—Board of Regents—State System Tuition Fee Revenue Bond Construction Fund

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO BE PAID FROM SPECIAL REVENUE FUND</td>
<td></td>
</tr>
<tr>
<td>1 Any unexpended balances remaining in prior years' and 1979-80 appropriations are hereby reappropriated for expenditure during fiscal year 1980-81.</td>
<td></td>
</tr>
</tbody>
</table>

145—Workmen's Compensation Commission

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO BE PAID FROM WORKMEN'S COMPENSATION FUND</td>
<td></td>
</tr>
<tr>
<td>1 Personal Services</td>
<td>$3,847,916</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>3,021,300</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>5,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>89,024</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>229,500</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>355,674</td>
</tr>
<tr>
<td>7 Public Employees Health Insurance</td>
<td>224,583</td>
</tr>
<tr>
<td>8 Total</td>
<td>$7,772,997</td>
</tr>
</tbody>
</table>

9 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.

146—West Virginia Alcohol Beverage Control Commission

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Commissioner</td>
<td>$30,000</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>8,306,817</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>4,328,403</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>50,500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>212,000</td>
</tr>
<tr>
<td>6 Social Security Matching</td>
<td>538,618</td>
</tr>
<tr>
<td>7 Public Employees Retirement Matching</td>
<td>800,762</td>
</tr>
<tr>
<td>8 Public Employees Health Insurance</td>
<td>718,959</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$14,986,059</strong></td>
</tr>
</tbody>
</table>

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

The above appropriations include 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.

147—West Virginia University—Medical School

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$37,961,909</td>
</tr>
</tbody>
</table>
2 Current Expenses ........................................ 23,221,527
3 Repairs and Alterations .............................. 1,746,740
4 Equipment .................................................. 2,544,940
5 Intern and Residency Support Program for Community Hospitals ............. 944,542
7 Family Practice Residency Support Program ............................ 777,047

8 Total .................................................. $ 67,196,705

1 Sec. 3. Supplemental and deficiency appropriations.—
2 From the State Fund, General Revenue, except as otherwise provided, there are hereby appropriated the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty, to supplement the 1979-80 appropriations and to be available for expenditure upon date of passage.

148—Department of Welfare
Acct. No. 4050

1 Public Assistance Grants .......................... $ 500,000
2 Direct Medical Services ......................... 7,500,000

3 Total ................................................ $ 8,000,000


11 Any unexpended balances of Items II, III, IV, IX, XII, XIII, XV, XVI and XVII in the appropriations made by and under the authority of Sec. 4 of the 1973 Budget Act and amended under Sec. 4 of the 1977 Budget Act are hereby reappropriated for expenditure during the fiscal year 1980-81 with exception of the following accounts: Item I, Acct. No. 3331-13, 3331-15, Item II, Acct. No. 4191-17,

22 Any unexpended balances of Items I, III and IV in the appropriation made by and under Sec. 4 of the 1976 Budget Act are hereby reappropriated for expenditure during the fiscal year 1980-81 with exception of the following accounts: Item III, Acct. No. 5651-07 and Item IX, Acct. No. 5651-15.

27 Any unexpended balance made by and under the provisions of Chapter 21, Acts of the Legislature, regular session, one thousand nine hundred seventy-seven, to Acct. No. 5650-30—Greenbrier State Forest—Picnic Area Improvements—is hereby redesignated to the purpose:

32 Greenbrier State Forest:

33 "Improvements, including completion of picnic area, improvement of potable water system for campground, repair of storm damaged electric utility and construction of a rest room."

1 Sec. 5. Appropriations from revenue sharing trust fund. -The following items are hereby appropriated from the Revenue Sharing Trust Fund to be available for expenditure during the fiscal year 1980-81.

149—Revenue Sharing Trust Fund
Governor's Office

Acct. No. 9721

1 Partnership Grants—Volunteer Fire Departments ........................................ $ 1,500,000
2 Partnership Grants ........................................................................... 2,000,000
4 Mingo County Sheltered Workshop ................................................. 75,000

150—Revenue Sharing Trust Fund
Department of Finance and Administration

Acct. No. 9740

1 TRIP—Operations .................................................................................. $ 350,000
151—Revenue Sharing Trust Fund
Department of Welfare
Acct. No. 9775

1 TRIP—Tickets $ 624,000

152—Revenue Sharing Trust Fund
Department of Highways
Acct. No. 9705

1 Maintenance State Local Services $ 11,000,000

153—Revenue Sharing Trust Fund
State Health Department
Acct. No. 9715

1 Wirt County Health Department $ 25,000
2 Colin Anderson Center—Capital Outlay 130,000

154—Revenue Sharing Trust Fund
State Board of Education—Vocational Division
Acct. No. 9780

1 Capital Outlay—Brooke County $ 500,000

155—Revenue Sharing Trust Fund
Department of Agriculture
Acct. No. 9771

1 Capital Outlay—Hardy County $ 300,000
2 Capital Outlay—Beckley Farmers Market 15,000
3 Capital Outlay—Inwood Market 40,000
4 Upper Buffalo Fork 90,000
5 Soak Creek Watershed Project 150,000

156—Revenue Sharing Trust Fund
Department of Natural Resources
Acct. No. 9725

1 State Parks—Capital Outlay $ 700,000
157—Revenue Sharing Trust Fund
Department of Corrections
Acct. No. 9719
1 Capital Outlay—Davis Center $130,000

158—Revenue Sharing Trust Fund
Department of Culture and History
Acct. No. 9750
1 Mountain State Forest Festival $32,700
2 Sunrise Museum $50,000
3 Oglebay Park $75,000
4 Ft. Pleasant Battlefield (Capital Outlay) $30,000

159—Revenue Sharing Trust Fund
Board of Regents
Acct. No. 9745
1 Jackson’s Mill 4-H Camp—Replace and install livestock weighing scales $15,000

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,” as amended by the “Intergovernmental Antirecession Assistance Act of 1977; Public Law 95-30,” enacted by the Congress of the United States, shall be deposited in the state treasury and kept in a separate account entitled “Countercyclical Fiscal Assistance Trust Fund.” Any part of or all such amounts as deposited, including deposits through fiscal year one thousand nine hundred eighty-one, are hereby appropriated and may be transferred to any other account in the Governor’s Office or to any other departments of state government for disbursement or expenditure.

Sec. 7. Reappropriations—Revenue Sharing Trust Fund. —Any unexpended balances to the appropriations made by and under Sec. 8 of the 1973 Budget Act, and Supplementary Acts to Chapter 10, acts of the Legislature,

Any unexpended balance made by and under the provisions of Sec. 5 of the 1979 Budget Act in the appropriation “Acct. No. 9715—Pinecrest State Hospital” is hereby redesignated to the purpose: “Pinecrest State Hospital—repair, renovation and equipment of existing facility.”

Sec. 8. Special revenue appropriations.—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-one, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of Chapter 12, Article 2, Section 2 of the Code of West Virginia, one thousand nine hundred thirty-one: Provided, however, That none of the moneys so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of Chapter 12, Articles 2 and 3, and Chapter 5A, Article 2 of the Code of West Virginia, unless the spending unit has filed with the state director of the budget, the State Auditor and the legislative auditor prior to the beginning of each fiscal year:

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

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

Sec. 9. State improvement fund appropriations.—Bequests or donations of nonpublic funds, received by the
Governor on behalf of the state during the fiscal year one thousand nine hundred eighty-one, for the purpose of making studies and recommendations relative 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 are hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred eighty-one, 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. Appropriations for refunding erroneous payments.—Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

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

Sec. 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
6 of the state sinking fund commission as provided by
7 Chapter 31, Article 18, Section 20b of the Code of West
8 Virginia, one thousand nine hundred thirty-one, as amend-
9 ed, or in the funds of the state sinking fund commission
10 because of the failure of any state agency for either
11 general obligation or revenue bonds or any local taxing
12 district for general obligations bonds to remit funds neces-
13 sary for the payment of interest and sinking fund re-
14 quirements. The Governor is authorized to transfer from
15 time to time such amounts to the state sinking fund com-
16 mission as may be necessary for these purposes.

17 The state sinking fund commission shall reimburse the
18 State of West Virginia through the Governor from the
19 first remittance collected from the West Virginia Housing
20 Development Fund or from any state agency or local
21 taxing district for which the Governor advanced funds,
22 with interest at the rate carried by the bonds for the
23 security or payment of which the advance was made.

1 Sec. 13. Appropriations from taxes and license fees.
2 —There is hereby appropriated from the soft drink tax
3 revenues for administration and enforcement of the law
4 relating to said tax a sum not to exceed two and one-half
5 percent of the total revenues collected. All such salaries
6 and expenses, authorized by law as aforesaid, shall be
7 paid by the tax commissioner through the State Treasury
8 out of gross collections.

9 There is hereby appropriated from the cigarette tax
10 revenues for administration and enforcement of the law
11 relating to said tax a sum not to exceed one and one-half
12 percent of the total revenues collected. All such salaries
13 and expenses, authorized by law as aforesaid, shall be
14 paid by the tax commissioner through the State Treasury
15 out of gross collections.

1 Sec. 14. Appropriations to pay costs of publication of
2 delinquent corporations.—There is hereby appropriated
3 out of the state fund, General Revenue, out of funds not
4 otherwise appropriated, to be paid upon requisition of the
5 Auditor and/or the Governor, as the case may be, a sum
6 sufficient to pay the cost of publication of delinquent
7 corporations as provided by Chapter 11, Article 12, Sections 84 and 86 of the Code of West Virginia.

Sec. 15. Appropriations for local governments.—There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts 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 I, Sec. 3.

Sec. 17. General school fund.—The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with Chapter 18, Article 9A, Section 16 of the Code of West Virginia.

TITLE 3. ADMINISTRATION.

§1. Appropriations conditional.

§2. Constitutionality.

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

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

Sec. 2. Constitutionality.—If any part of this act is de-
2 clared 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.

CHAPTER 4
(S. B. 513—By Mr. Hanlon and Mr. Hinkle)

[Passed March 4, 1980; 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 the thirtieth day of June, one thousand nine hundred eighty, to the Auditor's Office, Account No. 1500, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there remains unappropriated a balance in the general fund available for further appropriations during the fiscal year 1979-80, 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. 1500, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, 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

13—Auditor's Office—General Administration

Acct. No. 1500

Representation of Needy Persons Fund .... $350,000.00

This appropriation shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 5

(S. B. 525—By Mr. Fanning and Mr. Rollins)

[Passed March 1, 1980; 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 eighty, to the State Board of Education—Vocational Division, Account No. 2890, supplementing chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, which included a statement of the state fund, general revenue; and

WHEREAS, It appears from such budget that there remains unappropriated a balance in the general fund available for further appropriations during the fiscal year 1979-80, 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. 2890, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-
nine, known as the “Budget Bill,” be supplemented by adding the following item and sum:

1 EDUCATION
2 33—State Board of Education—Vocational Division
3 Acct. No. 2890
4 7a Construction of New Vocational
5 Education Facilities (Cabell Co.) $600,000
6 This appropriation shall be available for expenditure immediately upon the effective date of this bill.
7 Any unexpended balance remaining in this appropriation at the close of the fiscal year 1979-80 is hereby re-
8 appropriated for expenditure during the fiscal year 1980-81.

CHAPTER 6
(H. B. 1662—By Mr. Karras)

(Passed March 3, 1980; 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 eighty, to the Department of Corrections, Account No. 3680, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document dated January 9, 1980, 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 1979-80, 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. 3680, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented by adding thereto the following sum to the designated line item:

1 TITLE II. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 CORRECTIONS
4 49—Department of Corrections
5 Acct. No. 3680
6 5a Prison Industries ___________________________ $ 4,301
7 The purpose of this supplementary appropriation bill is to
8 supplement the aforesaid account and items therein for ex-
9 penditure in the current fiscal year of 1979-80. Such amounts
10 shall be available for expenditure immediately upon the ef-
11 fective date of this bill.

CHAPTER 7
(H. B. 1663—By Mr. Karras)

[Passed February 29, 1980; 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 eighty, to the West Virginia Penitentiary, Account No. 3750, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill."

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, 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 1979-80, 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. 3750, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented by adding thereto the following sums to the designated line items:

<table>
<thead>
<tr>
<th>TITLE II. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CORRECTIONS</td>
</tr>
<tr>
<td>56—West Virginia Penitentiary</td>
</tr>
<tr>
<td>Acct. No. 3750</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Line Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$150,007</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$218,560</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$11,718</td>
</tr>
<tr>
<td>Equipment</td>
<td>$4,400</td>
</tr>
<tr>
<td>Total</td>
<td>$384,685</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 of 1979-80. Such amounts shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 8

(H. B. 1664—By Mr. Karras)

[Passed February 29, 1980; 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 eighty, to the Huttonsville Correctional Center, Account No. 3760, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Whereas, The Governor submitted to the Legislature the Executive Budget Document dated January 9, 1980, 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 1979-80, 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. 3760, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented by adding thereto the following sums to the designated line items:

<table>
<thead>
<tr>
<th>TITLE II. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>CORRECTIONS</td>
</tr>
<tr>
<td>57—Huttonsville Correctional Center</td>
</tr>
<tr>
<td>Acct. No. 3760</td>
</tr>
<tr>
<td>6 1 Personal Services ........................................... $38,364</td>
</tr>
<tr>
<td>7 2 Current Expenses ............................................. $33,014</td>
</tr>
</tbody>
</table>

| 8 5 Total .............................................................. $71,378 |

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and items therein for expenditure in the current fiscal year of 1979-80. Such amounts shall be available for expenditure immediately 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 eighty, to the Department of Veterans Affairs—Veterans Home, Account No. 4010, supplementing chapter one, act of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 9, 1980, 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 appropriations during the fiscal year 1979-80, 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. 4010, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented by adding the following item and sum:

1 TITLE II. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 59—Department of Veterans Affairs
4 Veterans Home
5 Acct. No. 4010
6 2a Renovation and Construction $1,500,000
7 This appropriation shall be available for expenditure immediately upon the effective date of this bill.
Any unexpended balance remaining in the above item at the
close of the fiscal year 1979-80 is hereby reappropriated for
expenditure during the fiscal year 1980-81.

CHAPTER 10

(H. B. 1404—By Mr. Speaker, Mr. See)

[Passed February 27, 1980; 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 eighty, to the Department of Public
Safety, Account No. 5700, chapter one, acts of the Legislature,
first extraordinary session, one thousand nine hundred seventy-
nine, known as the “Budget Bill.”

WHEREAS, The Governor submitted to the Legislature the Execu-
tive Budget Document, dated January 9, 1980, 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 1979-80, 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. 5700, chapter one, acts of the Legislature, first
extraordinary session, one thousand nine hundred seventy-nine,
known as the “Budget Bill,” be supplemented by adding thereto the
following sum to the designated line item:

1 PROTECTION
2 102—Department of Public Safety
3 Acct. No. 5700
4 2 Current Expenses $64,200
5 The purpose of this supplementary appropriation bill is to
6 supplement the aforesaid account and item therein for ex-
penditure in the current fiscal year of 1979-80. Such amount
shall be available for expenditure immediately upon the ef-
flective date of the bill.

CHAPTER 11
(H. B. 1625—By Mr. Farley)

(Passed February 29, 1980; 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 current fiscal year ending June
thirtieth, one thousand nine hundred eighty, to the West Vir-
ginia Public Employees Insurance Board, Account No. 6150,
chapter one, acts of the Legislature, first extraordinary session,
one thousand nine hundred seventy-nine, known as the "Budget
Bill."

WHEREAS, The Governor submitted to the Legislature the Execu-
tive Budget Document, dated January 9, 1980, 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 1979-80, 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. 6150, chapter one, acts of the Legislature, first
extraordinary session, one thousand nine hundred seventy-nine,
known as the "Budget Bill," be supplemented by adding thereto
the following sum to the designated line item:

1 TITLE II. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 MISCELLANEOUS BOARDS AND COMMISSIONS
4 119—West Virginia Public Employees Insurance Board
5 Acct. No. 6150
6 2 Public Employees Health Insurance—
7 3 State Contribution ........................................ $2,665,000
The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year of 1979-80. Such amounts shall be available for expenditure immediately upon the effective date of the bill.

CHAPTER 12
(H. B. 1708—By Mr. Farley and Mrs. Neal)
[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Welch Emergency Hospital, Account No. 4260, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4260, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented, amended and transferred to read as follows:

TITLE II. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

70—Welch Emergency Hospital

Acct. No. 4260

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$1,080,604</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>372,013</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, with no new moneys
being appropriated hereby. The amounts as newly itemized for expenditure during the fiscal year one thousand nine hundred eighty, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 13
(H. B. 1705—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Andrew S. Rowan Memorial Home, Account No. 4270, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4270, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented, amended and transferred to read as follows:

TITLE II. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

71—Andrew S. Rowan Memorial Home

Acct. No. 4270

1 Personal Services ........................................ $ 802,953
2 Current Expenses .......................................... 422,950

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 newly
itemized for expenditure during the fiscal year one thousand
nine hundred eighty, shall be available for expenditure immedi-
ately upon the effective date of this bill.

CHAPTER 14
(S. B. 402—By Mr. Harman)

[Passed March 1, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts
between items of the existing appropriation of the West
Virginia Industrial School for Boys, Account No. 3700,
as appropriated by chapter one, acts of the Legislature,
first extraordinary session, one thousand nine hundred
seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 3700,
chapter one, acts of the Legislature, first extraordinary session,
one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented, amended and transferred to
read as follows:

<table>
<thead>
<tr>
<th>TITLE II. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>CORRECTIONS</td>
</tr>
<tr>
<td>51—West Virginia Industrial School for Boys</td>
</tr>
<tr>
<td>Acct. No. 3700</td>
</tr>
<tr>
<td>6 1 Personal Services .................................................. $927,415</td>
</tr>
<tr>
<td>7 2 Current Expenses .................................................. 351,300</td>
</tr>
<tr>
<td>8 3 Repairs and Alterations ......................................... 87,450</td>
</tr>
<tr>
<td>9 4 Equipment ............................................................ 22,950</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 other items 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 eighty, shall be available for
expenditure immediately upon the effective date of this
bill.

CHAPTER 15
(H. B. 1707—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts be-
tween items of the existing appropriation of Hopemont State
Hospital, Account No. 4300, as appropriated by chapter one,
acts of the Legislature, first extraordinary session, one thousand
nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4300,
chapter one, acts of the Legislature, first extraordinary session, one
thousand nine hundred seventy-nine, known as the “Budget Bill,” be
supplemented, amended and transferred to read as follows:

TITLE II. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

72—Hopemont State Hospital

Acct. No. 4300

1 Personal Services $ 3,378,499
2 Current Expenses 738,725

The purpose of this supplementary appropriation bill is to
supply, 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 newly itemized for expenditure during the fiscal year one thousand nine hundred eighty, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 16
(H. B. 1706—By Mr. Farley and Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of Pinecrest State Hospital, Account No. 4310, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriations of Account No. 4310, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill,” be supplemented, amended and transferred to read as follows:

TITLE II. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HEALTH AND WELFARE

73—Pinecrest State Hospital

Acct. No. 4310

1 Personal Services $3,041,840
2 Current Expenses $994,128

The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from one item of the existing appropriation to another item of such appro-
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 eighty, shall be available for expenditure immediately upon the effective date of this bill.

CHAPTER 17
(H. B. 1283—By Mr. Speaker, Mr. See)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between line items in the appropriation for the fiscal year ending June thirtieth, one thousand nine hundred eighty, to the State Department of Mines, Account No. 4600, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the appropriation of Account No. 4600, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, be supplemented, amended and transferred to read as follows:

78—Department of Mines

Acct. No. 4600

2 Current Expenses ................................................. $890,390
4 Special Mine Drainage Programs ......................... 14,260

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

CHAPTER 18
(H. B. 1666—By Mr. Mathis and Mr. Harden)

(Passed February 29, 1980; in effect from passage. Approved by the Governor.)

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Insurance Commissioner, Account No. 6160, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the “Budget Bill.”

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 6160, chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, be supplemented, amended and transferred to read as follows:

TITLE II. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

120—Insurance Commissioner

Acct. No. 6160

1 Personal Services $530,800
2 Current Expenses 188,790

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 newly itemized for expenditure during the current fiscal year of 1979-80, shall be made available for expenditure immediately 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. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, 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. 6700, for the fiscal year ending June thirtieth, one thousand nine hundred eighty, as appropriated by chapter one, acts of the Legislature, first extraordinary session, one thousand nine hundred seventy-nine, known as the "Budget Bill," be supplemented, amended and transferred to read as follows:

1 TITLE II. APPROPRIATIONS.

2 Section 2. Appropriations from other funds.

3 123—State Department of Highways

4 Acct. No. 6700

5 TO BE PAID FROM STATE ROAD FUND

6 1 Maintenance Expressway, Trunkline and Feeder $69,000,000

7 2 Maintenance State Local Services $74,500,000

8 3 Inventory Revolving 1,000,000

9 and State Toll Bridges (elimination of tolls) 9,000,000

9 6 General Operations 19,000,000

10 7 Debt Service 80,650,000

11 8 Interstate Construction 145,000,000

12 9 Other Federal Aid Programs 92,551,000
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 1979-80 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 20
(S. B. 242—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the commissioner of banking to make an examination of every financial institution at least once every eighteen months.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF BANKING.

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

The commissioner of banking shall make, at least once
every eighteen months, a thorough examination of all
the books, accounts, records and papers of every financial
institution. He shall carefully examine all of the assets
of each such institution, including its notes, drafts,
checks, mortgages, securities deposited to assure the pay-
ment of debts unto it, and all papers, documents and
records showing, or in any manner relating to, its busi-
ness affairs, and shall ascertain the full amount and
the nature in detail of all of its assets and liabilities.
The commissioner may also make such examination of
any subsidiaries or affiliates of a financial institution as
he may deem necessary to ascertain the financial condi-
tion of such financial institution, the relations between
such financial institution and its subsidiaries and affili-
ates and the effect of such relations upon the affairs
of such financial institution. A full report of every such
examination shall be made and filed and preserved in
the office of the commissioner and a copy thereof forth-
with mailed to the institution examined. Every such
institution shall retain all of its records of final entry
for such period of time as required in section thirty-
five, article four of this chapter for banking institutions.

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

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

CHAPTER 21
(S. B. 250—By Mr. Rogers)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two,
chapter thirty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to assessments of banks.

Be it enacted by the Legislature of West Virginia:

That section eight, article two, chapter thirty-one-a of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, be amended and reenacted to read as follows:
ARTICLE 2. DEPARTMENT OF BANKING.

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

(a) The commissioner of banking shall charge and collect from each state banking institution and pay into the state treasury assessments as follows:

(1) A semiannual assessment of fifty dollars upon the first twenty-five thousand dollars of the total assets and six and three-quarters cents for each additional one thousand dollars of such assets, computed on total assets of the bank as shown on the report of condition of the bank as of the last business days in June and December in each year.

(2) The commissioner shall, during the month of January, one thousand nine hundred eighty-one, and each July and each January thereafter, prepare and send to each state banking institution a statement of the amount of the assessment due.

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

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

(d) The commissioner of banking may maintain an action for the recovery of all such assessments, costs and expenses in any court of competent jurisdiction.
AN ACT to amend article four, 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 thirty-a, relating to an alternative means for determining the maximum rate of interest on loans made by persons and by banks chartered under the laws of this state; setting forth certain legislative findings and a legislative purpose; authorizing and directing the commissioner of banking to make certain findings and determinations and to prescribe from time to time a maximum rate of interest for such loans which shall not exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve district where such person or state chartered bank is located; authorizing any person or a state chartered bank to contract in writing for the payment of interest not to exceed such maximum rate; and fixing at time of commitment an interest rate on loans to be consummated in the future.

Be it enacted by the Legislature of West Virginia:

That article four, 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 thirty-a, to read as follows:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30a. Legislative findings; fixing alternative maximum interest rate on loans by persons or by banks chartered under state law; authorizing commissioner of banking to make certain findings and determinations and to fix maximum interest rate on such loans from time to time subject to limitation.

(a) The Legislature hereby finds and declares that:

(1) Under federal banking laws, national banking asso-
ciations are permitted to charge interest on loans at a rate not exceeding one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where the national banking association is located:

(2) Banks chartered under the laws of West Virginia are unable to charge interest on a comparable basis, and hence may from time to time be at a competitive disadvantage in relation to national banking associations having their principal offices in the state:

(3) It is in the best interest of the citizens of this state to preserve the state banking system and to that end, and in order to foster equitable competition as to interest rates, to provide a means by which banks chartered under the laws of West Virginia, as an alternative to the interest rates authorized by any other provisions of this code, may, if authorized by the commissioner of banking, charge interest at a rate comparable to the rate now permitted to national banking associations;

(4) Such alternative interest rate should be prescribed from time to time by the commissioner of banking, taking into account the interest rate permitted to be charged by national banking associations having their principal offices in the state and conditions then prevailing so as to permit and encourage competition in interest rates between the banks of West Virginia.

(b) In view of the foregoing findings, it is the purpose of this section to authorize and direct the commissioner of banking to prescribe from time to time the maximum interest rates on loans of money made by persons or by banks chartered under the laws of West Virginia, as an alternative to the interest rates authorized by any other provisions of this code, and to authorize such persons or banks to charge up to the maximum interest rates so fixed.

(c) The commissioner of banking is hereby authorized and directed to find and determine from time to time whether the maximum rate of interest which may be charged by national banking associations having their principal offices in the state is greater than the maximum rate of interest which may be charged by persons or by banks chartered under the laws of
West Virginia located in the same federal reserve district and if so, whether under prevailing conditions said state chartered banks are thereby placed at a competitive disadvantage and to prescribe from time to time by order a maximum rate of interest which may be charged by persons or by banks chartered under the laws of West Virginia, as an alternative to the interest rates authorized by any other provisions of this code, which maximum rate of interest shall not exceed one percent in excess of the discount rate on ninety-day commercial paper in effect at the federal reserve bank in the federal reserve district where such banks or persons are located, such finding and determination to be made and such maximum rate prescribed within two business days after the effective date of any change in such discount rate.

(d) Each time the discount rate shall change at a federal reserve bank in a federal reserve district in which a bank chartered under the laws of West Virginia is located, the commissioner of banking shall, in accordance with the provisions of subsection (c) of this section, make the required finding and determination and prescribe the maximum rate of interest which may be charged by persons or by state-chartered banks located in such federal reserve district for loans made pursuant to the provisions of this section, and shall cause such maximum rate of interest to be issued to the public, such maximum rate of interest to be effective immediately.

(e) Notwithstanding any other provisions of this section, the commissioner of banking shall on the effective date of this section or, if such day is a Saturday, Sunday or legal holiday, on the next succeeding business day make the finding and determination required by subsection (c) of this section and prescribe by order and issue to the public said maximum rate of interest for persons and state chartered banks located in such district which shall be effective until the commissioner of banking shall next issue an order prescribing such maximum rate of interest.

(f) As an alternative to the interest rate authorized by any other provisions of this code, any person may or any bank now or hereafter chartered under the laws of West Virginia may, after the effective date of this section, on any loan of money, contract in writing for the payment of interest at a rate,
including points expressed as a percentage of the loan divided by the number of years of the loan contract, not to exceed the then effective maximum rate prescribed by the commissioner of banking pursuant to the provisions of this section.

(g) For the purpose of subsection (f) of this section, the term "points" is defined as the amount of money, or other consideration, received by any person or by such banks, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

(h) A commitment to make a loan pursuant to this section which provides for consummation within some future time may be consummated pursuant to the provisions, including interest rate, of such commitment notwithstanding the fact that the maximum rate of interest at the time the loan contract is entered into is less than a commitment rate of interest:

Provided, That the commitment rate of interest does not exceed the maximum interest rate in effect on the date the commitment was issued: Provided, however, That the commitment when agreed to by the borrower constitutes a legally binding obligation on the part of such person or such bank to make such a loan within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of loan consummation even though the maximum rate of interest is then higher.

(i) Nothing contained in this section shall prohibit the parties to any loan transaction from contracting for a rate of interest authorized by any other provision of this code.

CHAPTER 23
(S. B. 364—By Mr. Kusic)

[Passed February 26, 1980; in effect ninety days from passage. Vetoed by the Governor.
Reconsidered and passed by the Legislature notwithstanding the objections of the Governor.]

AN ACT to amend and reenact sections two, three and thirteen, article sixteen, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article one, chapter sixty of said code, all relating to changing the definition of nonintoxicating beer to a product containing not more than four and two-tenths percent of alcohol by weight, or six percent by volume.

Be it enacted by the Legislature of West Virginia:

That sections two, three and thirteen, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five, article one, chapter sixty of said code be amended and reenacted, all to read as follows:

Chapter

11. Taxation.

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Definitions.

§11-16-3. State license required; alcoholic content of beer manufactured for sale without state.

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

§11-16-2. Definitions.

For the purpose of this article:

"Nonintoxicating beer" shall mean all cereal malt beverages or products of the brewing industry commonly referred to as beer, lager beer, ale, and all other mixtures and preparations produced by the brewing industry, and containing not more than four and two-tenths percent of alcohol by weight, or six percent by volume, whichever is greater, which are hereby declared to be nonintoxicating and the word "liquor" as used in chapter sixty of the code of West Virginia shall not be construed to include or embrace nonintoxicating beer.

"Person" shall mean and include an individual, firm, partnership, association or corporation.

"Retailer" shall mean any person selling, serving,
delivering or otherwise dispensing nonintoxicating beer at his established and licensed place of business.

“Distributor” shall mean any person, whose chief place of business is within the state of West Virginia, jobbing or distributing nonintoxicating beer to retailers at wholesale.

“Brewer” shall mean any person, firm, association, partnership or corporation manufacturing, bottling or otherwise producing nonintoxicating beer for sale at wholesale.

“Original container” shall mean the container used by the brewer at the place of manufacturing, bottling, or otherwise producing nonintoxicating beer for sale at wholesale.

§11-16-3. State license required; alcoholic content of beer manufactured for sale without state.

No person shall manufacture, sell, possess for sale, transport or distribute nonintoxicating beer except in accordance with the provisions of this article, and after first obtaining a state license therefor, as hereinafter provided: Provided, however, That nothing herein contained shall prohibit any brewer located within the state from manufacturing or transporting for sale without the state beer of an alcoholic strength greater than that of nonintoxicating beer.

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

It shall be unlawful:

(a) For any licensee, his, its or their servants, agents or employees to sell, give or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected therewith, nonintoxicating beer on weekdays between the hours of two o'clock a.m., and seven o'clock a.m., or between the hours of two o'clock a.m., and one o'clock p.m., on any Sunday, except in private clubs licensed under the provisions of article seven, chapter sixty of this code, where the hours shall conform with the hours of sale of alcoholic liquors;
(b) For any licensee, his, its or their servants, agents or employees, to sell, furnish or give any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any insane person, or to any habitual drunkard, or to any person under the age of eighteen years;

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

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

(e) For any brewer or distributor to give, furnish, rent or sell any equipment, fixtures, signs or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail, or to offer any prize, premium, gift, or other similar inducement, except advertising matter of nominal value, to either trade or consumer buyers: Provided, That nothing contained herein shall prohibit a distributor from offering for sale or renting tanks of carbonic gas;

(f) For any licensee to transport, sell, deliver or purchase any nonintoxicating beer or product of the brewing industry upon which there shall appear a label or other informative data which in any manner refers to the alcoholic content of such beer or product of the brewing industry, or upon the label of which there appears the word or words “strong,” “full strength,” “extra strength,” “prewar strength,” “high test” or other similar expressions bearing upon the alcoholic content of such product of the brewing industry, or which refers in any manner to the original alcoholic strength, extract or balling...
proof from which such beverage was produced, except that such label shall state the alcoholic content thereof;

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

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

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

(j) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession or consumption of any alcoholic liquors on the premises covered by such license or on premises directly or indirectly used in connection therewith: Provided, That the prohibitions contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession or consumption of alcoholic liquors shall not be applicable with respect to the holder of a license to operate a private club issued under the provisions of article seven, chapter sixty of this code;

(k) For any licensee to print, paint or place upon the door, window, or in any other public place in or about the premises, the word "saloon" or word of similar character or nature, or for the word "saloon" or similar words to be used in any advertisement by the licensee;

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

(m) For any licensee to permit loud, boisterous or disorderly conduct of any kind upon his premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community wherein such business is located:

Provided, That no licensee shall have in connection with his place of business any loudspeaker located on the outside of the licensed premises that broadcasts or carries music of any kind;

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

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

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

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

(r) For any licensee, his, its or their servants, agents, or employees, or for any licensee by or through such servants, agents or employees, to allow, suffer or permit any person under the age of eighteen years to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision shall not apply where such person under the age of eighteen years, is in, or upon such premises in the immediate company of his or her parent or parents, or where and while such person under the age of eighteen years is in, on or upon such premises for the purpose of and actually making a lawful purchase of any items or commodities therein sold, or for the purchase of and actually receiving any lawful service therein rendered, including the consumption of any
Any person who violates any provision of this article or who makes any false statement concerning any material fact in submitting application for license or for a renewal of a license or in any hearing concerning the revocation thereof, or who commits any of the acts herein declared to be unlawful, shall be guilty of a misdemeanor, and shall be punished for each offense by a fine of not less than twenty-five nor more than five hundred dollars, or imprisoned in the county jail for not less than thirty days or more than six months, or by both fine and imprisonment in the discretion of the court. Justices of the peace shall have concurrent jurisdiction with the circuit court, and any other courts having criminal jurisdiction in their county, for the trial of all misdemeanors arising under this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

1 For the purposes of this chapter:

2 “Alcohol” shall mean ethyl alcohol whatever its origin, and shall include synthetic ethyl alcohol but not denatured alcohol.

3 “Beer” shall mean any beverage obtained by the fermentation of barley, malt, hops, or any other similar product or substitute, and containing more alcohol than that of nonintoxicating beer.

4 “Nonintoxicating beer” shall mean any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by section two, article sixteen, chapter eleven.

5 “Wine” shall mean any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.
“Spirits” shall mean any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution, and includes brandy, rum, whiskey, cordials and gin.

“Alcoholic liquor” shall include alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

“Original package” shall mean any closed or sealed container or receptacle used for holding alcoholic liquor.

“Sale” shall mean any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by principal, proprietor, agent or employee.

“Selling” shall include solicitation or receipt of orders; possession for sale; and possession with intent to sell.

“Person” shall mean an individual, firm, partnership, corporation or voluntary association.

“Manufacture” means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

“Manufacturer” shall mean any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

“Brewery” shall mean an establishment where beer is manufactured or in any way prepared.

“Winery” shall mean an establishment where wine is manufactured or in any way prepared.

“Distillery” shall mean an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

“Public place” shall mean any place, building or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, and hotel dining rooms and lobbies, and corridors of hotels, and
any highway, street, lane, park or place of public resort or amusement.

"State liquor store" shall mean a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

"An agency" shall mean a drugstore, grocery store or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia alcohol beverage control commissioner.

"Department" shall mean the organization through which the commission exercises powers imposed upon it by this chapter.

"Commission" shall mean the West Virginia alcohol beverage control commissioner.

CHAPTER 24

(H. B. 988—By Mr. Shaffer and Mr. Stephens)

[Passed February 21, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen and twenty-three, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-b, relating to removal of any presumption by which one natural parent may be awarded custody of minor children; providing for visitation rights of grandparents of minor children; and providing for restoration of former name of wife.

Be it enacted by the Legislature of West Virginia:

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

**Article**

2. Divorce, Annulment and Separate Maintenance.

2B. Child Visitation.

**ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.**


§48-2-23. Former name of wife; restoration.

**§48-2-15. Alimony; custody and maintenance of children.**

1. Upon ordering a divorce, the court may make such further order as it shall deem expedient, concerning the maintenance of the parties, or either of them; and upon ordering the annulment of a marriage, or a divorce, the court may make such further order as it shall deem expedient, concerning the care, custody, education and maintenance of the minor children, and may determine with which of the parents or other proper person or persons the children or any of them, may remain; and the court may, from time to time afterward, on the verified petition of either of the parties, revise or alter such order concerning the maintenance of the parties, or either of them, and make a new order concerning the same, as the altered circumstances or needs of the parties may render necessary to meet the ends of justice; and the court may also from time to time afterward, on the verified petition of either of the parties or other proper person having actual or legal custody of such child or children, revise or alter such order concerning the care, custody, education and maintenance of the children, and make a new order concerning the same, as the circumstances of the parents or other proper person or persons and the benefit of the children may require. In making any such order respecting custody of minor children, there shall be no legal presumption that, as between the natural parents, either the father or the mother should be awarded custody of said children, but the court shall make an award of custody solely for the best interest of the children based upon the merits of each case. In any case where the divorce or the annulment is denied, if the parties are living separate and apart from each other, the court shall retain jurisdiction
of the case for the purpose of determining with which of the parents or other proper person or persons the children or any of them may remain and of making such order concerning the care, custody, education and maintenance of the minor children, or any of them, as to the court may seem proper and the benefit of the child or children may require; and such order may, from time to time afterward, on verified petition of either of the parties or other proper person having actual or legal custody of such child or children, be revised or altered, and a new order made, as the circumstances of the parties or the needs of the children may require. For the purpose of making effectual any order provided for in this section the court may make any order concerning the estate of the parties, or either of them, as it shall deem expedient.

In any case where a divorce is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may make such further order as it shall deem expedient, concerning the maintenance of the parties, or either of them, or concerning the care, custody, education and maintenance of the minor children, and in any case where an annulment is granted in this state upon constructive service of process, and personal jurisdiction is thereafter obtained of the defendant in such case, the court may make such further order as it shall deem expedient concerning the care, custody, education and maintenance of the minor children.

Upon ordering the annulment of a marriage or a divorce, the court may, in its discretion, make such further order as it shall deem expedient, concerning the grant of reasonable visitation rights to any grandparent of the minor children upon application, if the grandparent or grandparents are related to such minor child through a party to such action whose whereabouts are unknown or through a party who did not answer or otherwise appear and defend the cause of action in which such divorce or annulment is granted, and the court may issue any necessary order to enforce such order or decree.

§48-2-23. Former name of wife; restoration.

1 The court upon granting an annulment or divorce to the
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2 husband or wife, shall, if requested to do so by the wife,
3 allow the wife to resume her maiden name. The court shall,
4 if requested to do so by the wife, allow the wife to resume
5 the name of a former husband if she has any living minor child
6 or children by her marriage to such former husband.

ARTICLE 2B. CHILD VISITATION.

§48-2B-1. Grandparents' visitation.

1 Upon the verified petition by a parent of a deceased child
2 seeking visitation rights with grandchildren of the petitioner,
3 the court may order that the grandparent shall have such
4 reasonable and seasonable visitation rights with said grand-
5 child or grandchildren as the court may deem proper and in
6 the best interest of the child or children.

CHAPTER 25
(Com. Sub. for H. B. 1410—By Mr. Schifano)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article two, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article six, chapter forty-nine of said code; to further amend article six of said chapter by adding thereto a new section, designated section nine; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-a, all relating to child welfare generally; authorizing and empowering the state department of welfare to provide care, support, protective services and custody for certain children; deleting requirements that the findings of the court must be based partially upon conditions existing at time of hearing; establishing emergency procedures for the taking into custody, without court action, by a law-enforcement officer of any neglected or abused child who is abandoned or who needs emergency medical treatment; specifying certain conditions and time and other limitations in connection with such
emergency procedures; requiring certain inquiries, notices and statements; relating to other restrictions and limitations on the taking and retention of custody of children; defining terms; and relating to conditions of bail in criminal offenses against a child.

Be it enacted by the Legislature of West Virginia:

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

Chapter

CHAPTER 49. CHILD WELFARE.

Article
2. State Responsibilities for the Protection and Care of Children.
6. Procedure in Cases of Child Neglect or Abuse.

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


1 The state department is hereby authorized and empowered to provide care, support and protective services for children who are handicapped by dependency, neglect, illegitimate birth, mental or physical disability, or who for other reasons are in need of public service. Such department is also hereby authorized and empowered in its discretion to accept children for care from their parent or parents, guardian, custodian or relatives and to accept the custody of children committed to its care by courts exercising juvenile jurisdiction. The state department of welfare or any county office of such department is also hereby authorized and empowered in its discretion to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.
The state department of welfare shall provide care in special boarding homes for children needing detention pending disposition by a court having juvenile jurisdiction or temporary care following such court action.

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

§49-6-2. Petition to court when child believed neglected or abused; notice—Right to counsel; improvement period; hearing; transcript.

§49-6-9. Custody in emergency situations.

§49-6-2. Petition to court when child believed neglected or abused; notice—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 improve-
ment period.

(c) In any proceeding under this article, the party or
parties having custody of the child shall be afforded a mean-
ingful 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 re-
cording 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 proven by clear
and convincing proof.

(d) Following the court’s determination, it shall be in-
quired 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 trans-
cript of the hearing without cost to the indigent person, if an
affidavit is filed stating that he cannot pay therefor.

§49-6-9. Custody in emergency situations.

(a) A child believed to be a neglected child or an abused
child may be taken into custody without the court order other-
wise required by section three of this article by a law-
enforcement officer (1) if the child is abandoned as defined
in subsection (g) of this section, or (2) if such officer deter-
mines that the child is in a condition requiring emergency
medical treatment by a physician and the child’s parents,
parent, guardian or custodian refuses to permit such treat-
ment, or is unavailable for consent. A child who suffers from a condition requiring emergency medical treatment, whose parents, parent, guardian or custodian refuses to permit the providing of such emergency medical treatment, may be retained in a hospital by a physician against the will of such parents, parent, guardian or custodian, as provided in subsection (c) of this section.

(b) A child taken into protective custody as abandoned under the provisions of this section may be housed by the state department or in any authorized child shelter facility. The authority to hold such child in protective custody as abandoned, absent a petition and proper order granting temporary custody pursuant to section three of this article, shall terminate by operation of law upon the happening of either of the following events, whichever shall first occur: (1) the expiration of ninety-six hours from the time the child is initially taken into protective custody, or (2) the expiration of the circumstances which initially warranted the determination of abandonment. No child may be considered abandoned and custody withheld from such child's parents, parent, guardian or custodian presenting themselves, himself or herself in a fit and proper condition and requesting physical custody of such child. No child may be removed from a place of residence as abandoned under this section until after (1) all reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted; or if no such arrangements can be made, (2) the state department may place in the residence a home services worker with the child for a period of not less than twelve hours to await the return of such child's parents, parent, guardian or custodian. Prior to taking a child into protective custody as abandoned at a place at or near the residence of such child, the law-enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parents, parent, guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the officer, the place and telephone number where information can continuously be obtained as to the child's
whereabouts, and if known, the worker for the state department having responsibility for the child.

(c) A child taken into protective custody pursuant to the provisions of this section for emergency medical treatment may be held in a hospital under the care of a physician against the will of such child’s parents, parent, guardian or custodian for a period not to exceed ninety-six hours. The parents, parent, guardian or custodian may not be denied the right to see or visit with such child in a hospital. The authority to retain a child in protective custody in a hospital as requiring emergency medical treatment shall terminate by operation of law upon the happening of either of the following events, whichever shall first occur: (1) When the condition, in the opinion of the physician, no longer required emergency hospitalization, or (2) upon the expiration of ninety-six hours from the initiation of custody, unless within such time, a petition is presented and a proper order obtained from the circuit court.

(d) Prior to assuming custody of a child from a law-enforcement officer, pursuant to the provisions of this section, a physician or worker from the state department shall require a typed or legibly handwritten statement from such officer identifying such officer’s name, address and office telephone number and specifying all the facts upon which the decision to take the child into protective custody was based, and the date, time and place of the taking.

(e) Any worker for the state department assuming custody of a child pursuant to the provisions of this section shall immediately notify the parents, parent, guardian or custodian of the child of the taking of such custody and the reasons therefor, if the whereabouts of the parents, parent, guardian or custodian are known or can be discovered with due diligence; and if not, notice and explanation shall be given to the child’s closest relative, if his or her whereabouts are known or can be discovered with due diligence within a reasonable time. An inquiry shall be made of relatives and neighbors, and if a relative or appropriate neighbor is willing
to assume custody of such child, such child shall temporarily
be placed in such custody.

(f) No child shall be taken into custody under circum-
stances not justified by this section or pursuant to section
three of this article without appropriate process. Any re-
tention of a child or order for retention of a child not
complying with the time limits and other requirements speci-
fied in this article shall be void by operation of law.

(g) As used in this section:

(1) "Abandoned" means to be without supervision or
shelter for an unreasonable period of time in light of the
child's age and the ability to care for himself or herself in
circumstances presenting an immediate threat of serious harm
to such child;

(2) A "law-enforcement officer" means a law-enforcement
officer of the department of public safety, a municipality or
county sheriff's department;

(3) A "condition requiring emergency medical treatment"
means a condition which, if left untreated for a period of a
few hours, may result in permanent physical damage; such a
condition includes, but is not limited to, profuse or arterial
bleeding, dislocation or fracture, unconsciousness and evidence
of ingestion of significant amounts of a poisonous substance.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-17a. Bail in situations of alleged child abuse.

When the offense charged is an assault or other offense
against a child who is defined in chapter forty-nine of this
code, it may be a condition of bond that the defendant shall
not live in the same residence as the victim of the alleged
offense, and the court may make such other conditions of
bond with respect to contact with the victim as it deems
necessary under the circumstances to protect the child.
AN ACT to amend article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to authorizing the court, on its own motion or upon motion of counsel, to commit an adjudicated juvenile to the custody of the commissioner of corrections for diagnostic study and medical examination, not to exceed thirty days, as part of the disposition stage of the juvenile proceedings; report and recommendations of the commissioner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13a. Examination, diagnosis and classification; period of custody.

1 After adjudication as part of the dispositional proceeding, the court, upon its own motion, or upon request of counsel, may order the child to be delivered into the custody of the commissioner of corrections who shall cause such child to be forthwith transferred to a juvenile diagnostic center for a period not to exceed thirty days. During such period, such child shall undergo examination, diagnosis, classification, and a complete medical examination and shall at all times be kept in an area wholly segregated from the general juvenile inmate population in the custody of the commissioner of corrections. Not later than thirty days after commitment pursuant to this section such juvenile shall be remanded and delivered to the custody of the juvenile probation officer of the county wherein the child was adjudicated delinquent or to the custody of such other person as the court shall direct by its order. Within ten
days following the termination of such examination, diagnosis
and classification, the commissioner of corrections shall make
or cause to be made a report to the court containing the
results, findings, conclusions and recommendations of the
commissioner with respect to such child.

CHAPTER 27
(S. B. 514—By Mr. Hanlon and Mr. Hinkle)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article two,
chapter fourteen of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to the
compensation and expenses of judges of the court of
claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CLAIMS AGAINST THE STATE.


1 Each judge of the court shall receive one hundred
2 fifteen dollars for each day actually served, and actual
3 expenses incurred in the performance of his duties. The
4 number of days served by each judge shall not exceed
5 one hundred in any fiscal year, except by authority of
6 the joint committee on government and finance. Req-
7 uisitions for compensation and expenses shall be ac-
8 companied by sworn and itemized statements, which shall
9 be filed with the auditor and preserved as public records.
10 For the purpose of this section, time served shall include
11 time spent in the hearing of claims, in the consideration of
12 the record, in the preparation of opinions, and in neces-
13 sary travel.
AN ACT to amend and reenact section one-a, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conservation officers; exclusion from coverage of wage and hour law; premium pay in lieu of overtime; and days and hours in the workweek.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING.

§20-7-1a. Conservation officers excluded from coverage of wage and hour laws; supplemental pay in lieu of overtime; regulation.

1 The Legislature finds and declares that the supreme court of appeals of West Virginia has held that conservation officers are covered by the provisions of the state wage and hour law, article five-c, chapter twenty-one of this code. The Legislature further finds and declares that because of the unique duties of conservation officers, it is not appropriate to apply said wage and hour provisions to them. Accordingly, conservation officers are hereby excluded from the provisions of said wage and hour law and department of civil service guidelines, rules or regulations relating thereto. They shall be subject to duty whenever and wherever required by the functions, services and needs of the department.

13 The minimum workweek for conservation officers shall be five eight hour days and the maximum number of days and hours per day shall be unrestricted. Conservation officers shall not be entitled to compensatory time for days or hours worked in excess of the minimum in a work day or week except
a compensatory day shall be granted for any holiday worked. In lieu of any benefits to which they would have been entitled by the coverage from which they are hereby excluded, conservation officers, except those classified by the West Virginia civil service system as conservation officer IV and natural resources administrator, shall receive in addition to their salaries an annual premium payment of two thousand one hundred dollars which sum shall be prorated and included in the payment of their salary checks.

This section shall not apply to special nor emergency conservation officers appointed under the authority of section one of this article.

CHAPTER 29
(S. B. 243—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creation of a fee for examination and investigation of an application for certificate of incorporation for an industrial loan company.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-9. Industrial loan companies; agreement of incorporation; issuance of certificate of incorporation; recordation; application for and issuance of certificate or license to engage in business.

Persons desiring to form an industrial loan company
shall sign and acknowledge an agreement of incorporation, as provided in article one of this chapter.

The agreement shall be delivered to the secretary of state, who, after the agreement has been approved in writing by the commissioner of banking, shall issue to the incorporators his certificate under the great seal of the state as provided in article one of this chapter: Provided, That hereafter no charter shall be issued to any industrial loan company under the provisions of this article, nor shall any amendment under general law or under the provisions of this article be made to the charter of any existing industrial loan company coming within the terms of this article, whether heretofore or hereafter organized, until the application for such charter or for an amendment to such already existing charter has been approved in writing by the commissioner of banking. Application for a new charter shall be filed in duplicate with the commissioner of banking, accompanied by an examination and investigation fee of one thousand dollars payable to the commissioner. Such charter, when issued, shall be filed and recorded as provided by law for general corporations organized under the laws of this state. The provisions of section five, article two, chapter thirty-one-a, insofar as the same relates to financial institutions, other than banking institutions, shall apply to the application and issuance of a certificate or license by the commissioner to an industrial loan company.

CHAPTER 30

(Com. Sub. for S. B. 558—By Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]
said code; to repeal section three of said article one; to amend and reenact sections two, four and five, article three of said chapter; and to repeal section three of said article three, all relating to commitment of youthful male and female offenders to the custody of the commissioner of corrections; age limits; physical, educational and psychological examinations; cost of examinations to be borne by committing county; alternative examinations ordered by court prior to disposition; results of examinations and court orders to accompany youths when committed; authority of commissioner of corrections for transfer and placement of youths; examination of female youth to be in presence of a matron; compensation of physician and matron for examination of female youth.

Be it enacted by the Legislature of West Virginia:

That section seven, article four, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section two, article one, chapter twenty-eight of said code be amended and reenacted; that section three of said article one be repealed; that sections two, four and five, article three, chapter twenty-eight of said code be amended and reenacted; and that section three of said article three be repealed, all to read as follows:

Chapter

25. Department of Corrections.


CHAPTER 25. DEPARTMENT OF CORRECTIONS.

ARTICLE 4. CENTERS FOR HOUSING YOUTHFUL MALE LAW OFFENDERS.

§25-4-7. Physical, educational and psychological examinations; transfer and placement.

1 Every youthful offender committed hereunder shall be given complete physical, educational and psychological examinations in the same manner and under the same protections and requirements of subsections (b) and (c), section two, article one, chapter twenty-eight of this code. In addition thereto, all admission, transfer and place-
ment requirements and authority provided to the com-
missioner in subsections (d) and (e), section two, article
one, chapter twenty-eight of this code shall be applicable.

CHAPTER 28. STATE CORRECTIONAL AND PENAL
INSTITUTIONS.

Article
1. Commitment of Youthful Male Offenders.
3. Industrial Home for Girls.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and
psychological examinations; admission; transfer and
placement.

(a) Any male youth between the ages of ten and
eighteen years may be committed to the custody of the
commissioner of corrections by a circuit court of this state
in the manner prescribed in article five, chapter forty-nine
of this code; and further, any male youth who has been
adjudged delinquent pursuant to subdivision one, section
four, article one, chapter forty-nine of this code, who,
as a result thereof, was placed on probation and has been
found, in a proceeding pursuant to the procedural require-
ments of article five, chapter forty-nine of this code, to
have violated a term of probation, prior to the attainment
of his twentieth birthday, which constitutes a criminal
offense, may be committed to the custody of the commis-
sioner of corrections as a youthful offender.

(b) Every youth committed hereunder shall, following
the dispositional proceeding, be transferred to the place
or places designated by the commissioner of corrections
for complete physical, educational and psychological
examinations, including all appropriate tests, to be com-
pleted as soon as possible, the completion of the physical
examinations to be within twenty days. Such youth
shall be housed in a manner so as to prevent the spread of
infectious disease. Following disposition and prior to
transfer to the custody of the commissioner of corrections,
each youth shall be allowed to visit with his relatives,
without being committed to jail, for a period of not less
than one hour. The cost of the examinations herein shall be borne by the committing county. The youth shall be provided all treatment and rehabilitation indicated by such examinations.

In lieu of the physical examinations and tests provided for herein, the court may, in the absence of objection, have the county health officer or other local health care facility perform physical and mental examinations and tests, so long as such examinations and tests are performed prior to the dispositional proceeding. Except as otherwise provided by law, no child shall be committed to a jail following a dispositional proceeding solely to await a physical, educational or mental examination or the results thereof.

(c) All such examinations shall be private. No youth who is mentally ill or significantly mentally retarded shall be committed to, or retained by, the commissioner of corrections, but shall be returned to the committing court for further disposition. No youth who has a serious infectious disease shall be retained in the custody of the commissioner of corrections, but shall be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every youth.

(d) The results of any such physical, educational and psychological examinations, together with a copy of the petition, the adjudicatory order and the dispositional order shall accompany every youth committed to the commissioner of corrections, without which such youth shall not be accepted. The commissioner, or his designated representative, shall review the records of each youth committed to assure that no youth is illegally detained in an inappropriate facility or custodial situation.

(e) The commissioner of corrections shall have the authority to transfer and place such youth in any of the centers or homes or halfway programs which shall be established, and in less restrictive settings, whether under his jurisdiction or private nonprofit residential facilities, as he may deem appropriate to promote the rehabilitation of such youth. To the extent possible, no youth under the
ARTICLE 3. INDUSTRIAL HOME FOR GIRLS.

§28-3-2. Commitment; age limits.
§28-3-4. Physical, educational and psychological examinations; admission; transfer and placement.
§28-3-5. Compensation of physician and matron.

§28-3-2. Commitment; age limits.

1 Any female youth between the ages of twelve and eighteen years may be committed to the custody of the commissioner of corrections by a circuit court of this state in the manner described in article five, chapter forty-nine of this code; and further, any such youth who has been adjudged delinquent pursuant to subdivision one, section four, article one, chapter forty-nine of this code, who, as a result thereof, was placed on probation and has been found in a proceeding pursuant to the procedural requirements of article five, chapter forty-nine of this code to have violated a term of probation, prior to the attainment of her twentieth birthday, which constitutes a criminal offense, may be committed to the custody of the commissioner of corrections.

§28-3-4. Physical, educational and psychological examinations; admission; transfer and placement.

1 Every female youth committed hereunder shall be given complete physical, educational and psychological examinations in the same manner and under the same protections and requirements of subsections (b) and (c), section two, article one, chapter twenty-eight of this code. In addition thereto, all such examinations shall be in private, but there shall be present during the examination a woman of good character and of mature years. In addition thereto, all admission, transfer and placement requirements and authority provided to the commissioner in subsections (d) and (e), section two, article one, chapter twenty-eight of this code shall be applicable.

§28-3-5. Compensation of physician and matron.

1 In a proceeding for the commitment of a female youth
to the commissioner of corrections, the compensation of
the physician and of the matron present during such
examination shall be fixed by the court and taxed as other
costs.

CHAPTER 31
(Com. Sub. for H. B. 1091—By Mr. Damron and Mr. Mathis)

[Passed March 8, 1980; in effect December 31, 1980. Approved by the Governor.]

AN ACT to repeal section four, article one, chapter seven; sections
five-a and five-a (one), article two, chapter eleven; section
seven, article one, chapter nineteen; and section two, article
twenty, chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; to amend and
reenact sections five and five-a, article one; section four, article
seven, chapter seven; and to further amend said article by
adding thereto four new sections, designated sections six-a,
six-b, six-c and six-d, all relating to compensation of county
officials; duties of county officials; additional duties of assessors;
duties of county commissioners and payment for services other
than services in court.

Be it enacted by the Legislature of West Virginia:

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

Article
1. County Commissions Generally.
7. Training Programs for County Employees, etc.; Compensation of
   Elected County Officials; County Assistants, Deputies and Employees,
   their Number and Compensation.
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

§7-1-5a. Salaries of county commissioners.

§7-1-5. Duties of county commissioners; payment for services other than services in court.

It shall be the duty of the county commissioners of each county to visit each quarter and inspect institutions within their county for housing and caring for the poor, to inspect the jails, to arrange for the feeding and care of the prisoners therein, to investigate the conditions of the poor within their county, not housed within such institutions; to visit detention homes for children within their counties, if any; to visit and inspect bridges and bridge approaches under their control; to provide for and have general supervision over the repair and maintenance of the county courthouse, jails, houses for the poor and other county property, so as to prevent the undue deterioration thereof; to supervise and control the maintenance and operation of airport or airports owned or operated by the county commission; to supervise and control the purchase, erection and maintenance of airport facilities; to supervise and control the purchase of furniture, fixtures and equipment and janitors' and other supplies for their county; to attend the annual meetings of county assessors and such district meetings as may be called by the state tax commissioner on matters pertaining to the work of the county assessors and the county commission as boards of review and equalization; to review and equalize the assessments made by the assessors; to inspect and review the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes, and to point out to the assessor any property, real and personal, which the said assessors of their respective counties may have overlooked or omitted to place on said tax lists; to call to the attention of the assessor all real estate or personal property belonging to churches, lodges, schools or other charitable institutions which may have been overlooked or omitted by the assessor or his deputies in making up his lists of property for entry on the land and personal property books; to supervise the general management of the fiscal affairs and business of
each county; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect public parks, playgrounds and recreational facilities, to purchase, lease or rent equipment therefor and to employ qualified recreational directors and personnel; to construct new Four-H camps on county property; to operate stone quarries and sand deposits on county-owned or leased property; to construct buildings for or aid in constructing or equipping buildings for emergency services on sites approved by the office of emergency services; to operate dog pounds for county municipalities; to purchase, lease, rent, control, supervise, inspect, maintain and erect public markets and to purchase, rent or lease equipment therefor and to employ qualified personnel to operate such public markets; and as a further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect county mental health clinics and engage in any program designated for the betterment of the mental and physical well-being of the residents of their county and to cooperate with any public or private agency for these purposes; to establish and participate in regional planning and development councils; to establish and participate in county commissions on intergovernmental relations as required by section three-q of this article; to establish and participate in county commissions on crime, delinquency and corrections as required by section three-r of this article; to conduct a survey of all orphan roads within the county, which roads shall include roads or highways, not situated within a municipality, which are open to the public and which serve two or more persons, but shall exclude roads comprising or included within the state road system as defined by section two, article four, chapter seventeen of this code or comprising or included within any county road or highway system and which shall also exclude any road brought into the state road system for purposes of maintenance only by the commissioner of highways pursuant to statutory or regulatory authority; to prepare an inventory of all such orphaned roads within the county, which inventory shall be made available to any agency of the state or federal government upon request, and be filed and recorded in the office of the county clerk.
Compensation shall be allowed and paid out of the county treasury, in the same manner as salaries are paid, to each county commissioner of each county (except as otherwise provided by law for the county of Ohio) for services performed for such county concerning the visiting of the poor, inspection of jails, bridges and bridge approaches and for visiting detention homes for children and for providing for and supervising the repair and maintenance of the county courthouse, jails, houses for the poor and other county property; for supervising and controlling the maintenance and operation of airport or airports owned or operated by the county commission and supervising and controlling the purchase, erection and maintenance of airport facilities; for supervising and controlling the purchase of furniture, fixtures and equipment and janitors' and other supplies for their county; for attending the annual meeting of assessors and such district meetings as may be called by the state tax commissioner on matters pertaining to the work of assessors and county commissions as boards of review and equalization; for reviewing and equalizing the assessments made by the assessors; for inspecting and reviewing the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes and for pointing out to the assessor any property, real and personal, which the said assessors of their respective counties may have overlooked or omitted to place on said tax lists; for calling to the attention of the assessor all real estate or personal property belonging to churches, lodges, schools or other charitable institutions which may have been overlooked or omitted by the assessor or his deputies in making up their lists of property for entry on the land and personal property books; for purchasing, leasing, renting, controlling, supervising, inspecting, maintaining and erecting public parks, playgrounds and recreational facilities and the purchasing, leasing or renting the equipment therefor and employing qualified recreational directors and personnel therefor; for constructing new Four-H camps on county property; operating stone quarries and sand deposits on county-owned or leased property; constructing buildings for or aiding in construction or equipping buildings for emergency services on sites approved by the office of emergency services; operating dog pounds for county-municipalities; to purchase, lease, rent,
control, supervise, inspect, maintain and erect public markets, and to purchase, rent or lease equipment therefor and to employ qualified personnel to operate such public markets; for constructing fallout shelters and aiding individuals to construct fallout shelters through furnishing available information; for purchasing, leasing, renting, controlling, supervising, inspecting, maintaining or erecting county mental health clinics or engaging in programs for the betterment of the mental or physical well-being of the residents of their county; for conducting a survey of all abandoned and dilapidated buildings or structures within the county and to prepare an inventory thereof, which inventory shall be made available to any agency of state or federal government or to local governmental agencies upon request; for establishing and participating in regional planning and development councils; to conduct a survey of all orphan roads within the county, which roads shall include roads or highways, not situated within a municipality, which are open to the public and which serve two or more persons, but shall exclude roads comprising or included within the state road system as defined by section two, article four, chapter seventeen of this code or comprising or included within any county road or highway system and which shall also exclude any road brought into the state road system for purposes of maintenance only by the commissioner of highways pursuant to statutory or regulatory authority; to prepare an inventory of all such orphaned roads within the county, which inventory shall be made available to any agency of the state or federal government upon request, and be filed and recorded in the office of the county clerk; for establishing and participating in county commissions on intergovernmental relations as required by section three-q of this article; for establishing and participating in county commissions on crime, delinquency and correction as required by section three-r of this article and for supervising the general management of the fiscal affairs and business of each county, within their counties, and other business by such commissioners.

§7-1-5a. Salaries of county commissioners.

All county commissioners shall be paid compensation out of the county treasury in amounts and according to
the schedule hereafter set forth for each class of county as determined by the provisions of section three, article seven, chapter seven: Provided, That as to any county having a tribunal in lieu of a county commission, the county commissioners of such county may be paid less than the minimum compensation limits of the county commission for the particular class of such county.

<table>
<thead>
<tr>
<th>Class</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$16,100</td>
</tr>
<tr>
<td>Class II</td>
<td>12,300</td>
</tr>
<tr>
<td>Class III</td>
<td>11,500</td>
</tr>
<tr>
<td>Class IV</td>
<td>8,200</td>
</tr>
<tr>
<td>Class V</td>
<td>5,500</td>
</tr>
<tr>
<td>Class VI</td>
<td>3,200</td>
</tr>
<tr>
<td>Class VII</td>
<td>1,300</td>
</tr>
</tbody>
</table>

The compensation hereinafter provided shall be paid on and after January one, one thousand nine hundred eighty-one, to each county commissioner. Within each county, every county commissioner whose term of office commenced prior to the first day of January, one thousand nine hundred eighty-one, shall receive the same annual compensation as commissioners commencing a term of office on or after that date by virtue of the new duties imposed upon county commissioners pursuant to the amended provisions of section five of this article.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-4. Compensation of elected county officials other than county commissioners for each class of county; effective date.

§7-7-6a. Assessors; additional compensation; additional duties.

§7-7-6b. Additional compensation of assessors according to county classification.

§7-7-6c. Additional compensation of assessor.

§7-7-6d. Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.
§7-7-4. Compensation of elected county officials other than county commissioners for each class of county; effective date.

For the purpose of determining the compensation to be paid to the elected county officials of each county, the following compensations for each county office by class are hereby established and shall be used by each county commission in determining the compensation of each of their county officials other than compensation of members of the county commission:

<table>
<thead>
<tr>
<th>Class</th>
<th>Sheriff</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Assessor</th>
<th>Prosecuting Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$19,200</td>
<td>$26,300</td>
<td>$26,300</td>
<td>$19,200</td>
<td>$36,500</td>
</tr>
<tr>
<td>II</td>
<td>19,200</td>
<td>23,000</td>
<td>23,000</td>
<td>19,200</td>
<td>34,500</td>
</tr>
<tr>
<td>III</td>
<td>17,900</td>
<td>21,000</td>
<td>21,000</td>
<td>19,200</td>
<td>25,000</td>
</tr>
<tr>
<td>IV</td>
<td>17,300</td>
<td>17,500</td>
<td>17,500</td>
<td>17,300</td>
<td>21,500</td>
</tr>
<tr>
<td>V</td>
<td>15,400</td>
<td>15,500</td>
<td>15,500</td>
<td>15,400</td>
<td>18,500</td>
</tr>
<tr>
<td>VI</td>
<td>12,200</td>
<td>12,200</td>
<td>12,200</td>
<td>12,200</td>
<td>12,000</td>
</tr>
</tbody>
</table>

Any county clerk, circuit clerk, joint clerk of the county commission and circuit court, if any, county assessor, sheriff and prosecuting attorney of a Class I county, any assessor of a Class II and Class III county, any sheriff of a Class II and Class III county, and any prosecuting attorney of a Class II county shall devote full time to his public duties to the exclusion of any other employment: Provided, That any such public official, whose term of office begins when his county's classification imposes no restriction on his outside activities, shall not be restricted on his outside activities during the remainder of the term for which he is elected. The compensation hereinabove provided shall be paid on and after January one, one thousand nine hundred and eighty-one, to each elected county official.

In the case of a county that has a joint clerk of the county commission and circuit court, the compensation of the joint clerk shall be fixed in an amount twenty-five percent higher than the compensation would be fixed for the county clerk if it had separate offices of county clerk and circuit clerk.
§7-7-6a. Assessors; additional compensation; additional duties.

In addition to the salary or compensation provided elsewhere in this article, the county commission of each county shall pay to the assessor, on an annual basis, on and after July one, one thousand nine hundred seventy-seven, additional compensation in accordance with the provisions of this section and section six-b of this article for such additional duties required of him by this section.

To receive such additional compensation, the following duties are hereby imposed upon every assessor of this state:

1. He shall annually complete a sales ratio analysis in a manner prescribed by the state tax commissioner.

2. He shall present to the tax commissioner a list of real property transfers of the prior assessment year by December first annually.

3. He shall on or before December first of each year supply a list of new construction and improvements exceeding one thousand dollars of the previous assessment year on forms prescribed by the state tax commissioner.

4. He shall on or before December first of each year supply a list of new businesses added to the assessment rolls and businesses that have discontinued operations in the previous assessment year and been removed from the assessment rolls.

5. He shall provide assistance to the tax commissioner to disseminate information with respect to the taxation, classification and valuation of nonutility and public utility property to the end that all property shall be more equally and uniformly assessed throughout the state.

6. He shall annually assist the tax commissioner in determining the current use of such real property in his county as the tax commissioner may require to accomplish a uniform appraisal and assessment of real property.

The duties hereinbefore listed must be substantially completed by the assessor no later than the first day of November of each year, and each assessor shall certify to the tax commissioner that he has substantially completed such duties in
accordance with requirements of the tax commissioner. If at this time there has been substantial completion of the above duties to the satisfaction of the tax commissioner, the tax commissioner shall, but no later than the fifteenth day of November of each year, certify to the county commission that the assessor has substantially performed these duties, and is entitled to the remuneration provided for in section six-b of this article.

§7-7-6b. Additional compensation of assessors according to county classification.

For the purpose of determining the additional compensation to be paid to the county assessor of each county for the additional duties provided by section six-a of this article, the following compensations for each county assessor by class, as provided in section three of this article, are hereby established and shall be used by each county commission in determining the compensation of each county assessor; for assessors in Class I counties, twelve thousand dollars for the calendar year one thousand nine hundred and eighty, and eleven thousand dollars for each calendar year thereafter; for assessors in Class II counties, six thousand dollars; for assessors in Class III counties, five thousand dollars; for assessors in Class IV counties, two thousand five hundred dollars; for assessors in Class V counties, one thousand five hundred dollars; and for assessors in Class VI counties, one thousand dollars.

Notwithstanding this section or any other section of the code to the contrary, in no event shall the additional compensation paid to the county assessors for performance of additional duties as provided in section six-a of this article be less than the additional compensation such county assessors received January one, one thousand nine hundred seventy-six.

§7-7-6c. Additional compensation of assessor.

The county commission of each county shall allow the assessor a reasonable compensation, not exceeding ten percent of his salary, as provided by section four of this article, for such work as may be required of him under article one, chapter nineteen of this code, by the commissioner of agriculture,
and no county commission shall allow pay to assessor for
performance of duties herein prescribed until such assessor
has received a certificate that his reports are completed and
satisfactory to said commissioner.

§7-7-6d. Collection of head tax on dogs; duties of assessor and
sheriff; registration of dogs; disposition of head tax;
taxes on dogs not collected by assessor.

It shall be the duty of the county assessor and his deputies
of each county within the state, at the time they are making
assessment of the personal property within such county, to
assess and collect a head tax of one dollar on each male or
spayed female dog and of two dollars on each unspayed fe­
male dog; and in addition to the above, the assessor and his
deputies shall have the further duty of collecting any such head
tax on dogs as may be levied by the ordinances of each and
every municipality within the county. In the event that the
owner, keeper, or person having in his possession or allowing
to remain on any premises under his control any dog above
the age of six months, shall refuse or fail to pay such tax,
when the same is assessed or within fifteen days thereafter, to
the assessor or deputy assessor, then such assessor or deputy
assessor shall certify such tax to the county dog warden; if
there be no county dog warden he shall certify such tax to the
county sheriff, who shall take charge of the dog for which the
tax is delinquent and impound the same for a period of fif­
teen days, for which service he shall be allowed a fee of one
dollar and fifty cents to be charged against such delinquent
taxpayer in addition to the taxes herein provided for. In case
the tax and impounding charge herein provided for shall not
have been paid within the period of fifteen days, then the
sheriff may sell the impounded dog and deduct the impound­
ing charge and the delinquent tax from the amount received
therefor, and return the balance, if any, to the delinquent tax­
payer. Should the sheriff fail to sell the dog so impounded
within the time specified herein, he shall kill such dog and
dispose of its body.

At the same time as the head tax is assessed, the assessor
and his deputies shall, on the forms prescribed under section
four, article twenty, chapter nineteen of this code, take down
the age, sex, color, character of hair (long or short) and breed
(if known) and the name and address of the owner, keeper or
harborer thereof. When the head tax, and extra charges, if
any, are paid, the officer to whom payment is made shall issue
a certificate of registration and a registration tag for such dog.

In addition to the assessment and registration above pro-
vided for, whenever a dog either is acquired or becomes six
months of age after the assessment of the personal property of
the owner, keeper or harborer thereof, the said owner, keeper
or harborer of said dog shall, within ten days after the acquisi-
tion or maturation, register the said dog with the assessor, and
pay the head tax thereon unless the prior owner, keeper or
harborer paid the head tax.

All certificates of registration and registration tags issued
pursuant to the provisions of this section shall be issued for
the fiscal year and shall be valid from the date on which issued
until the thirtieth day of June of that fiscal year, or until
reissued by the assessor or his deputy in the regular perfor-
man ce of his duties, but in no case shall previous registration
tags be valid after September thirtieth of the next ensuing
fiscal year.

The assessor collecting the head tax on dogs shall be al-
lowed a commission of ten percent upon all such taxes col-
lected by him and shall turn in to the county treasurer ninety
percent of such taxes so collected, as are levied by this section;
and the assessor shall turn over to the treasurer or other proper
officer of each and every municipality within the county ninety
percent of such taxes levied by the ordinances of such muni-
cipality. All such dog taxes, except those belonging to muni-
icipalities, shall be accredited to the dog and kennel fund pro-
vided for in section ten, article twenty, chapter nineteen of this
code. Such dog taxes as are collected for and turned over to
municipalities shall be deposited by the proper officer of such
municipality to such fund and shall be expended in such man-
ner as the law of such municipality may provide. All taxes on
dogs not collected by the assessor shall be collected by the
regular tax collecting officer of the county and placed to the
credit of the dog and kennel fund.
AN ACT to amend and reenact sections two, five, seven, seven-a, eight and nine, article three, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting counties to cooperate in the development of regional correctional centers for both adult and youth offenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. COUNTY PROPERTY.

§7-3-2. Courthouse, jail and offices.
§7-3-5. County commissions authorized to acquire and convey real estate and contract for construction, etc., and rental of courthouse, jail or other public building.
§7-3-7. Bonds for cost of real estate and public buildings.
§7-3-7a. Bonds for construction or renovation of county jail or regional correctional center.
§7-3-8. Creation and enforcement of lien of bondholders.
§7-3-9. Form and payment of bonds; use of proceeds of bonds.

§7-3-2. Courthouse, jail and offices.

1 The county commission of every county, at the expense of the county, shall provide at the county seat thereof a suitable courthouse and jail, together with suitable offices for the judge of the circuit court and judges of courts of limited jurisdiction, clerks of circuit courts, courts of limited jurisdiction and of the county commission, assessor, sheriff, prosecuting attorney, county superintendent of schools, and surveyor, and all other offices as are or may be required by law: Provided, That the courthouse, including any annex or other facility housing the courts and offices herein set out, (excepting
all facilities that are on a twenty-four-hour basis), shall be open to the public Monday through Saturday during the hours prescribed by the county commission by an order duly recorded in the order book of the commission, excluding Sundays and national or state holidays, and may, with the consent of the county commission in counties having a population in excess of one hundred thousand be closed on Saturday: Provided, however, That the county commission of every county having a population in excess of two hundred thousand may provide at the county seat or elsewhere in the county, as the county commission shall determine, a suitable jail or jails: Provided further, That the county commission of any county, regardless of population, may, as provided in chapter eight, article twenty-three of the code of West Virginia, contract with the county commissions of one or more other counties within this state for the erection, construction, equipment, leasing and renting of a regional correctional center for either adult or youth offenders, at a location mutually agreeable to the contracting parties and not necessarily at the county seat, which will serve each county entering into the contract. The county commission shall keep the courthouse, jail and other offices in constant and adequate repair, and supplied with the necessary heat, light, furniture, record books, and janitor service, and, except as to the office for the judge of the circuit court, with the necessary stationery and postage, and other things as shall be necessary; but all of the public records, books and papers belonging or appertaining to the county surveyor's office shall be delivered to the clerk of the county commission and retained by him in his official possession and under his control and shall constitute a part of the public records, books and papers of his office. All courthouses, jails and offices hereafter erected shall be built of stone and brick, or stone or brick, or other equally fireproof materials, and the offices shall be fireproof or be furnished with fireproof vaults or safes. The jails shall be well secured, and sufficient for the convenient accommodation of those who may be confined therein, and so that the convicts may be in apartments separate from each other, and
from the other prisoners; every apartment shall be so
constructed that it can be kept comfortable. The county
commission may also provide other necessary offices and
buildings, and may, by purchase or otherwise, acquire
as much land as may be requisite or desirable for county
purposes, and may suitably enclose, improve and em-
bellish the lands so acquired.

Subject to the conditions hereinabove set forth with
respect to the site of the courthouse, jail, and other
offices, the commission may, from time to time, as may
seem to it proper, provide, at the expense of the county,
a new or other building or buildings to be used for the
courthouse and jail, or for either, together with suit-
able offices, as aforesaid, and for that purpose may
acquire, by purchase or otherwise, and hold any lands,
or lands and buildings, which may be necessary, and
may enclose, improve and embellish the same. When
any new or other building or buildings shall be ready
for occupancy, the county commission shall make an
order declaring that, on a day to be therein named,
the new or other building or buildings shall become
the courthouse, or jail, or both the courthouse and jail
of the county, and shall cause copies of the order to be
posted at the front door of the new as well as of the
old courthouse, at least twenty days before the day
named in the order; and on and after the day named
the new or other building or buildings shall become,
respectively, the courthouse, or jail, or both the court-
house and jail of the county in all respects and for all
purposes. After the change shall have been made the
county commission may sell or otherwise dispose of,
as may seem to it proper, the building or buildings pre-
viously used as a courthouse and jail, or either, and the
land on which they are, or either is, situated, and of
the interest of the county therein.

§7-3-5. County commissions authorized to acquire and convey
real estate and contract for construction, etc., and
rental of courthouse, jail or other public building.

The county commission of any county is hereby au-
thorized and empowered to acquire real estate and to
convey real estate and to enter into a contract, or lease, or both, with the United States government, or any federal agency authorized to make or enter into a contract, or lease, or with any bank or financial institution, or with any individual or persons for the erection, construction, equipment, leasing and renting of a courthouse, hospital, other public buildings, or jail, with an option to purchase the building and to provide for the payment of a yearly rental for the building by the commission: Provided, That any county commission may, as provided in chapter eight, article twenty-three of the code of West Virginia, also contract with one or more other county commissions within this state for the erection, construction, equipment, leasing and renting of a regional correctional center for either adult or youth offenders at a location mutually agreeable to the contracting parties and not necessarily at the county seat. The county commission of any county is also authorized to contract with the United States government, or any federal agency authorized to make or enter into a contract, or any bank or financial institution, or any individual or persons, to the end that the United States government, or any of its agencies, or agents thereunto duly authorized, or bank or financial institution or individual or persons, may for and on behalf of any county commission, build, erect, construct, equip or furnish upon the property any such building, or buildings, including a hospital; and to contract with the United States government, or any federal agency, or bank, or financial institution, or individual, or persons, for the lease, or rental, of the building or buildings, with the privilege and authority of renewing any lease from year to year, for any period of years, not exceeding thirty, with the right to purchase the building, or buildings, and real estate on which the building or buildings are situated, and to apply toward the purchase price thereof any and all rentals paid to the United States government, or agency, or bank or financial institution, or individual, or persons, under the provisions of this act; and the county commission shall pay to the United States government, or any federal agency, or bank, or financial institution, or individual, or persons, the yearly rental, or rentals, for the use and
occupancy of the building, or buildings, if and when
they are constructed, which yearly rental, or rentals,
in the aggregate, may not exceed the total amount, and
the interest thereon expended by the United States
government, or agency or bank or financial institution,
or individual, or persons, on the project, or projects,
and the said yearly rentals shall be paid out of levies
laid within the constitutional debts limitations; and to
do any and all other things lawfully required by the
United States government, or any federal agency, or
bank, or financial institution, or individual, or persons,
which are necessary and proper to effectuate the purpose
of this act.

§7-3-7. Bonds for cost of real estate and public buildings.
1 Any county commission is likewise authorized and em­
2 powered to acquire real estate for, construct, equip, fur­
3 nish and maintain a courthouse, hospital or other public
4 buildings or jail, including a regional correctional center
5 for either adult or youth offenders which is developed
6 jointly by one or more counties, and to borrow funds from
7 the United States government, the public works adminis­
8 tration, or other governmental agency authorized to make
9 loans, or any bank, or financial institution authorized by
10 law to make loans, or any individual, or persons for the
11 purpose of building, constructing, furnishing and equip­
12 ping a courthouse, hospital, other buildings or jail, and for
13 the purpose of acquiring real estate therefor, and shall
14 have the right to acquire by purchase, condemnation, gift
15 or otherwise, real estate on which to build the courthouse,
16 hospital, other buildings or jail, including a regional cor­
17 rectional center for either adult or youth offenders which
18 is developed jointly by one or more counties, within the
19 discretion of the commission. The commission is authorized
20 and empowered to issue bonds for the purpose of paying
21 the cost of any real estate, building, furnishing and equip­
22 ment and to pledge a sufficient amount of revenue within
23 the constitutional limitations and within the limitations as
24 provided by general law, to pay the principal of the bonds
25 and the interest thereon, within a period not to exceed
26 thirty years. Such court is further authorized and empow­
27 ered to do and perform any and all acts and make all con­
tracts necessary to effectuate the general purpose of this act, including the acquisition, by original grant, gift, condemnation, or other lawful means of real estate, and of all necessary permits, easements and other rights in real estate, and title to and possession thereof, or to make any purchase and acquisition with the money borrowed, as provided in this act.

The commission shall have authority, and is empowered, to make contracts, agreements and covenants between it and the United States government, or the public works administration, or other governmental agency, or bank, or financial institution, or individual, or persons for the loan of funds to the commission, and securing payment thereof as they may be able to effectuate, subject only to this limitation, that the bonds issued, or given as security thereof, shall be payable out of the levies now provided for by general law and by this act; to be levied by the commission in and for the county; to acquire needed real estate, to construct, equip, furnish and maintain a courthouse, hospital, other public buildings or jail including a regional correctional center for either adult or youth offenders which is developed jointly by one or more counties, and to make and enter into contracts, and to do and perform all acts as may be necessary for the construction, equipment, operation and maintenance of the courthouse, hospital, other buildings, jail or correctional center, subject to any burdens, restrictions and encumbrances as it may be necessary to incur and bear, in securing the bonds and the real estate construction, equipment and maintenance.

Bonds issued hereunder shall be exempt from taxation by the state of West Virginia, or any county therein, or any district or municipality thereof.

§7-3-7a. Bonds for construction or renovation of county jail or regional correctional center.

The county commissions of the several counties are hereby authorized to issue revenue bonds for the purpose of constructing, reconstructing and renovating any jail facility used for county prisoners or a regional correctional center for either adult or youth offenders which is developed jointly by one or more counties; and for
the purpose of retiring the bonds, the county commission
may pledge for a period not to exceed twenty years, the
funds available to the county under the provisions of
section fifteen, article five of this chapter.

§7-3-8. Creation and enforcement of lien of bondholders.

There shall be and there is hereby created a statutory
mortgage lien upon the real estate, buildings and prop­
erty acquired, constructed or built from the proceeds of
bonds authorized to be issued under this act, which shall
exist in favor of the holder of the bonds, and each of
them, and to and in favor of the holder of the interest
coupons attached to the bonds, and the courthouse,
hospital, other public buildings, or jail or regional cor­
rectional center, and the real estate so acquired and used
for and in connection therewith, shall remain subject
to the statutory mortgage lien until payment in full of
the principal and interest of the bonds. Any holder of
bonds issued under the provisions of this act, or the
holder of any coupons representing interest accrued
thereon, may, either at law or in equity, enforce the
statutory mortgage lien hereby created and conferred,
and may, by proper suit, compel the performance of the
duties of the officials of the commission as set forth in
this act. If there be default in the payment of the prin­
cipal of or interest upon any of the bonds, any court
having jurisdiction in any proper action may appoint a
receiver to administer the property on behalf of the
court with power to charge and collect rents or income
sufficient to provide for the payment of the bonds and
interest thereon, and for the payment of the operating
expenses, and to apply the income, rents or other revenue
in conformity with this act and the order providing for
the issuance of the bonds.

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

Any county commission issuing revenue bonds under

*Clerk's Note: This section was amended by this act on March 8, 1980,
empowering County Commissions to set the interest rate on revenue bonds.
This section was also amended by Com. Sub. for S. B. 444 on March 7, 1980,
setting the interest rate on bonds issued by County Commissions at not more
than ten percent per annum.
the provisions of this article shall thereafter, so long as any such bonds remain outstanding, operate and maintain said courthouse, hospital, other public buildings, jail or regional correctional center, to provide revenues sufficient to pay all operating costs, provide a sinking fund for, and to retire such bonds and pay the interest thereon as the same may become due. The amounts, as and when so set apart by said county commission, shall be remitted to the West Virginia municipal bond commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and with the order pursuant to which the bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any order passed pursuant to the provisions of this article, and shall invest all sinking funds, as provided by general law. Revenue bonds issued under the provisions of this article are hereby declared to be and to have all the qualities of negotiable instruments. Such bonds shall bear interest at the rate set by the county commission, payable semiannually, and shall mature at any time fixed by the county commission, in not more than thirty years from their date. Such bonds shall be sold at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than the interest rate set by the county commission to the purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such price and under terms and conditions as said county commission may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of the state treasurer, or a designated bank located either in New York City or in the state of West Virginia.

In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the
same as if they had remained in office until such delivery. The county commission shall by order entered prior to the issuance of said bonds, fix the denominations, times and places of payment of such bonds, the principal and interest of which shall be payable in lawful money of the United States of America. The proceeds of such bonds shall be used solely for the payment of the cost of land, buildings, furniture and equipment thereon, and shall be checked out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. If the proceeds of such bonds issued for any courthouse, hospital, other public buildings, jail or regional correctional center, shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the commission in its said order, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

Prior to the preparation of definitive bonds, the county commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

CHAPTER 33

(Com. Sub. for S. B. 444—By Mr. Sharpe)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and fourteen, article three, chapter seven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article sixteen; section fourteen, article eighteen; sections four and six, article nineteen; and section five, article twenty, all of chapter eight of said code; to amend and reenact section fourteen, article one; and section five, article two-a, chapter thirteen of said code; to amend and reenact section ten, article thirteen; and section thirteen, article thirteen-a, chapter sixteen of said code; and to amend and reenact section six, article twenty-four, chapter eighteen of said code, all relating to increasing to ten percent the maximum interest rate that revenue bonds or general obligation bonds issued under these code sections may bear and providing for a corresponding increase in the allowable bond yield.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.
8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.
13. Public Bonded Indebtedness.
18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 3. COUNTY PROPERTY.

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

§7-3-14. Authority to acquire and operate hospitals, clinics, long-term care facilities and other related facilities; financing.
§7-3-9. Form and payment of bonds; use of proceeds of bonds.

Any county commission issuing revenue bonds under the provisions of this article shall thereafter, so long as any such bonds remain outstanding, operate and maintain said courthouse, hospital, other public buildings, or jail, to provide revenues sufficient to pay all operating costs, provide a sinking fund for, and to retire such bonds and pay the interest thereon as the same may become due. The amounts, as and when so set apart by said county commission, shall be remitted to the West Virginia municipal bond commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and with the order pursuant to which such bonds have been issued. The West Virginia municipal bond commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any order passed pursuant to the provisions of this article, and shall invest all sinking funds, as provided by general law. Revenue bonds issued under the provisions of this article are hereby declared to be and to have all the qualities of negotiable instruments. Such bonds shall bear interest at not more than ten percent per annum, payable semiannually, and shall mature at any time fixed by the county commission, in not more than thirty years from their date. Such bonds shall be sold at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than eleven percent per annum to the purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such price and under terms and conditions as said commission may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of the state treasurer, or some bank in the city of New York.

*Clerk’s Note: This section was amended by this act on March 7, 1980, setting the interest rate on bonds issued by County Commissions at not more than ten percent per annum. The section was also amended by S. B. 63, which passed on March 8, 1980. That act empowers County Commissions to set the interest rate on bonds.
In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The county commission shall by order entered prior to the issuance of said bonds, fix the denominations, times and places of payment of such bonds, the principal and interest of which shall be payable in lawful money of the United States of America. The proceeds of such bonds shall be used solely for the payment of the cost of land, buildings, furniture and equipment thereon, and shall be checked out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. If the proceeds of such bonds issued for any courthouse, hospital, other public buildings, or jail, shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the commission in its said order, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

Prior to the preparation of definitive bonds, the county commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

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

The county commission of any county is hereby authorized and empowered to acquire by purchase or construction and to thereafter own, equip, furnish, operate, lease, improve and extend a public hospital, clinic, long-term
care facility and other related facilities, with all appurtenances, including the necessary real estate as a site therefor. Any such county public hospital acquired pursuant thereto may include a nurses home and nurses training school. The county commission is further authorized and empowered, upon acquiring a hospital, clinic, long-term care facility or other related facility, to lease to others any or all such facilities for such rentals and upon such terms and conditions as the county commission may deem advisable. For the purpose of paying all or any part of the costs, not otherwise provided, of acquiring, completing, equipping, furnishing, improving or extending such hospital, clinic, long-term care facility or other related facility, the county commission is hereby authorized and empowered by order duly entered of record, to issue and sell the negotiable revenue bonds of such county, which shall be payable solely and only from all or such part of the net revenues from the operation of such county public hospital, clinic, long-term care facility or other related facility as may be provided by said order; and each such revenue bond so issued shall contain a recital that payment or redemption of the bond and payment of the interest thereon is secured by the revenues pledged therefor, and that such bond does not constitute an indebtedness of such county or the county commission thereof within the meaning of any constitutional or statutory limitation or provision. Such revenue bonds may bear such date or dates, may mature at such time or times not exceeding thirty-four years from their respective dates, may bear interest at such rate or rates not exceeding ten percent per annum, may be of such denomination or denominations, may be in such form, may carry such registration privileges, may be made subject to such terms of redemption with or without premium, and may contain such other terms and covenants not inconsistent with this article as may be provided in such order. Such revenue bonds shall be exempt from taxation by the state of West Virginia and the other taxing bodies of the state. In determining the amount of revenue bonds to be issued, there may be included any expenses in connection with and incidental to the issuance and sale of bonds and
for the preparation of plans, specifications, surveys and estimates, interest during the estimated construction period and for six months thereafter, and a reasonable amount for working capital and prepaid insurance. Such bonds may be sold in such manner, at such times and upon such terms as may be determined by the county commission to be for the best interests of the county: Provided, That no bonds may be sold upon terms which will result in the net interest cost of more than eleven percent per annum computed to maturity of the bonds according to standard tables of bond values. There may be included in any such order authorizing the issuance of revenue bonds such covenants, stipulations and conditions as may be deemed necessary with respect to the expenditure of the bond proceeds, the operation and maintenance of the county public hospital, clinic, long-term care facility or other related facility, and the custody and application of the revenues from such operation. The holder of any bond or bonds may, by mandamus or other appropriate proceedings, require and compel performance of any duties imposed by law in connection with the hospital, clinic, long-term care facility or other related facility, or any covenant, stipulation or condition that may have been expressed in such bond order.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

Article
16. Municipal Public Works; Revenue Bond Financing.
18. Assessments to Improve Streets, Sidewalks and Sewers; Sewer Connections and Board of Health.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

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

1 Such revenue bonds shall bear interest at not more than ten percent per annum, payable semiannually, or at shorter intervals, and shall mature at such time or times, not exceeding forty years, as may be determined
by the ordinance or ordinances authorizing the issuance of such bonds. Such bonds may be made redeemable before maturity, at the option of the municipality or municipalities issuing the same, to be exercised by said board, at not more than the par value thereof, and at a premium of not more than five percent, under such terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Such ordinance or ordinances shall determine the form of the bonds, including the interest coupons to be attached thereto, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the state. When two or more municipalities take joint action under the provisions of this article, the bonds shall be issued by the participating municipalities either as separate or joint bonds, as the governing bodies thereof may agree, and when separate bonds are issued, the amount of the bonds to be issued by each participating municipality shall be fixed by agreement of the governing bodies of the participating municipalities set forth in the ordinance of each participating municipality authorizing the issuance of such bonds. The bonds shall contain a statement on their face that the municipality or municipalities issuing the same shall not be obligated to pay the same, or the interest thereon, except from the special fund derived from the net revenue of the works, or the pro rata part thereof, as provided for in section eleven hereof. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this state. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone; but bonds shall be executed in such manner as the governing body or bodies may direct. The bonds shall be sold by the governing body or bodies in such manner as may be determined to be for the best interest of the municipality or munici-
palities: Provided, That said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than ten percent per annum to the purchaser upon the amount paid therefor. Any surplus of the bond proceeds over and above the cost of the project shall be paid into the sinking fund herein-after provided for. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the ordinance or ordinances authorizing the issuance of the bonds first issued, or in the trust indenture hereinafter authorized, shall be deemed to be of same issue, and shall be entitled to payment without preference or priority of the bonds first issued; and if any preference or priority of the bonds first issued is provided for in the ordinance or ordinances authorizing the issuance of the bonds first issued or in said trust indenture, such preference or priority shall not extend to an amount exceeding ten percent of the original issue. Prior to the preparation of the definitive bonds, interim certificates may, under like restrictions, be issued with or without coupons exchangeable for definitive bonds upon the issuance of the latter.

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


Every municipality is hereby empowered and authorized to issue its bonds for any improvements under the provisions of this article in anticipation of special assessments to be made upon the property abutting upon the streets, alleys, public ways or easements, or sewer rights-of-way or easements, so improved, and such bonds may be in such an amount as will be sufficient to pay the entire estimated cost and expense of such improvements for which such special assessments are levied. Such municipality is also authorized to sell such bonds, but the price for which they are sold shall not be below
the par value of such bonds. Such bonds shall be payable in not to exceed ten years from the date of the issuance thereof, and shall bear interest at not to exceed ten percent per annum, payable annually; and in the issuance and sale of such bonds, the municipality shall be governed by all the restrictions and limitations of the constitution of this state, and by the restrictions and limitations of the statutes of this state with respect to the issuance and sale of other bonds, so far as they are not in conflict with the provisions of this article; and the assessments shall be collected as provided in sections ten and twelve of this article, and as paid and collected shall be applied to the liquidation of such bonds and the interest thereon; and if by reason of penalties collected with delinquent assessments there be any balance after the payment of such bonds and all accrued interest and cost, such balance shall be turned into the municipal treasury to the credit of the interest and sinking fund of the municipality: Provided, That no such municipality shall by sale or issuance of such bonds cause the aggregate of its indebtedness of every kind whatsoever to exceed five percent of the value of taxable property therein: Provided, however, That nothing here contained shall be construed as authorizing any such municipality to become indebted in any other manner or for any other purpose, to an amount, including its existing indebtedness, in the aggregate exceeding two and one-half percent of the value of the taxable property therein, as provided in section three, article one, chapter thirteen of this code, except for the purpose of grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, building or renewing sidewalks, or constructing sewers or otherwise improving or reimagining the streets, alleys, public ways or easements, or sewer rights-of-way or easements, of such municipality, as provided for in this article; nor shall such municipality make such issuance and sale without at the same time providing for the collection of a direct annual tax sufficient to pay annually the interest on such debt and the principal thereof within and not exceeding ten years. All of the assessments, interest and penalties collected from the
abutting property owners on account of the grading, re-
grading, paving, repaving, surfacing, resurfacing, curbing,
recurring, building or renewing sidewalks, or constructing
sewers or otherwise improving or reimproving the streets,
alleys, public ways or easements, or sewer rights-of-way
or easements, of any such municipality, under the provi-
sions of this article, shall annually be applied to the annual
tax required to pay the interest on such debt and such
principal within and not exceeding ten years; and in the
event that the assessments, interest and penalties so col-
lected do not amount to a sum sufficient to pay annually
the interest on such debt and the principal thereof within
and not exceeding ten years, then the governing body of
such municipality shall collect so much of such levy as
will pay annually the interest on such debt and the
principal thereof within and not exceeding ten years.

ARTICLE 19. MUNICIPAL WATERWORKS AND ELECTRIC POWER
SYSTEMS.

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

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

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

1 Whenever a municipality shall, under the provisions of
2 this article, determine to acquire, by purchase or other-
3 wise, construct, establish, extend or equip a waterworks
4 system, or to construct any additions, betterments or im-
5 provements to any waterworks or electric power system,
6 it shall cause an estimate to be made of the cost thereof,
7 and shall, by ordinance, provide for the issuance of rev-
8 enue bonds under the provisions of this article, which
9 ordinance shall set forth a brief description of the con-
10 templated undertaking, the estimated cost thereof, the
11 amount, rate or rates of interest, the time and place of
12 payment, and other details in connection with the issu-
13 ance of the bonds. Such bonds shall be in such form and
14 shall be negotiated in such manner and upon such terms
15 as the governing body of such municipality may by ordi-
16 nance specify. All such bonds and the interest thereon,
and all properties and revenues and income derived from such waterworks or electric power system, shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof. Such bonds shall bear interest at not more than ten percent per annum, payable semiannually, and shall be payable at such times, not exceeding forty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance providing for their issuance. Such ordinance shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying such bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of such revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from such waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance authorizing the issuance of said bonds.

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

Bonds herein provided for shall be issued in such amounts as may be necessary to provide sufficient funds to pay all costs of acquisition, construction, establishment, extension or equipment, including engineering, legal and
other expenses, together with interest to a date six months subsequent to the estimated date of completion. Bonds issued under the provisions of this article are here- by declared to be negotiable instruments, and the same shall be executed by the proper legally constituted au-

thorities of the municipality and be sealed with the cor-

porate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had re-

mained in office until such delivery. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Said bonds shall not be negotiated at a price lower than a price which when computed to maturity upon standard tables of bond values will show a net return of more than ten per-

cent per annum to the purchaser upon the amount paid therefor.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

§8-20-5. Amount, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.

For the purpose of defraying the cost of acquisition, con-

struction, establishment or equipment of any such water-

works or sewerage system, or a combined waterworks and sewerage system, and for the purpose of paying the cost of constructing any extensions, additions, better-

ments or improvements to either the waterworks or sew-

erage system of said combined waterworks and sewerage system, or both, any such municipality may issue revenue bonds under the provisions of this article. All such bonds may be authorized, issued and sold pursuant to ordinance in installments at different times or an entire issue or series may be sold at one time. Such bonds shall bear interest at a rate not to exceed ten percent per annum, payable semiannually, and shall mature within the period of usefulness of the project involved, to be determined
by the governing body and in any event within a period
of not more than forty years. Such bonds may be in such
denomination or denominations, may be in such form,
either coupon or registered, may carry such registration
and conversion privileges, may be executed in such
manner, may be payable in such medium of payment, at
such place or places, may be subject to such terms of
redemption, with or without a premium, may be declared
to become due before the maturity date thereof, may
provide for the replacement of mutilated, destroyed,
stolen or lost bonds, may be authenticated in such manner
and upon compliance with such conditions, and may con-
tain such other terms and covenants, as may be provided
by ordinance of the governing body of the municipality.
Notwithstanding the form of tenor thereof, and in the
absence of an express recital on the face thereof that the
bond is nonnegotiable, all such bonds shall at all times be,
and shall be treated as, negotiable instruments for all
purposes. Said bonds and the interest thereon, together
with all properties and facilities of said municipality
owned or used in connection with said combined water-
works or sewerage system, and all the moneys, revenues
and other income of such municipality derived from
such combined waterworks and sewerage system shall
be exempt from all taxation by this state or any county,
municipality, political subdivision or agency thereof.
Such bonds may be sold in such manner as the governing
body shall determine and if issued to bear interest at the
rate of ten percent per annum shall be sold for not less
than par and accrued interest. If any such bonds shall be
issued to bear interest at a rate of less than ten percent
per annum, the minimum price at which they may be
sold shall be such that the interest cost to such munici-
pality of the proceeds of such bonds shall not exceed ten
percent per annum computed to maturity according to
the standard table of bond values: Provided, That if the
governing body of the municipality determines to sell
any revenue bonds of such combined waterworks and
sewerage system for refunding purposes, such bonds shall
be sold at not less than par and accrued interest and the
proceeds deposited at the place of payment of the bonds,
obligations or securities being refunded thereby. In case any officer whose signature appears on such bonds or coupons attached thereto shall cease to be such officer before the delivery of the bonds to the purchaser, such signature shall nevertheless be valid and sufficient for all purposes, with the same effect as if he had remained in office until the delivery of the bonds. All signatures on the bonds or coupons and the corporate seal may be mechanically reproduced if authorized in the ordinance authorizing the issuance of the bonds. Such bonds shall have all the qualities of negotiable instruments under the law of this state.

Whenever a waterworks and sewerage system is included in a combined waterworks and sewerage system under the provisions of this article and there are unpaid and outstanding revenue bonds or any other obligations or securities previously issued which are payable solely from the revenues of such waterworks or such sewerage system or any part thereof, such outstanding bonds, obligations or securities may be refunded by the issuance and sale or exchange therefor of revenue bonds to be issued under the provisions of this article. Whenever any outstanding bonds, obligations or securities previously issued which are payable solely from the revenues of any waterworks or sewerage system included in a combined waterworks and sewerage system under the provisions of this article are refunded and the refunding is to be accomplished by exchange, such outstanding bonds, obligations or securities shall be surrendered and exchanged for revenue bonds of such combined waterworks and sewerage system of a total principal amount which shall not be more and may be less than the principal amount of the bonds, obligations or securities surrendered and exchanged plus the interest to accrue thereon to the date of surrender and exchange, and if the refunding is to be accomplished through the sale of revenue bonds of such combined waterworks and sewerage system the total principal amount of such revenue bonds which may be sold for refunding purposes shall not exceed the principal amount of the bonds, obligations or securities being refunded plus
the interest to accrue thereon to the retirement date or
the next succeeding interest payment date, whichever
date may be earlier. Provision may be made that each
bond to be exchanged for refunding bonds shall be kept
intact and shall not be canceled or destroyed until the
refunding bonds, and interest thereon, have been finally
paid and discharged; but each such bond shall be stamped
with a legend to the effect that the same has been re-

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

Article
1. Bond Issues for Original Indebtedness.
2A. Revenue Bond Financing.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

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

If three fifths of all the votes cast for and against the
proposition to incur debt and issue negotiable bonds shall
be in favor of the same, the governing body of the political
division shall, by resolution, authorize the issuance of
such bonds in an amount not exceeding the amount stated
in the proposition; fix the date thereof; set forth the
denominations in which they shall be issued, which
denominations shall be one hundred dollars or multiples
thereof; determine the rate of interest which the bonds
shall bear, which rate of interest shall be within the
maximum rate stated in the proposition submitted to
vote and payable semiannually, and shall in no case ex-
ceed ten percent per annum; prescribe the medium with
which the bonds shall be payable; require that the bonds
shall be made payable at the office of the state treasurer
and at such other place or places as the body issuing
the same may designate; provide for a sufficient levy to
pay the annual interest on the bonds and the principal
maturity; fix the times within the maximum period, as
contained in the proposition submitted to vote, when
the bonds shall become payable, which shall not exceed
thirty-four years from the date thereof; and prescribe a
form for executing the bonds authorized.
ARTICLE 2A. REVENUE BOND REFINANCING.

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

The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, not in any event exceeding forty years from their respective dates; may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds or other obligations refinanced thereby; may be in such denomination or denominations, may be in such form either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen or lost bonds, may be authenticated in such manner and upon compliance with such conditions; and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the public body: Provided, That if the refinancing is for the sole purpose of discharging at less than their face or par value all of the outstanding notes, bonds or other obligations of a Class I or Class II city, as defined in chapter eight of this code, and such notes, bonds or other obligations are to be refinanced, then such refunding bonds may bear interest at any rate or rates, not exceeding ten percent per annum, which results in a total interest cost of not more than the total amount of interest, including interest then in arrears, that would have been payable from the date of such refinancing to maturity of the notes, bonds or other obligations so refinanced: Provided, however, That if the governing body determines that one of the purposes of issuing such refunding bonds is to effect the release, termination or modification of liens, restrictions, conditions or limitations imposed in connection with the notes, bonds or other obligations refinanced thereby, then
such refunding bonds may be issued bearing interest at such rate or rates as the governing body may determine, but such rate or rates shall not exceed the maximum stated rate of interest which the notes, bonds or other obligations refinanced thereby could bear if they were being issued as of the date of issuance of such refunding bonds, and notwithstanding any other limitations contained in this article, such refunding bonds may not be sold or exchanged at a price which would result in a net interest cost, herein defined to mean the total amount of interest to accrue on the refunding bonds from the date thereof to their respective maturities without regard to any retained options of redemption plus the amount of any discount below par or less the amount of any premium above par at which the bonds may be sold or exchanged, in excess of the maximum net interest cost which the outstanding notes, bonds or other obligations to be refinanced thereby could be sold or exchanged for if they were being issued as of the date of issuance of such refunding bonds.

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

CHAPTER 16. PUBLIC HEALTH.

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

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

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

Such revenue bonds shall bear interest at not more than ten percent per annum, payable semiannually, and shall mature at such time or times as may be determined
by ordinance. Such bonds may be made redeemable before maturity at the option of the municipality, to be exercised by said board, at not more than the par value thereof and a premium of five percent, under such terms and conditions as may be fixed by the ordinance authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. Said ordinance shall determine the form of the bonds, including the interest coupons to be attached thereto, and shall fix the denomination or denominations of such bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the state. The bonds shall contain a statement on their face that the municipality shall not be obligated to pay the same or the interest thereon except from the special fund provided from the net revenues of the works. All such bonds shall be, and shall have and are hereby declared to have all the qualities and incidents of, negotiable instruments under the Uniform Commercial Code of the state. Said bonds shall be exempt from all taxation, state, county and municipal. Provisions may be made for the registration of any of the bonds in the name of the owner as to principal alone. Such bonds shall be executed by the proper legally constituted authorities of the municipality and be sealed with the corporate seal of the municipality, and in case any of the officers whose signatures appear on the bonds or coupons shall cease to be such officers, before delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold at a price not lower than a price, which when computed upon standard tables of bond values, will show a net return of not more than eleven per centum per annum to the purchaser upon the amount paid therefor and the proceeds derived therefrom shall be used exclusively for the purposes for which said bonds are issued and same may be sold at one time or in parcels as funds are needed. Any surplus of bond proceeds over and above the cost of the works shall be paid into the sinking fund here-
in after provided. If the proceeds of the bonds, by error
of calculation or otherwise, shall be less than the cost
of the works, additional bonds may in like manner be
issued to provide the amount of such deficit and, unless
otherwise provided in said ordinance authorizing the
issuance of the bonds first issued or in the trust indenture
hereinafter authorized, shall be deemed to be of the
same issue and shall be entitled to payment without
preference or priority of the bonds first issued. Prior
to the preparation of the definitive bonds, temporary
bonds may under like restrictions be issued with or with-
out coupons, exchangeable for definitive bonds upon the
issuance of the latter.

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


1 For constructing or acquiring any public service prop-
erties for the authorized purposes of the district, or
necessary or incidental thereto, and for constructing
improvements and extensions thereto, and also for reim-
bursing or paying the costs and expenses of creating the
district, the board of any such district is hereby autho-
rized to borrow money from time to time and in evidence
thereof issue the bonds of such district, payable solely
from the revenues derived from the operation of the
public service properties under control of the district.
Such bonds may be issued in one or more series, may
bear such date or dates, may mature at such time or
times not exceeding forty years from their respective
dates, may bear interest at such rate or rates not exceed-
ing ten percent per annum payable semiannually, may be
in such form, may carry such registration privileges, may
be executed in such manner, may be payable at such
place or places, may be subject to such terms of redeem-
tion with or without premium, may be declared or become
due before maturity date thereof, may be authenticated
in any manner, and upon compliance with such condi-
tions, and may contain such terms and covenants as may
be provided by resolution or resolutions of the board.
Notwithstanding the form or tenor thereof, and in the
absence of any express recital on the face thereof, that
the bond is nonnegotiable, all such bonds shall be, and
shall be treated as, negotiable instruments for all pur-
poses. Bonds bearing the signatures of officers in office on
the date of the signing thereof shall be valid and binding
for all purposes notwithstanding that before the delivery
thereof any or all of the persons whose signatures appear
thereon shall have ceased to be such officers. Notwith-
standing the requirements or provisions of any other law,
any such bonds may be negotiated or sold in such manner
and at such time or times as is found by the board to be
most advantageous, and all such bonds may be sold at such
price that the interest cost of the proceeds therefrom does
not exceed ten percent per annum, based on the average
maturity of such bonds and computed according to stan-
dard tables of bond values. Any resolution or resolutions
providing for the issuance of such bonds may con-
tain such covenants and restrictions upon the issuance of
additional bonds thereafter as may be deemed necessary
or advisable for the assurance of the payment of the
bonds thereby authorized.

CHAPTER 18. EDUCATION.

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

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

Whenever the term "student union building" is used in
this section the same shall mean a student union building
or a combination student union building and dining hall
building; and wherever the term "building fund" is used
in this section the same shall mean the respective special
student union building funds created as provided in sec-
tion one of this article for each state educational institu-
tion which has imposed student union fees pursuant to
section one of this article, to be expended by the West
Virginia board of regents for the benefit of the state edu-
cational institutions under its control.

The West Virginia board of regents may make expendi-
tures from such building funds at the various state educa-
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tional institutions under its control to finance in whole or in part, together with any federal, state or other grants or contributions, any one or more of the following purposes:

17  (1) The construction and acquisition of new student union buildings. (2) The acquisition, renovation and improvement of existing buildings to be used as student union buildings. (3) The construction of additions, extensions and improvements to existing student union buildings. (4) The acquisition of furnishings and equipment for any existing student union buildings or student union buildings to be constructed or acquired, or the construction of any roads, utilities or other properties, real or personal, or for any other purposes necessary, appurtenant or incidental to the construction, acquisition, financing and placing in operation of such student union buildings. (5) The payment of the cost of the operation and maintenance of such student union buildings, subject however to any covenants or agreements made with the holders of revenue bonds heretofore or hereafter issued pursuant to this section or pursuant to section one of this article.

The West Virginia board of regents, at its discretion, may use the moneys in such building funds to finance the costs of the above purposes on a cash basis, or may from time to time issue revenue bonds of the state as provided in this section to finance all or part of such purposes and pledge all or any part of the moneys in such building funds for the payment of the principal of and interest on such revenue bonds, and for reserves therefor. Any pledge of such building funds for such revenue bonds shall be a prior and superior charge on such special funds over the use of any of the moneys in such funds to pay for the cost of any of such purposes on a cash basis, or for the payment of the cost of operation and maintenance, or any part thereof, of such student union buildings, under such terms and conditions as shall be provided in the proceedings which authorized the issuance of such revenue bonds.

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

The issuance of such revenue bonds shall be authorized
by a resolution adopted by the West Virginia board of
regents, and such revenue bonds shall bear such date or
dates, mature at such time or times not exceeding forty
years from their respective dates; bear interest at such
rate or rates not exceeding ten per centum per annum; be
in such form either coupon or registered, with such ex-
changeability and interchangeability privileges; be pay-
able in such medium of payment and at such place or
places, within or without the state; be subject to such
terms of prior redemption at such prices not exceeding
one hundred five per centum of the principal amount
thereof; and shall have such other terms and provisions
as the board shall determine. Such revenue bonds shall be
signed by the governor and by the president of the West
Virginia 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 of the West Virginia board of regents. Such
revenue bonds shall be sold in such manner as the board
may determine to be for the best interests of the state.

The West Virginia board of regents may enter into trust
agreements with banks or trust companies, within or with-
out the state, and in such trust agreements or the resolu-
tions authorizing the issuance of such bonds may enter in-
to valid and legally binding covenants with the holders of
such revenue bonds as to the custody, safeguarding and
disposition of the proceeds of such revenue bonds, the
moneys in such building funds, sinking funds, reserve
funds, or any other moneys or funds; as to the rank and
priority, if any, of different issues of revenue bonds issued
by the board for the same educational institution under
the provisions of this section; as to the maintenance or
revision of the amounts of such student union fees, and
the terms and conditions, if any, under which any of such
student union fees may be reduced; and as to any other
matters or provisions which are deemed necessary and
advisable by the board in the best interests of the state
and to enhance the marketability of such revenue bonds.

Any revenues or income derived from the operation of
such student union buildings may, in the discretion of the
board, be used to pay the cost of the operation and main-
tenance of such student union buildings, or for the debt
service on any bonds issued pursuant to this section or
pursuant to any other law.

After the issuance of any of such revenue bonds, the
student union fees at the state educational institution for
which such revenue bonds were issued shall not be re-
duced as long as any of such revenue bonds are outstand-
ing and unpaid except under such terms, provisions and
conditions as shall be contained in the resolution, trust
agreement or other proceedings under which such rev-
ue bonds were issued.

Such revenue bonds shall be and constitute negotiable
instruments under the Uniform Commercial Code of the
state, shall, together with the interest thereon, be exempt
from all taxation by the state of West Virginia, or by any
county, school district, municipality or political subdivi-
sion thereof; and such revenue bonds shall not be deemed
to be obligations or debts of the state, and the credit or
taxing power of the state shall not be pledged therefor,
but such revenue bonds shall be payable only from the
student union fees pledged therefor as provided in this
section.

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

CHAPTER 34

(H. B. 779—By Mr. Hendricks and Mr. Tucker)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article seven, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing to not more than five dollars per day the allotment for food that a county must provide for prisoners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-13. Allowance for expenses of sheriff.

1 The county commission of every county having a population of thirty thousand or less as determined by the latest official census available and which, as provided in section two-a, article eight of this chapter, has directed the sheriff as jailer to feed prisoners shall, in addition to his compensation, allow to the sheriff for keeping and feeding each prisoner, other than federal prisoners or prisoners held under civil process as provided by law, not more than five dollars per day for each prisoner.

10 The limitation per day shall not include cost of personal service, bed or bedding, soaps, and disinfectants and items of like kind, the cost of which shall be paid out of the allowance
fixed by the county commission under the provisions of present law.

All supplies of whatever kind for keeping and feeding prisoners shall be purchased upon the requisition of the sheriff under rules and regulations prescribed by the county commission. At the end of each month the sheriff shall file with the county commission a detailed statement showing the name of each prisoner, date of commitment, date of discharge, the number of days in jail, and an itemized statement showing each purchase and the cost for keeping and feeding prisoners.

The county commission of every county shall allow the actual and necessary expenses incurred by the sheriff in the discharge of his duties, including, but not limited to: Those incurred in arresting, pursuing or transporting persons accused or convicted of crimes and offenses; in the cost of law-enforcement and safety equipment; in conveying or transporting a prisoner from and to jail to participate in court proceedings; and in conveying or transferring any person to or from any state institution where he may be committed from his county, where the sheriff is authorized to convey or transfer the person. The county commission shall allow the actual and necessary expenses incurred in serving summons, notices or other official papers in connection with the sheriff's office.

Every sheriff shall file monthly, under oath, an accurate account of all the actual and necessary expenses incurred by him, his deputies, assistants and employees in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county commission. Reimbursement, properly allowed, shall be made from the general county fund.

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CHAPTER 35

(Com. Sub. for S. 8, 157—By Mr. Rollins)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty, chapter nineteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to permitting the county commissions to set the costs and fees for seized and impounded dogs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. DOGS.

§19-20-8. Impounding and disposition of dogs; costs and fees.

1 All dogs seized and impounded as provided in this article, except dogs taken into custody under section two of this article, shall be kept housed and fed in the county dog pound for five days after notice of seizure and impounding shall have been given or posted as required by this article, at the expiration of which time all dogs which have not previously been redeemed by their owners as herein provided, shall be sold or humanely destroyed. No dog sold as herein provided shall be discharged from the pound until such dog shall have been registered and provided with a valid registration tag.

12 The owner, keeper or harborer of any dog seized and impounded under the provisions of this article may, at any time prior to the expiration of five days from the time that notice of the seizure and impounding of the dog shall have been given or posted as required by this article, redeem the same by paying to the dog warden or his authorized agent or deputy all of the costs assessed against such dog, and by providing a valid certificate of registration and registration tag for such dog.

21 Reasonable costs and fees, in such amount as may be determined from time to time by the county commission, shall be assessed against every dog seized and impounded under the provisions of this article, except dogs taken into custody under section two of this article. Such cost shall be a valid claim in favor of the county against the owner, keeper or harborer of any dog seized and impounded under the provisions of this article and not redeemed or sold as herein provided, and such costs shall
be recovered by the sheriff in a civil action against such
owner, keeper or harborer.

A record of all dogs impounded, the disposition of such
dogs, and a statement of costs assessed against each dog
shall be kept by the dog warden and a transcript thereof
shall be furnished to the sheriff quarterly.

CHAPTER 36
(H. B. 1624—By Mr. Albright)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-n, article two, chapter
fifty-one of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to the terms of court
for the fourteenth judicial circuit; changing the beginning days
of circuit court term in the counties of Clay and Webster.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1n. Fourteenth circuit.

1 For the county of Braxton on the first Monday in February,
2 June and October.

3 For the county of Clay on the third Monday in March, the
4 second Monday in July and the first Monday in November.

5 For the county of Gilmer on the first Monday in March,
6 July and November.

7 For the county of Webster on the second Monday in Janu-
8 ary, and the first Monday in May and September.
CHAPTER 37
(Com. Sub. for H. B. 1045—By Mr. Teets)

[Passed February 12, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one-q and one-r, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the dates of the terms of court for the seventeenth and eighteenth judicial circuits.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.
§51-2-lq. Seventeenth circuit.
§51-2-lr. Eighteenth circuit.
§51-2-lq. Seventeenth circuit.
1  For the county of Monongalia, on Thursday after the first
2  Monday in January, May and September.
§51-2-lr. Eighteenth circuit.
1  For the county of Preston, on the first Tuesday in March
2  and June and the third Tuesday in October.

CHAPTER 38
(S. B. 77—By Mr. Brotherston, Mr. President)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section ten-a, article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section thirteen, article two of said chapter, all relating to increasing the salaries of justices of the supreme court of appeals and circuit judges.
Be it enacted by the Legislature of West Virginia:

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

**Artic le**

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.

**ARTICLE 1. SUPREME COURT OF APPEALS.**

§51-1-10a. Salary of justices.

1. The salary of each of the justices of the supreme court of appeals shall be forty thousand dollars per year.

**ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**


1. The salaries of the judges of the various circuit courts shall be paid solely out of the state treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

6. The annual salary of all circuit judges shall be thirty-eight thousand dollars per year.

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**CHAPTER 39**

(H. B. 926—By Mr. Worden and Mr. Swann)

[Passed January 31, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-a, relating to continuing and reestablishing the division of archives and history.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF CULTURE AND HISTORY.

§29-1-7a. Reestablishment of division of archives and history.

1 After having conducted a performance and fiscal audit
2 through its joint committee on government operations, pursuant
3 to section nine, article ten, chapter four of this code, the
4 Legislature hereby finds and declares that the division of
5 archives and history should be continued and reestablished.
6 Accordingly, notwithstanding the provisions of section four,
7 article ten, chapter four of this code, the division of archives
8 and history shall continue to exist until the first day of July,
9 one thousand nine hundred eighty-six.

CHAPTER 40

(S. B. 569—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article
one, chapter twelve of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
depositories for demand deposits; apportionment of de-
posits; board authorized to select deposits through com-
petitive bidding; maintenance of deposits by treasurer;
depositories for interest earning deposits; qualifications.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPOSITORIES.

§12-1-2. Depositories for demand deposits; categories of demand deposits;
competitive bidding for disbursement accounts; maintenance of
deposits by treasurer.

§12-1-3. Depositories for interest earning deposits; qualifications.
§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by treasurer.

1 The state board of investments shall designate the state and national banks in this state which shall serve as depositories for all state funds placed in demand deposits. Any such state or national bank shall, upon request to such board, be designated as a state depository for such deposits, if such bank meets the requirements set forth in this chapter: Provided, That notwithstanding any provision of this article to the contrary, no state funds may be deposited in any bank which has been in existence over a period of five years which does not have a loan to deposit ratio of fifty percent or more and which does not have farm, single or multifamily residential unit loans in an amount greater than twenty-five percent of the amount of loans representing a loan-to-deposit ratio of fifty percent. For the purpose of making the foregoing calculation, the balances due the bank on the following loans shall be given effect: (1) Qualifying residential loans held by the bank; (2) qualifying loans made in participation with other financial institutions; (3) qualifying loans made in participation with agencies of the state, federal or local governments; and (4) qualifying loans originated and serviced by the bank but owned by an out-of-state investor. The computation of the criteria for eligibility specified above shall be based on the average daily balances of deposits, the average daily balances of total loans, and qualifying residential loans for the period being reported.

Demand deposit accounts shall consist of receipt, disbursement and investment accounts. Receipt accounts shall be those accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts shall be those accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political
subdivision, person, firm or corporation except moneys paid from investment accounts.

Investment accounts shall be those accounts established by the treasurer or board of investments for the buying and selling of securities for investment for the state of West Virginia or any official, department, board, commission or agency thereof or to meet obligations to paying agents or for paying charges incurred for the custody, safekeeping and management of such securities pursuant to the provisions of section five, article five of this chapter, or for paying the charges of any bank or trust company acting as paying agent or copaying agent for a bond issue of the state pursuant to the provisions of section seven-a, article one, chapter fifty-seven of this code.

The board of investments shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of the code of West Virginia, as amended, concerning depositories for receipt accounts and investment accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.

The board of investments shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state: Provided, That funds in disbursement accounts shall be proportionately distributed among the following categories of such depositories, based upon the total assets of such depository: (a) Depositories whose total assets are not greater than twenty-five million dollars; (b) depositories whose total assets are greater than twenty-five million dollars but not greater than fifty million dollars; or (c) depositories whose total assets are greater than fifty million dollars. The board shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a
of the code of West Virginia, as amended, prescribing the
procedures and criteria for such bidding and selection. It
shall, in its invitations for bids, specify the approximate
amounts of deposits, the duration of contracts to be
awarded and such other contractual terms as it considers
to be in the best interests of the state, consistent with
obtaining the most efficient service at the lowest cost:
Provided, however, That the depositories for such dis-
bursement accounts shall be determined by the board
through competitive bidding separately for each category
of depositories created in this section.

The amount of money needed for current operation
purposes of the state government, as determined by the
state treasurer, shall be maintained at all times in the
state treasury, in cash or in disbursement accounts with
banks designated as depositories in accordance with the
provisions of this section. No state officer or employee
shall make or cause to be made any deposits of state funds
in banks not so designated.

§12-1-3. Depositories for interest earning deposits; qualifica-
tions.

1 Any state or national bank or any state or federal sav-
ings and loan association in this state shall, upon request
made to the board of investments, be designated as an eli-
gible depository for interest earning deposits of state
funds if such bank or state or federal savings and loan as-
sociation meets the requirements set forth in this chapter.
For purposes of this article, the term "interest earning de-
posits" includes certificates of deposit. The board of in-
vestments, acting through the treasurer, shall make and
apportion such interest earning deposits and shall pre-
scribe the interest rates, terms and conditions of such
deposits, all in accordance with the provisions of article
six of this chapter: Provided, That state or federal savings
and loan associations insured by an agency of the federal
government shall be eligible for such deposits not in ex-
cess of one hundred thousand dollars: Provided, however,
That notwithstanding any provision of this article to the
contrary, no such interest earning deposits may be de-
posited in any depository which has been in existence over
a period of five years which does not have a loan to de-
posit ratio of fifty percent or more and which does not
have farm, single or multifamily residential unit loans in
an amount greater than twenty-five percent of the amount
of loans representing a loan-to-deposit ratio of fifty per-
cent. For the purpose of making the foregoing calcula-
tion, the balances due the depository on the following
loans shall be given effect: (1) Qualifying residential
loans held by the depository; (2) qualifying loans made
in participation with other financial institutions; (3)
qualifying loans made in participation with agencies of
the state, federal or local governments; and (4) qualify-
ing loans originated and serviced by the depository but
owned by an out-of-state investor. The computation of
the criteria for eligibility specified above shall be based
on the average daily balances of deposits, the average
daily balances of total loans, and qualifying residential
loans for the period being reported.

CHAPTER 41

(Com. Sub. for S. B. 62—By Mr. Gilligan)

[Passed February 27, 1980; in effect April 1, 1980. Approved by the Governor.]

AN ACT to amend article four, chapter sixty-a of the code
of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated
section four hundred three-a, relating to the prohibition
of illegal drug paraphernalia businesses; providing that
any person who conducts, finances, manages, supervises,
directs or owns all or part of such business is guilty of a
misdemeanor, and setting forth the penalty therefor;
describing the elements of such offense; defining the term
"drug device"; providing for certain places to be deemed
common and public nuisances; providing that a person
who maintains, aids and abets, or knowingly associates
with others in maintaining such nuisance is guilty of a
misdemeanor, and setting forth the penalty therefor; pro-
viding for abatement of nuisances; suits to abate nuisances; 
requiring bond in certain cases; providing for injunction; 
providing for the issuance of search warrants; forfeiture 
of property.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403a. Prohibition of illegal drug paraphernalia busi-
nesses; definitions; places deemed common and 
public nuisances; abatement; suit to abate 
uisances; injunction; search warrants; for-
feiture of property; penalties.

1 (a) Any person who conducts, finances, manages, 
supervises, directs or owns all or part of an illegal drug 
paraphernalia business is guilty of a misdemeanor, and, 
upon conviction thereof, shall be fined not more than five 
thousand dollars, or confined in jail not less than six 
months nor more than one year, or both.

7 (b) A person violates subsection (a) of this section 
when:

9 (1) The person conducts, finances, manages, supervises, 
directs, or owns all or part of a business which for profit, 
in the regular course of business or as a continuing 
course of conduct, manufactures, sells, stores, possesses, 
gives away or furnishes objects designed to be primarily 
useful as drug devices.

15 (2) The person knows or has reason to know that the 
design of such objects renders them primarily useful as 
drug devices.

18 (c) As used in this section, “drug device” means an 
object usable for smoking marihuana, for smoking con-
trolled substances defined as tetrahydrocannabinols, or
for ingesting or inhaling cocaine, and includes, but is not limited to:

(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Chamber pipes;

(vii) Carburetor pipes;

(viii) Electric pipes;

(ix) Air-driven pipes;

(x) Chillums;

(xi) Bongs;

(xii) Ice pipes or chillers; and

(xiii) Miniature cocaine spoons, and cocaine vials.

In any prosecution under this section, the question whether an object is a drug device shall be a question of fact.

(d) A place where drug devices are manufactured, sold, stored, possessed, given away or furnished in violation of this section shall be deemed a common or public nuisance. Conveyances or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of subsection (e) of this section. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by confinement in jail not more
than six months for each offense, and judgment shall be
given that such nuisance be abated or closed as a place
for the manufacture, sale, storage, possession, giving away
or furnishing of drug devices.

(e) The prosecuting attorney or a citizen of the county
or municipality where a nuisance as defined in subsec-
tion (d) is located, may maintain a suit in the name of
the state to abate and perpetually enjoin the same. Cir-
cuit courts shall have jurisdiction thereof. The injunction
may be granted at the commencement of the suit and no
bond shall be required if such action for injunction be
brought by the prosecuting attorney. If such suit for
injunction be brought or maintained by a citizen of the
county or municipality where such nuisance is alleged
to be located, then the court may require a bond as in
other cases of injunction. On the finding that the ma-
terial allegations of the complaint are true, the court or
judge thereof in vacation shall order the injunction for
such period of time as it or he may think proper, with
the right to dissolve the injunction upon the application
of the owner of the place, if a proper case is shown for
such dissolution.

The continuance of the injunction as provided in this
section may be ordered, although the place complained
of may not at the time of hearing be unlawfully used.

(f) If there be complaint on oath or affirmation support-
ed by affidavit or affidavits setting forth the facts for such
belief that drug devices are being manufactured, sold,
kept, stored or in any manner held, used or concealed in a
particular house or other place with intent to engage in
illegal drug paraphernalia business in violation of law,
a magistrate or a circuit court, or the judge thereof in
vacation to whom such complaint is made, if satisfied that
there is probable cause for such belief, shall issue a
warrant to search such house or other place for such
devices. Such warrants, except as herein otherwise pro-
vided, shall be issued, directed and executed in accord-
ance with the laws of West Virginia pertaining to search
warrants. Warrants issued under this section for the
search of any automobile, boat, conveyance or vehicle,
or for the search of any trunk, grip or other article of baggage, for such devices, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any magistrate or circuit court, or the judge thereof in vacation, within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported.

An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.

(g) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the state.

CHAPTER 42

(Com. Sub. for H. B. 1461—By Mr. Prunty)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to employees of West Virginia board of regents and institutions of higher education receiving their salaries in twelve equal monthly installments.

Be it enacted by the Legislature of West Virginia:

That article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a, to read as follows:
ARTICLE 3. APPROPRIATIONS AND EXPENDITURES.

§12-3-12a. Payment of salaries of employees of West Virginia board of regents and institutions of higher education in twelve equal monthly installments.

Notwithstanding the provisions of section twelve of this article, in the event that an employee of the West Virginia board of regents or of any of the institutions which it governs elects to receive his salary in twelve equal monthly installments, warrants may be drawn for the last two such installments in the months of July and August following the fiscal year during which such salary was earned: Provided, That such warrants have been encumbered by said board of regents and the budget office prior to the thirtieth day of June of said fiscal year.

CHAPTER 43

(Fin. Com. Sub. for Ed. Com. Sub. for S. B. 167—
By Mr. Tonkovich and Mr. Galperin)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one, chapter eighteen-a of said code; to amend and reenact sections one, two-a, three, eight and eight-a, article four of said chapter; and to further amend said article four by adding thereto a new section, designated section one-a, all relating to certain salaries, job classifications, and other employment matters of employees of county boards of education; placing school nurses in teachers pay scale; pay raise for teachers; increasing principals' pay increments; pay raise for auxiliary and service personnel; additional pay for custodians who work a split shift; creating a job classification of sanitation plant operator; redefinition of job classification of Secre-
tary II; prohibiting reduction of rate of pay, compensation, or benefits of auxiliary and service personnel under certain conditions; and requiring report to Legislature of auxiliary and service personnel working split shifts and of ratio of cooks to meals served.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 1. DEFINITIONS, LIMITATIONS OF CHAPTER.

§18-1-1. Definitions.

1 The following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

5 (a) "School" shall mean the pupils and teacher or teachers assembled in one or more buildings, organized as a unit;

8 (b) "District" shall mean county school district;

9 (c) "State board" shall mean the West Virginia board of education;

11 (d) "Board" shall mean the county board of education;

13 (e) "State superintendent" shall mean the state superintendent of free schools;
(f) "Superintendent" shall mean the county superintendent of schools;

(g) "Teacher" shall mean teacher, supervisor, principal, superintendent, public school librarian; registered professional nurse, licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, who has a baccalaureate degree; or any other person regularly employed for instructional purposes in a public school in this state;

(h) "Service personnel" shall mean all nonteaching school employees not included in the above definition of "teacher";

(i) "Regular full-time employee" shall mean any person employed by a county board of education who has a regular position or job throughout his employment term, without regard to hours or method of pay.

CHAPTER 18A. SCHOOL PERSONNEL.

Article
4. Salaries, Wages, and Other Benefits.

ARTICLE 1. GENERAL PROVISIONS.

§18A-1-1. Definitions.

1 The definitions contained in section one, article one of chapter eighteen shall be applicable to this chapter. In addition, the following words used in this chapter and in any proceedings pursuant thereto shall, unless the context clearly indicates a different meaning, be construed as follows:

(a) "School personnel" shall mean all personnel employed by a county board of education whether employed on a regular full-time basis, an hourly basis or otherwise. School personnel shall be comprised of three categories: Professional personnel, auxiliary personnel and service personnel.

(b) "Professional personnel" shall mean persons who
meet the certification and/or licensing requirements of
the state, and shall include the professional educator and
other professional employees.

(c) "Professional educator" shall be synonymous with
and shall have the same meaning as "teacher" as defined
in section one, article one, chapter eighteen of this code.

Professional educators shall be classified as:

(1) "Classroom teacher": The professional educator
who has direct instructional or counseling relationship
with pupils, spending the majority of his time in this
capacity.

(2) "Principal": The professional educator who as
agent of the board has responsibility for the supervision,
management and control of a school or schools within the
guidelines established by said board. The major area of
such responsibility shall be the general supervision of all
the school and all school activities involving pupils,
teachers and other school personnel.

(3) "Supervisor": The professional educator who,
whether by this or other appropriate title, is responsible
for working primarily in the field with professional and/
or other personnel in instructional and other school im-
provement.

(4) "Central office administrator": The superintendent,
associate superintendent, assistant superintendent and
other professional educators, whether by these or other
appropriate titles, who are charged with the administ-
ing and supervising of the whole or some assigned part of
the total program of the county-wide school system.

(d) "Other professional employee" shall mean that per-
son from another profession who is properly licensed and
is employed to serve the public schools and shall include
a registered professional nurse, licensed by the West
Virginia board of examiners for registered professional
nurses and employed by a county board of education, who
has completed either a two-year (sixty-four semester
hours) or a three-year (ninety-six semester hours) nurs-
ing program.
(e) "Auxiliary personnel" shall mean those persons selected and trained for teacher-aide classifications such as monitor aide, clerical aide, classroom aide, general aide.

(f) "Service personnel" shall mean those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-1. Definitions.
§18A-4-1a. Minimum salary for a registered professional nurse employed by the board, who has less than a bachelor's degree.
§18A-4-2a. State supplemental salaries.
§18A-4-3. Salary increments for principals.
§18A-4-8. Employment term and class titles of service and auxiliary personnel; definitions.
§18A-4-8a. Auxiliary and service personnel minimum monthly 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 of this article 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 a registered professional nurse employed by a county board of education, “years of experience” means the number of years the nurse has been employed as a public school health nurse, including active work in a nursing position related to education, and service in the armed forces if the nurse was under contract with the county board at the time of induction. For the purpose of section two of this article, the experience of a teacher or a nurse 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 examinations,” (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.” mean 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. A registered professional nurse with a bachelor's degree, who is licensed by the West Virginia board of examiners for registered professional nurses and employed by a county board of education, shall be within this classification for payment in accordance with sections two and two-a of this article.

(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 insti-
tution 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 de-
gree 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.

(9) "M.A. + 30" means the above-defined master's de-
gree plus thirty graduate hours, earned in an institution
approved to do graduate work, if the person is qualified
for or holds a professional certificate or its equivalent.

(10) "Doctorate" means a doctor's degree, 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-la. Minimum salary for a registered professional nurse
employed by the board, who has less than a
bachelor's degree.

1 A registered professional nurse, licensed by the West
2 Virginia board of examiners for registered professional
3 nurses and employed by a county board of education,
4 who has less than a bachelor's degree, shall receive a
5 salary not less than that provided in sections two and
6 two-a of this article and in accordance with the follow-
ing:

8 (a) A registered professional nurse who has com-
9 pleted a two-year nursing program (sixty-four semester
10 hours) shall be paid not less than the salary for a teacher
11 whose classification of training is "third class" as defined
in subparagraph (3), section one of this article, such salary to include allowable years of experience, and

(b) A registered professional nurse who has completed a three-year nursing program (ninety-six hours) shall be paid not less than the salary for a teacher whose classification of training is "second class" as defined in subparagraph (4), section one of this article, such salary to include allowable years of experience.

The salary provided under this section and the additional fixed charge payments required therefor shall be paid outside the public school support plan provided for in article nine-a, chapter eighteen of this code.

§18A-4-2a. State supplemental salaries.

In addition to the amount of state minimum salary received pursuant to section two of this article, on and after the first day of July, one thousand nine hundred eighty, each teacher shall receive as a supplement therefor to the specific additional amount prescribed in this section for such teacher's years of experience and educational level as hereinafter set forth. This salary supplement and the increased fixed charges payments hereby required shall be paid outside the West Virginia public school support plan provided for in article nine-a, chapter eighteen of the code.

**STATE SUPPLEMENTAL SALARY SCHEDULE**

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<th>2nd Class</th>
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§18A-4-3. Salary increments for principals.

In addition to the present recommended salary schedules in each county for principals, the following schedule of monthly salary increments for principals shall be paid from state funds appropriated therefor, beginning with the fiscal year commencing on the first day of July, one thousand nine hundred eighty.

### Bachelor's Degree

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§18A-4-8. Employment term and class titles of service and auxiliary personnel; definitions.

1. The purpose of this section is to establish an employment term and class titles 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:

2. Provided, That the county board of education may contract with all or part of these 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.

3. Auxiliary and service personnel employed in the same classification for more than the two hundred day minimum employment term shall be paid for additional employment at a daily rate of not less than the daily rate paid for the two hundred day minimum employment term.

4. Custodians required to work a daily work schedule that is interrupted, that is, who do not work a continuous period in one day, shall be paid additional compensation which shall be equal to at least one eighth of their total salary as provided by their state minimum salary and any county pay supplement, and payable entirely from county funds.

5. 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.

6. 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 in section eight-a of this article, 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 em-
ployed at the time of his induction. For the purpose of
section eight-a of this article, years of employment shall
be limited to the number of years shown and allowed
under the state minimum pay scale as set forth in sec-
tion eight-a of this article.

"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
operations relating to a phase of the total payroll.

"Accountant II" means personnel employed to main-
tain accounting records and to be responsible for the
accounting process associated with billing, budgets, pur-
chasing 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 sec-
tion one, article one of this chapter.

"Aide II" means auxiliary personnel as defined in
section one, article one of this chapter, who have com-
pleted a training program approved by the state board
of education, or who hold a high school diploma or have
received a general educational development certificate.

"Aide III" means auxiliary personnel who hold a high
school diploma or a general educational development
certificate, and have completed six semester hours of
college credit at a higher educational institution.

"Audiovisual technician" means personnel employed to
perform minor maintenance on audiovisual equipment,
films, supplies and the filling of requests for equip-
ment.

"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 recom-
mend purchase agreements for materials and services
that meet predetermined specifications at the lowest
available costs.

"Cabinetmaker" means personnel employed to con-
struct 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, approv-
ing requisitions for supplies and repairs, keeping inven-
tories, 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 journey-
man 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 gener-
al clerical tasks, prepare reports and tabulations and oper-
ate office machines.

"Computer operators" means qualified personnel em-
ployed 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 and shall include personnel who have been employed as a “Cook I” for a period of four years, if such personnel have not been elevated to this classification within that period of time.

“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.

“Foremen” 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.

“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.

“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. 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.

“Sanitation plant operator” means personnel employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant’s effluent for human consumption or environmental protection.

“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 mechanical equipment, receive callers, perform clerical tasks, prepare reports and operate office machines.
“Secretary II” means personnel employed in any elementary, secondary, kindergarten, nursery, special education, vocational or any other school as a secretary. The duties may include performing general clerical tasks, transcribing from notes or stenotype or mechanical equipment or a sound-producing machine, preparing reports, receiving callers and referring them to proper persons, operating office machines, keeping records and handling routine correspondence. There is nothing implied herein that would prevent such employees from holding or being elevated to a higher classification.

“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 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.

In addition to the compensation provided for in section eight-a of this article, 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 set forth in section eight-a of this article, may 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, these 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 county boards shall review each auxiliary and service personnel employee job classification annually and shall reclassify all auxiliary and service employees as required by such job classifications. The state superin-
356 tendent of schools is hereby authorized to withhold state
357 funds appropriated pursuant to this article for salaries
358 for auxiliary and service personnel who are improperly
359 classified by such county boards.

360 The state board of education is authorized to establish
361 other class titles of auxiliary and service personnel posi-
362 tions and jobs not listed in this section. The state board
363 of education is further authorized to provide appropriate
364 pay grades for such positions and jobs but pay shall be
365 established within the minimum salary scale in section
366 eight-a of this article.

367 No auxiliary or service employee, without his written
368 consent, may be reclassified by class title or relegated to
369 any condition of employment which would result in a
370 reduction of his salary, rate of pay, compensation or
371 benefits earned during the current fiscal year or which
372 would result in a reduction of his salary, rate of pay,
373 compensation or benefits for which he would qualify
374 by continuing in the same job position and classification
375 held during said fiscal year.

376 Any board failing to comply with the provisions of this
377 article may be compelled to do so by mandamus, and
378 shall be liable to any party prevailing against the board
379 for court costs and his reasonable attorney fee, as de-
380 termined and established by the court.

381 The new provisions of this section shall become effec-
382 tive the first day of July, one thousand nine hundred
383 eighty.

384 The state superintendent of schools shall compile, from
385 information submitted by the county boards of educa-
386 tion, a report containing the number of personnel, pay
387 classifications and years of experience of custodians and
388 other auxiliary and service personnel who are required
389 to work an interrupted daily work schedule, and the
390 ratio of cooks to school meals served and shall report
391 to the Legislature on the first day of the regular session
392 thereof in the year one thousand nine hundred eighty-one
393 his findings, conclusions and recommendations with
394 respect to such matters.
§18A-4-8a. Auxiliary and service personnel minimum monthly salaries.

**STATE MINIMUM PAY SCALE**

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**CLASS TITLE**

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<td>Computer Operator</td>
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Programmer
Roofing/SHEET Metal Mechanic
Sanitation Plant Operator
School Bus Supervisor
Secretary I
Secretary II
Secretary III
Supervisor of Maintenance
Supervisor of Transportation
Switchboard Operator-Receptionist
Truck Driver
Warehouse Clerk
Watchman
Welder

1 On and after the first day of July, one thousand nine
2 hundred seventy-nine, the minimum monthly pay for
3 each auxiliary and service employee whose employment
4 is for a period of more than three and one-half hours
5 a day shall be at least the amounts indicated in the
6 "state minimum pay scale" as set forth in this section,
7 and the minimum monthly pay for each auxiliary and
8 service employee whose employment is for a period of
9 three and one-half hours or less a day shall be at least
10 one half the amount indicated in the "state minimum
11 pay scale" set forth in this section.

CHAPTER 44
(Com. Sub. for H. B. 1676—By Mr. Speaker, Mr. See)
[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twelve, fourteen and fifteen, article nine-a of said chapter, all relating to requiring statistical computations for school aid formula and comprehensive educational programs to
be based on data from second month of prior school term rather than third month of prior school term.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article two, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and sections twelve, fourteen and fifteen, article nine-a of said chapter, be amended and reenacted all to read as follows:

Article
2. State Board of Education.
9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-23. Comprehensive educational programs; standards, etc.; evaluation and approval; allocation and distribution of funds; distribution of excess funds.

1 The West Virginia board of education, through the state superintendent of schools, shall establish standards and criteria especially designed to guide the development of plans for a comprehensive educational program or programs in county school systems, to provide for their evaluation and approval, and to provide, as herein directed, for the allocation and distribution of state funds, which may be appropriated to assist county school systems to meet additional costs of development and operation of such programs. The plans shall include, but need not be restricted to an analysis of existing program area deficiencies and the procedures for their correction. The plans shall be submitted to and be approved by the West Virginia board of education.

14 County plans shall include one or more of the following: (1) A plan to initiate comprehensive educational programs in any or all areas or parts of the curriculum, and provide necessary supporting services, or (2) a plan to provide for the maintenance or extension of areas or parts of comprehensive educational programs developed or established under this section, or (3) a plan to give essential aid for instruction or supporting services for enrichment of curriculum in schools designated as isolated by the West Virginia board of education where consolidation of schools
or the development of county comprehensive educational pro-
grams are not possible or feasible.

The state superintendent of schools shall provide assistance
to counties in the development and preparation of their plans
for a comprehensive educational program or programs in
order to ensure that every county may have the opportunity
to fully participate and receive its maximum share of the funds
available. All plans shall be submitted to the West Virginia
board of education on or before the first day of July of the
school year in which they are operative. The state superinten-
dent of schools shall as soon as possible and before the first
day of August each year notify any county whose plan fails
to receive approval specifying the manner in which the plan
fails to meet the criteria established and suggesting the neces-
sary corrections. If the county modifies its plan so that its
program or programs become acceptable on or before the first
day of September of that year, the county shall be entitled
to receive the computed share of its allocation for which it
is eligible under its approved plan.

The total potential cost of the comprehensive educational
program for each county shall be determined prior to the
first day of July by multiplying the applicable net enroll-
ments at the close of the second month of the current school
term by the following amounts: Ten dollars for an adult in
a public school program; ten dollars per senior high school
student; seven dollars and fifty cents per junior high school
student; and five dollars per elementary school student, in-
cluding kindergarten. If the appropriation is not sufficient
to provide for all counties their total potential costs as here-
in set forth, the allocation to all counties shall be reduced
proportionately to secure a total which matches the appropria-
tion.

Funds allocated to the counties shall be distributed to
them annually not later than the first day of November on
the basis of net enrollment in approved programs which are
part of their current comprehensive educational plan and the
funds distributed shall be computed as provided herein.

The West Virginia board of education shall establish by
regulation the number of areas in which a county shall partici-
pate to qualify for full or partial distribution of its allocation.
The number of curriculum areas in which a county shall be
required to participate to qualify for its full allocation shall
depend upon factors such as county size, population sparsity,
topography and availability of school staff personnel. In no
case shall the allocation for any one county exceed the amount
derived from application of the maximum pupil allocation as
hereinbefore set forth.

If the county plans approved by the first day of September
do not utilize the total allocations by reason of the plan
or plans of one or more counties not requiring the full alloca-
tions or by failure of one or more counties to submit an
acceptable plan or plans by the first day of September, then
those moneys which were available to such county or counties
shall be declared by the state board of education to be excess
funds. These excess funds shall be available for that year
only for special distribution. All counties shall be eligible
for additional moneys as a special distribution from excess
funds if, and to the extent that, such county or counties ap-
proved plan or plans require funds in excess of the amount
allocated to each county on or before the first day of Septem-
ber: Provided, That no county may receive any funds in ex-
cess of its total potential cost as determined prior to the first
day of July. If the moneys for which the counties are eligible
from the special distribution of excess funds exceed the total
amount available for such distribution, the special distribu-
tion to each county shall be reduced proportionately. It is
the intention to distribute all excess funds, in any given year,
on a pro rata basis to all counties who have approved com-
prehensive educational programs for that year and who have
not received their total potential funds.

Appropriations for the purpose of this section shall be
used only to meet the requirements of the allocation schedule
and of approved county plans.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.
§12-9A-12. County basic foundation; total basic state aid allowance.
§18-9A-12. County basic foundation; total basic state aid allowance.

The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the state board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article.

Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the state board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.


In order to encourage counties to move toward new and improved programs and to reduce class size, counties having ratios of adjusted enrollment to professional staff higher than the state average will be granted advance funds to employ sufficient additional staff to reach the state average: Provided, That in any one fiscal year no more than one half of such additional staff may be counted under this provision. Such funds shall be granted to each eligible county based on data at the end of the second month of school but only on the basis of actual staff members employed.


To provide for the support of increased net enrollments in the counties in a school year over the net enrollments
used in the computation of total state aid for that year, there shall be appropriated for that purpose from the general revenue fund an amount equal to the average total state aid per net pupil multiplied by the total of all the increases in the net enrollments of the counties made by comparing the most recent reports of net enrollment for the second school month to the immediately previous year's reports for the same school month.

Upon determination of the several increases in the respective counties' net enrollments, as of the close of the second school month, each county showing such increase shall be allocated an amount equal to that county's average per net pupil total state aid multiplied by the increase in that county's net enrollment fund as provided heretofore. Such allocations shall be distributed not later than December thirty-one of each year to the counties having increases in net enrollment as heretofore provided. If the amount appropriated for this purpose shall not be sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations, and the allocations as thus adjusted shall be distributed to the counties as provided in this section. No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

CHAPTER 45

(S. B. 89—By Mr. Boettner)

[Passed February 27, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authorization of county boards of education to provide
uniforms for employees; and relating to the authorization of county boards of education to provide group insurance for employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.


The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority:

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, That such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in May, in the same manner as provided in section four of this article, except in an emergency, subject to the
approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession, and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, That all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof: Provided further, That in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education: Provided, however, That buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age
subject to the conditions and restrictions of subdivisions (6) and (7) of this section;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(8) To provide solely from county funds for all regular full time employees of the board all or any part of the cost of a group plan or plans of insurance coverage not provided or available under the West Virginia Public Employees Insurance Act;

(9) To employ and to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board;

(10) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(11) To employ legal counsel;

(12) To provide appropriate uniforms for school service personnel;

(13) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

No policy or contract of public liability insurance providing coverage for public liability shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against the board, its officers, agents or employees, in which there is in effect liability insurance coverage in an amount equal to or greater than the amount sued for, the attorney for such
board, the attorney for such insurance carrier, or any
other attorney who may appear on behalf of the board, its
agents, officers or employees shall not set up the defense
of governmental immunity in any such action.

"Quasi-public funds" as used herein means any money
received by any principal, teacher, student or other person
for the benefit of the school system as a result of curric-
ular or noncurricular activities.

The board of each county shall expend under such
regulations as it establishes for each child an amount not
to exceed the proportion of all school funds of the district
that each child would be entitled to receive if all the
funds were distributed equally among all the children of
school age in the district upon a per capita basis.

CHAPTER 46
(Com. Sub. for H. B. 878—By Mr. Moler and Mr. Gvoyich)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]
of withdrawal and providing that the interest paid shall be de­posited in the reserve fund; requiring teacher members of the Legislature to contribute to the fund during their absence an amount equal to what they would have normally paid; requiring former members of public employees retirement system to pay six percent interest compounded annually on money withdrawn and subsequently paid into the teachers retirement system for membership and service credit therein; eliminating mandatory retirement at age sixty-five requirement; eliminating obsolete Plan A for alternate computation of member’s annuities; providing that certain members employed by the West Virginia board of regents at institutions of higher education use a maximum salary figure for computation of annuities; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action, specifying factors for eligibility, and computation thereof; providing for beneficiary member who chose joint life annuity with his then spouse to change such election, one time, upon divorce or annulment of marriage, but only to a maximum annuity plan, as recalculated; increasing the minimum loan to members; allowing the teachers retirement board to adjust upward specified interest rate on loans and setting a maximum thereon; and permitting any one member to apply for only one loan in a year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.
§18-7A-17. Statement and computation of teachers’ service.
§18-7A-25. Eligibility for retirement allowance.
§18-7A-26h. Supplemental benefits for certain annuitants.
§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

§18-7A-34. Loans to members.


"Teacher" includes the following persons, if regularly employed for at least half-time service: (a) Any person employed for instructional service in the public schools of West Virginia; (b) principals; (c) public school librarians; (d) superintendents of schools and assistant county superintendents of schools; (e) any county school attendance director holding a West Virginia teacher's certificate; (f) the executive secretary of the retirement board; (g) members of the research, extension, administrative or library staffs of the public schools; (h) the state superintendent of schools, heads and assistant heads of the divisions under his supervision, or any other employee thereunder performing services of an educational nature; (i) employees of the state board of education who are performing services of an educational nature; (j) any person employed in a nonteaching capacity by the state board of education, the West Virginia board of regents, any county board of education, the state department of education or the teachers retirement board, if such person was formerly employed as a teacher in the public schools; (k) all classroom teachers, principals and educational administrators in schools under the supervision of the state commissioner of public institutions; and (l) employees of the state board of school finance if such person was formerly employed as a teacher in the public schools.

"Members of the administrative staff of the public school" includes deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

"Members of the extension staff" of the public schools includes every agricultural agent, boys' and girls' club agent, and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

"Retirement system" means the state teachers retirement system provided for in this article.
"Present teacher" means any person who was a teacher within the thirty-five years beginning July one, one thousand nine hundred thirty-four, and whose membership in the retirement system has been continuous.

"New entrant" means a teacher who is not a present teacher.

"Present member" means a present teacher who is a member of the retirement system.

"Total service" means all service as a teacher while a member of the retirement system since last becoming a member and, in addition thereto, his credit for prior service, if any.

"Prior service" means all service as a teacher completed prior to July first, one thousand nine hundred forty-one, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he was legally ineligible for membership during such service.

"Average final salary" means the average annual salary earned as a teacher during the last fifteen years of prior service, including military service, as provided herein, or if prior service is less than fifteen years, the average annual salary for that period. If the records for determining each annual salary need cannot reasonably be established by the retirement board, then the term means the average annual salary of the teacher for years for which records are available.

"Accumulated contributions" means all deposits and all deductions from the earnable compensation of a contributor minus the total of all supplemental fees deducted from his compensation.

"Regular interest" means interest at three percent compounded annually, or a higher earnable rate if approved by the retirement board.

"Refund interest" means interest compounded annually at a rate of three percent.

"Employer" means the agency of and within the state which has employed or employs a member.
“Contributor” means a member of the retirement system who has an account in the teachers accumulation fund.

“Beneficiary” means the recipient of annuity payments made under the retirement system.

“Refund beneficiary” means the estate of a deceased contributor, or such person as he shall have nominated as beneficiary of his contributions by written designation duly executed and filed with the retirement board.

“Earnable compensation” means the full compensation actually received by members for service as teachers whether or not a part of such compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions. Allowances from employers for maintenance of members shall be deemed a part of earnable compensation for such members whose allowances were approved by the teachers retirement board and contributions to the teachers retirement system were made, in accordance therewith, on or before the effective date of this section.

“Annuities” means the annual retirement payments for life granted beneficiaries in accordance with this article.

“Member” means a member of the retirement system.

“Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state.

“Deposit” means a voluntary payment to his account by a member.

The masculine gender shall be construed so as to include the feminine.

Age in excess of seventy years shall be deemed to be seventy years.

§18-7A-13. Membership in retirement system; cessation of membership; payments for membership rights.

The membership of the retirement system shall consist of the following:
(a) New entrants, whose membership in the system shall be compulsory upon employment as teachers and nonteachers.

(b) The membership of the retirement system shall not include any person who is an active member of or who has been retired by the West Virginia public employees retirement system, the judge's retirement system, or the retirement system of the department of public safety or the supplemental retirement system as provided in section four-a, article twenty-three of this chapter.

The membership of any person in the retirement system shall cease:

(1) Upon the withdrawal of his accumulated contributions after the cessation of teaching service, or (2) upon retirement, or (3) at death, or (4) if service amounts to less than five years in any period of ten consecutive years.

For the sole purpose of preventing loss of membership under subdivision (4), a deposit by the member to his individual account in the teachers accumulation fund of an amount equaling his last annual contribution shall be the amount necessary to maintain membership status for a period of one year.

Any former member of the retirement system who has withdrawn his accumulated contributions but subsequently re-enters the retirement system shall be permitted to repay to the retirement fund the amount withdrawn, plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment and shall be accorded all the rights to prior service and experience as he held at the time of withdrawal of such accumulated contributions. The interest paid shall be deposited in the reserve fund.

No member shall be eligible for prior service credit unless he is eligible for prior service pension, as prescribed by section twenty-two of this article; however, a new entrant who becomes a present teacher as provided in this paragraph shall be deemed eligible for prior service pension upon retirement.

§18-7A-17. Statement and computation of teachers' service.

Under such rules and regulations as the retirement board
may adopt, each teacher shall file a detailed statement of his length of service as a teacher for which he claims credit. The retirement board shall determine what part of a year is the equivalent of a year of service. In computing such service, however, it shall credit no period of more than a month’s duration during which a member was absent without pay, nor shall it credit for more than one year of service performed in any calendar year.

For the purpose of this article, the retirement board shall grant prior service credit to new entrants and other members of the retirement system for service in any of the armed forces of the United States in any period of national emergency within which a federal selective service act was in effect. For purposes of this section, “armed forces” shall include Women’s Army Corps, Women’s Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women’s Reserve and other similar units officially parts of the military service of the United States. Such military service shall be deemed equivalent to public school teaching, and the salary equivalent for each year of such service shall be the actual salary of the member as a teacher for his first year of teaching after discharge from military service. Prior service credit for military service shall not exceed ten years for any one member, nor shall it exceed twenty-five percent of total service at the time of retirement.

For service as a teacher in the employment of the federal government, or a state or territory of the United States, or a governmental subdivision of such state or territory, the retirement board shall grant credit to the member: Provided, That the member shall pay to the system double the amount he contributed during the first full year of current employment, times the number of years for which credit is granted, plus interest at a rate to be determined by the retirement board. Such interest shall be deposited in the reserve fund and service credit so granted at the time of retirement shall not exceed the lesser of ten years or fifty percent of the member’s total service as a teacher in West Virginia. Any transfer of out-of-state service, as provided in this article, shall not be used to establish eligibility for a retirement allowance and the
The teachers retirement board shall grant service credit to any former or present member of the West Virginia public employees retirement system who has been a contributing member for more than three years, for service previously credited by the public employees retirement system, and (1) shall require the transfer of the member’s contributions to the teachers retirement system or (2) shall require a repayment of the amount withdrawn any time prior to the member’s retirement: Provided, That there shall be added by
the member to the amounts transferred or repaid under this paragraph an amount which shall be sufficient to equal the contributions he would have made had the member been under the teachers retirement system during the period of his membership in the public employees retirement system plus interest at a rate of six percent, compounded annually from the date of withdrawal to the date of repayment. The interest paid shall be deposited in the reserve fund.

If a member is not eligible for prior service credit or pension as provided in this article, then his prior service shall not be deemed a part of his total service.

A member who withdrew from membership shall be permitted to regain his former membership rights as specified in section thirteen of this article only in case he has served two years since his last withdrawal.

Subject to the above provisions, the board shall verify as soon as practicable, the statements of service submitted. The retirement board shall issue prior service certificates to all persons eligible therefor under the provisions of this article. Such certificates shall state the length of such prior service credit, but in no case shall the prior service credit exceed forty years.

§18-7A-25. Eligibility for retirement allowance.

Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, shall be eligible for an annuity. No new entrant nor present member shall be eligible for an annuity, however, if either has less than five years of service to his credit.

Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia shall be eligible for an annuity.

The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.
A member shall be eligible for annuity for disability, if he satisfies the conditions in both (a) and (b) as follows:

(a) His service as a teacher in West Virginia must total at least ten years, and service as a teacher must have been terminated because of disability, which disability must have caused absence from service for at least six months before his application for disability annuity is approved.

(b) An examination by a physician or physicians selected by the retirement board must show that the member is at the time mentally or physically incapacitated for service as a teacher, that for such service the disability is total and likely to be permanent, and that he should be retired in consequence thereof.

Continuance of the disability of the retired teacher shall be established by medical examination, as prescribed in the preceding paragraph, annually for five years after retirement, and thereafter at such times as the retirement board may require. Payment of the disability annuity provided in this article shall cease immediately, if the retirement board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.


Annuitants whose annuities were approved by the retirement board effective before July first, one thousand nine hundred eighty, shall be paid the annuities which were approved by the retirement board.

Annuitants approved by the board effective after June thirty, one thousand nine hundred eighty, shall be computed as provided herein.

Upon establishment of eligibility for a retirement allowance, a member shall be granted an annuity which shall be the sum of the following:

(a) Two percent of the member’s average salary multiplied by his total service credit as a teacher. In this paragraph “average salary” shall mean the average of the highest annual
salaries received by the member during any five years contained within his last fifteen years of total service credit:

Provided, That the highest annual salary used in this calculation for certain members employed by the West Virginia board of regents at institutions of higher education under its control shall be four thousand eight hundred dollars, as provided by section fourteen-a of this article and chapter;

(b) The actuarial equivalent of the voluntary deposits of the member in his individual account up to the time of his retirement, with regular interest.

The disability annuities of all teachers retired for disability shall be based upon a disability table prepared by a competent actuary approved by the retirement board.

Upon the death of an annuitant who qualified for an annuity as a surviving spouse or because of permanent disability, the estate of the deceased or beneficiary designated for such purpose, shall be paid the difference, if any, between the member's contributions with regular interest thereon, and the sum of the annuity payments.

All annuities shall be paid in twelve monthly payments. In computing the monthly payments, fractions of a cent should be deemed a cent. The monthly payments shall cease with the payment for the month within which the beneficiary dies, and shall begin with the payment for the month succeeding the month within which the annuitant became eligible under this article for the annuity granted; in no case, however, shall an annuitant receive more than four monthly payments which are retroactive after the board receives his application for annuity.

In case the retirement board receives data affecting the approved annuity of a retired teacher, the annuity shall be changed in accordance with the data, the change being effective with the payment for the month within which the board received the new data.

Any person who has attained the age of sixty-five and who has served at least twenty-five years as a teacher prior to July one, one thousand nine hundred forty-one, shall be
eligible for prior service credit and for prior service pensions as prescribed in this section.

§18-7A-26h. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than six thousand dollars annually on the effective date of this section shall receive a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to July first, one thousand nine hundred seventy-six, and he had ten years or more of credited service at the time of such retirement. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more of credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article, shall not exceed six thousand dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

§18-7A-28. Options to beneficiaries; change of certain options because of divorce or annulment; limitation on recalculated monthly benefits.

The retirement board is hereby authorized to offer plans, optional with the beneficiary, for the payment of allowances due such beneficiary for retirement, withdrawal or prior service pensions under the retirement system. No plans shall be offered, however, which are not approved by competent actuaries.
When a beneficiary and his spouse have been approved for a retirement plan which provides for them a joint life annuity, and their marriage is subsequently dissolved, the board shall permit such beneficiary to convert to the maximum life annuity plan approved by the board: Provided, That the beneficiary shall furnish to the board proof of entry of a final decree of divorce or annulment: Provided, however, That a beneficiary who qualifies for the change of retirement plans afforded by this section shall be permitted only one such change: Provided further, That the recalculated monthly benefits, independently of increases granted by law after the beneficiary's retirement, shall not exceed the monthly benefits which would have been applicable under the maximum life annuity plan at the time the beneficiary retired; and with such recalculation to be effective on the first day of the month following submission to the board by the beneficiary of proof of entry of a final decree of divorce or annulment.

§18-7A-34. Loans to members.

A member of the retirement system upon written application may borrow from his individual account in the teachers accumulation fund, subject to these restrictions:

(1) Loans shall be made in multiples of ten dollars, the minimal loan being one hundred dollars and the maximum being three thousand dollars.

(2) Loans to any one member shall not exceed one half of his contributions to his individual account in the teachers accumulation fund.

(3) Interest charged on the amount of the loan shall be six percent per annum, or a higher rate as set by the teachers retirement board. If repayable in installments, the interest shall not exceed the annual rate so established upon the principal amount of the loan, for the entire period of the loan, and such charge shall be added to the principal amount of the loan. The minimal interest charge shall be for six months.

(4) No member shall be eligible for more than one loan in any one year.
(5) If a refund or benefit is payable to the borrower or his beneficiary before he repays the loan with interest, the balance due with interest to date shall be deducted from such benefit or refund.

(6) From his monthly salary as a teacher the member shall pay the loan and interest by deductions which will pay the loan and interest in not more than forty-eight nor less than six months. Upon notice of loan granted and payment due, the employer shall be responsible for making such salary deductions and reporting them to the retirement board. At the option of the retirement board, loan deductions may be collected as prescribed herein for the collection of members’ contribution, or may be collected through issuance of warrant by employer. If the borrower decides to make loan payments while not paid for service as a teacher, the retirement board must accept such payments.

CHAPTER 47
(S. B. 312—By Mr. Tonkovich)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to include approved three-year registered nurse diploma programs which are offered at nonprofit West Virginia hospitals as programs in which recipients of state scholarship awards may participate.

Be it enacted by the Legislature of West Virginia:

That sections five and six, article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 22B. STATE SCHOLARSHIP PROGRAM.

§18-22B-5. Eligibility for a scholarship.

1 A person shall be eligible for consideration for a
2 scholarship if:

3 (1) He is a citizen of the United States;
4 (2) He has been a resident of the state for one year
5 immediately preceding the date of his application for a
6 scholarship or a renewal of a scholarship;
7 (3) He meets the admission requirements of the
8 approved institution of higher education of his choice,
9 or meets the admission requirements of a three-year
10 registered nurse diploma program which is offered by a
11 nonprofit West Virginia hospital and approved by the
12 West Virginia board of examiners for registered profes-
13 sional nurses;
14 (4) He satisfactorily meets the qualifications of
15 financial need, character and academic promise, as well
16 as academic achievement, as established by the board
17 of regents.

§18-22B-6. Recipients, awards and distribution of awards of
scholarships; authority of board of regents to
enter into reciprocal agreements with other
states concerning scholarships.

1 The scholarship recipient shall be free to attend any
2 approved institution of higher education in this state
3 or any three-year registered nurse diploma program
4 which is approved by the West Virginia board of ex-
5aminers for registered professional nurses and which is
6 offered at a nonprofit West Virginia hospital.
7 The institution is not required to accept the scholar-
8ship recipient for enrollment, but is free to exact com-
9pliance with its own admission requirements, standards
10 and policies.
11 Scholarship grants shall only be made to under-
12graduate students and to students enrolled in approved
13 three-year registered nurse diploma programs, as pro-
14vided in this article.
Each scholarship is renewable until the course of study is completed, but not to exceed an additional three academic years beyond the first year of the award. These may not necessarily be consecutive years and the scholarship will be terminated if the student receives his degree in a shorter period of time. Qualifications for renewal will include maintaining satisfactory academic standing, making normal progress toward completion of the course of study and continued eligibility, as determined by the board of regents.

Scholarship awards shall be made without regard to the applicant's race, creed, color, sex, national origin or ancestry; and in making scholarship awards, the board of regents shall treat all approved institutions of higher education in a fair and equitable manner. The board of regents from time to time shall identify areas of professional, vocational and technical expertise that are, or will be, of critical need in this state and, to the extent feasible, may direct scholarship grants to students that are pursuing instruction in those areas.

The board of regents may enter into reciprocal agreements with state scholarship and grant program agencies in other states which provide financial assistance to their residents attending institutions of higher education located in West Virginia. In connection therewith, the board of regents may authorize residents of West Virginia to use financial assistance under this article to attend institutions of higher education in such other states. Residents of West Virginia requesting financial assistance to attend institutions of higher education located in any such states must meet all of the eligibility standards set forth in section five of this article.

Scholarship awards shall be limited to the lesser of the payment of tuition and those related compulsory fees charged by an institution to all West Virginia undergraduate students, or an amount equal to the average state general fund support for each full-time equivalent student in the state four-year colleges for the preceding academic year as calculated by the board of regents.
Payments of scholarships shall be made directly to the institution.

In the event that a scholarship recipient transfers from one approved institution of higher education or approved three-year registered nurse diploma program, to another approved institution of higher education or approved three-year registered nurse diploma program, his scholarship shall be transferable only with the approval of the board of regents.

Should the recipient terminate his enrollment for any reason during the academic year, the unused portion of the scholarship shall be returned to the board of regents by the institution according to the institution's own policy for issuing refunds.

CHAPTER 48

(S. B. 90—By Mr. Hamilton, Mr. Nelson, Mr. Susman and Mr. McGraw)

[Passed March 3, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, providing duty-free lunch periods for teachers, and permitting teachers to waive such right under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-14. Duty-free lunch period for teachers.

1 (1) Notwithstanding the provisions of section seven, 2 article two of this chapter, every public schoolteacher
shall be provided a daily lunch recess of not less than thirty consecutive minutes, and no teacher shall be assigned any responsibilities during this recess.

(2) Nothing in this section shall be construed to prevent any teacher from exchanging his right to a lunch recess for any compensation or benefit mutually agreed upon by that teacher and the county superintendent of schools or his agent: Provided, That the parties may not agree to terms which are different from those available to any other teacher within the individual school or in any way discriminate among teachers within the individual school.

CHAPTER 49
(H. B. 960—By Mr. Shepherd)

[Passed February 14, 1980; in effect from passage. Approved by the Governor.]

AN ACT to repeal section ten, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, ten and forty-four, article one; section ten, article four; sections five, nine and twenty-one, article five; section two, article six; and sections five and nine, article eight, all of said chapter three, all relating to elections generally; moving the time for election of party executive committee members to the primary election in the year one thousand nine hundred eighty-two; creation of executive committee districts; changing the numerical limits on such districts; allowing such districts to cross magisterial district lines; extending executive committees as presently composed until the primary election in the year one thousand nine hundred eighty-two; increasing compensation and expense allowance for election commissioners and poll clerks; lowering to thirty days prior to the election the time in which ballot labels for use in voting machine counties are to be delivered to the clerk of the county commission; setting specifications for such ballot labels; requiring the printing of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot;
requiring election commissioners to provide all other necessary
equipment for the conduct of the election; changing the time
for filing for county boards of education by extending such
filing time to not later than the last Saturday in March preceding
the election in the year one thousand nine hundred eighty
and each two years thereafter; extending to forty days prior to
the election day the time in which the secretary of state shall
transmit to the clerk of the circuit courts certificates of informa­
tion; requiring party conventions for nomination of presidential
electors be held anytime during the month of August preceding
any general election; providing for specifications of general
election ballots; providing for rotation of names of candidates
for certain offices on said ballots and the manner of such
rotation; requiring filing of detailed financial statements of
election expenses; specifying the general contents of such
financial statements; changing the time of filing such financial
statements to the last Saturday in March or within fifteen days
thereafter next preceding the primary election day; stipulating
that any earlier filing will not be considered compliance; re­
quiring filing of an additional financial statement within thirty
days after the primary or other election; specifying lawful elec­
tion expenses; authorizing secretarial and other reasonable of­
office expenses for candidates who do not maintain a political
headquarters; allowing expenses for rent, maintenance, and
furnishing of offices to be used as political headquarters;
authorizing expenses for conducting public opinion poll or
polls; defining public opinion polls and limiting their use; the
use of advertising agency services for election purposes and
limiting such services to those specifically delineated; pro­
hibiting such agencies from conveying or engaging others to
convey voters to and from polls; requiring liabilities incurred
to be reasonable, proper and fairly commensurate with services
rendered; requiring filing of election expenses by candidates,
financial agents, committees and advertising agencies; and allow­
ing a candidate to designate a financial agent.

Be it enacted by the Legislature of West Virginia:

That section ten, article eight, chapter three of the code of West
Virginia, one thousand nine hundred thirty-one, as amended, be
repealed; that sections nine, ten and forty-four, article one; section
ten, article four; sections five, nine and twenty-one, article five; section two, article six; and sections five and nine, article eight, all of said chapter three, be amended and reenacted, all to read as follows:

Article
4. Voting Machines.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
8. Regulation and Control of Elections.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.
§3-1-10. Party committees in office.
§3-1-44. Compensation of election officials; expenses.

§3-1-9. Political party committees; how composed; organization.

1. At the June primary election in the year one thousand nine hundred eighty-two, and in every fourth year thereafter, the voters of each political party in each senatorial district shall elect two male and two female members of the state executive committee of the party. In senatorial districts containing two or more counties, not more than two such elected committee members shall be residents of the same county. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large.

At such primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the senatorial district in which such county is situated and of the delegate district in which such county is situated if such county be situated in a delegate district. At the same time such voters in each magisterial district or executive committee district, as the case may be, of the county shall elect one male and one female member of the party's county executive committee.

For the purpose of complying with the provisions of this section the county commission shall create such executive committee districts as they shall determine, which such dis-
24 districts shall not be fewer than the number of magisterial districts
25 in such counties nor shall they exceed in number the following:
26 Forty for counties having a population of one hundred thou-
27 sand persons or more; thirty for counties having a population
28 of fifty thousand to one hundred thousand; twenty for counties
29 having a population of twenty thousand to fifty thousand; and
30 such districts in counties having a population of less than
31 twenty thousand persons shall be coextensive with the
32 magisterial districts.

33 The executive committee districts shall be as nearly equal in
34 population as practicable, and shall each be composed of
35 compact, contiguous territory. The county commissions shall
36 constitute the executive committee district to be effective for
37 the term of office of executive committee members elected
38 at the one thousand nine hundred eighty-two primary election
39 and thereafter. Executive committees as presently composed
40 shall continue until after their successors are elected and quali-
41 fied following the primary election of one thousand nine
42 hundred eighty-two. The county commissions shall change
43 the territorial boundaries of such districts as necessary, only
44 if there is an increase or decrease in the population of such
45 districts as determined by a decennial census and such changes
46 must be made within two years following such census.

47 All members of executive committees, selected for each
48 political division as herein provided, shall reside within the
49 county or district from which chosen. The term of office of
50 all members of executive committees elected at the June
51 primary in the year one thousand nine hundred eighty-two,
52 shall begin on the first day of July, following said June
53 primary, and shall continue for four years thereafter and until
54 their successors are elected and qualified. Vacancies in the
55 state executive committee shall be filled by the members of
56 the committee for the unexpired term. Vacancies in the party’s
57 executive committee of a congressional district, senatorial dis-
58 trict, delegate district or county shall be filled by the party’s
59 executive committee of the county in which such vacancy
60 exists, and shall be for the unexpired term.

61 As soon as possible after the first day of July, following
62 the election of the new executive committees, as herein pro-
vided, they shall convene within their respective political divisions, on the call of the chairman of corresponding outgoing executive committees, or by any member of the new executive committee in the event there is no corresponding outgoing executive committee, and proceed to select a chairman, a treasurer, and a secretary, and such other officers as they may desire, each of which officers shall for their respective committees perform the duties that usually appertain to such offices.

§3-1-10. Party committees in office.

The members of all state, congressional, senatorial, and county executive committees for political parties in office at the time this section becomes effective, and the various officers of such committees, shall hold their several offices and discharge the duties thereof until their successors are chosen and installed in accordance with the provisions of section nine of this article effective simultaneously herewith and other applicable provisions of this article, the prior provisions of section nine having become effective after the election of such members and officers for terms ending in the year one thousand nine hundred eighty-two. The Legislature finds and declares that the prior provisions of section nine of this article should not operate to limit the terms of such members and officers before the expiration thereof as contemplated by law effective at the time of the primary election held May, one thousand nine hundred seventy-eight.

§3-1-44. Compensation of election officials; expenses.

Each ballot commissioner shall be allowed and paid a sum, to be fixed by the county commission, not exceeding twenty-five dollars for each day he shall serve as such, but in no case shall a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election. Each commissioner of election and poll clerk shall be allowed and paid a sum, to be fixed by the county commission, not exceeding twenty-five dollars for one day's services for attending the school of instruction for election officials and a sum not exceeding fifty dollars for his services at any one
Provided, That each commissioner of election and poll clerk shall be paid and allowed a sum not exceeding twenty-five dollars for his services at any of the three special elections hereinafter specified and described. The commissioners of election obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning them as provided in articles five and six of this chapter, shall be allowed and paid an additional sum, likewise fixed by the county commission, not exceeding twenty-five dollars for all such services at any one election and, in addition, shall be allowed and paid mileage at the rate of seventeen cents per mile necessarily traveled in the performance of such services.

The compensation of election officers, cost of printing ballots, and all other expenses incurred in holding and making the return of elections, other than the three special elections hereinafter specified and described, shall be audited by the county commission and paid out of the county treasury.

The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts and ordinances of a constitutional convention shall be obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and county commissions of the various counties as agents of the state, and all such expenses shall be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all such expenses of such special elections to the secretary of state. If satisfied that such expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer, and shall mail such warrants directly to the vendors of such special election services, supplies and facilities.
ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in such election the ballot labels for the voting machines. The ballot labels so printed shall total in number one and one-half times the total number of voting machines to be used in the several precincts of the county in such election. All such labels shall be delivered to the clerk of the county commission at least thirty days prior to the day of the election in which such labels are to be used. The labels shall contain the name of each candidate and each question to be voted upon and shall be clearly printed or typed in black ink on clear white material of such size as will fit the ballot frames. One set of ballot labels shall be inserted in the machine prior to the delivery of the machine to the polling place. The remainder of such ballot labels for each machine shall be retained by the clerk of the county commission for use in the event the set so inserted in a machine becomes lost, mutilated or damaged.

If a nomination to fill a vacancy be made by a political committee or the chairman thereof and be certified to the ballot commissioners after the ballot labels to be used at the ensuing election shall have been printed, it shall be lawful for the chairman of the party executive committee for the political division to provide, or cause to be provided, and deliver, or cause to be delivered, to the clerk, a sufficient number of ballot labels containing the name of such candidate. Such ballot labels shall conform to the specification as set forth herein. If such ballot labels are furnished to the clerk of the county commission before the machines are delivered to the election precincts, the clerk, with the advice and consent of the ballot commissioners, shall cause such ballot labels to be inserted in the proper ballot frames.

In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample
ballots, facsimile diagrams of the voting machine ballot and
official printed ballots adequate for the orderly conduct of the
election in each precinct in their county. In addition they
shall provide all other materials and equipment necessary to
the conduct of the election, including appropriate facilities
for the reception and safekeeping of the ballots of absent
voters and of challenged voters and of such "independent"
voters who shall, in primary elections, cast their votes on
nonpartisan candidates and public questions submitted to the

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCED­
URES.

§3-5-5. Candidates for county board of education.
§3-5-9. Certification and posting of candidacies.
§3-5-21. Party conventions to nominate presidential electors; candidates; or­
ganization; duties.

§3-5-5. Candidates for county board of education.

Any person who is eligible to hold office as a member of
a county board of education may file a certificate with the
clerk of the circuit court of the county, declaring himself a
candidate for election to such office. Such certificate shall be
substantially in the following form:

I, ________________________, hereby certify that I am a candidate
for nonpartisan election to membership on the ____________
County Board of Education, and desire my name printed on
the ballot to be voted at the primary election to be held on
the ____________ day of ________________, 19______.; that
I am a legally qualified voter of the County of ____________,
State of West Virginia; that the address of my residence in
_____________ County is ________________ ; that I am eligible to hold the office; and that I am a candidate
therefor in good faith.

______________________________
Candidate

Signed and acknowledged before me this ___________ _______ day of
______________________________, 19______

______________________________
Signature and official title
of certifying officer.
Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same.

In the year one thousand nine hundred eighty, notwithstanding the expiration of the time of filing certificates of candidacy for the office of member of the county board of education, such certificates of candidacy may be filed not later than the last Saturday in March next preceding the primary election day and must be received by the clerk before midnight, eastern standard time, of that day, or, if mailed, shall be postmarked before that hour.

In the year one thousand nine hundred eighty-two, and each two years thereafter, such certificate shall be filed with the clerk of the circuit court not earlier than the last Monday in February next preceding the primary election day and not later than the last Saturday of March next preceding the primary election day and must be received by the clerk before midnight, eastern standard time, of that day, or, if mailed, shall be postmarked before that hour.

§3-5-9. Certification and posting of candidacies.

During the week next following the last Saturday of March next preceding the day fixed for the primary election, the secretary of state shall arrange the names of all candidates, who have filed announcements with him, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his name and the lesser seal of the state, and file the same in his office.

Such certificate of candidates shall allow (1) the name and residence of each candidate, (2) the office for which he is a candidate, (3) the name of the political party of which he is a candidate, (4) upon what ballot his name is to be printed, and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his party, or if he has no preference, the word “uncommitted.”
The secretary of state shall post a duplicate of such certificate in a conspicuous place in his office and keep same posted until after the primary election.

Immediately upon completion of such certification, the secretary of state shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the circuit court in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in such county. He shall transmit such certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the fortieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty and every primary election held thereafter.

§3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties.

Candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the month of August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of such convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party’s candidate for governor at the last preceding general election at which a governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at such convention.

At least sixty days prior to the date fixed for holding any state convention, the chairman of the party’s state executive committee shall cause to be delivered to the party’s county executive committee in each county of the state a copy of the
resolutions fixing the time and place of holding the state convention and prescribing the number of delegates from each county to the convention. Within ten days after receipt of the copy of such resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for governor at the last preceding general election at which a governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to such state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the several magisterial districts of the county, which district meeting shall be held at least thirty days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which such district is entitled in the state convention.

The meeting place in the magisterial district shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any such mass convention and in the selection of delegates. Notice of the time and place of holding the several magisterial district mass conventions and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The first publication shall be made not more than fifteen days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of each magisterial district shall choose a chairman and a secretary, who, within five days after the holding of such convention, shall certify to the chairman of the state executive committee of the political
party and the chairman of the county committee of the political
different party, the names and addresses of the parties selected as dele-
gates to the state convention.

All contests over the selection of delegates to conventions
shall be heard and determined by the party executive com-
mittee of the county from which the delegates are chosen, and
such county executive committee shall, upon written petition
of any contest, meet for such hearings and determinations
within ten days after the holding of such magisterial district
mass convention. The circuit court of the county and the
supreme court of appeals of the state shall have concurrent
original jurisdiction to review, by mandamus or other proper
proceeding, the decision of a county executive committee in
any contest.

The delegates chosen and certified by and from the several
magisterial districts in the state, and, in the event of any con-
test, those prevailing in the contest, shall make up the state
convention. The number present of those entitled to partici-
pate in any convention shall cast the entire vote to which the
county is entitled in such convention, and it shall require a
majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified
within fifteen days thereafter, by the chairman and the secretary
of the convention, to the secretary of state, who shall certify
them to the clerk of the circuit court of each county concerned,
and the names of the persons so nominated shall be printed
upon the regular ballot to be voted at the ensuing general
election, except that the names of the presidential elector
candidates shall not be printed thereon.

The delegates to any state convention may formulate and
promulgate such party platform or declaration of party prin-
ciples as to them shall seem advisable.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

All ballots prepared under the provisions of this article
shall be printed in black ink on number two white book
paper sufficiently thick so that the printing cannot be dis-
tinguished from the back, and shall contain the names of every candidate whose nomination for any office to be voted for at the election has been certified and filed according to law, and no others, except that if it shall appear to the satisfaction of the ballot commissioners that a person has been legally nominated as a candidate for an office and is lawfully entitled to have his name upon the ballot and no certificate of the nomination has been received by the clerk of the circuit court, they shall print the name of such candidate upon the ballot in its proper place.

The tickets, except the heading, which shall be in display type, shall be printed in eight point type; the name or designation of the office and the residence of the candidate in lowercase letters, and the name of the candidate in capital letters. The name and residence of the candidate may be printed in the same line. The name of each candidate shall be printed in a space defined by ruled lines, and with a black square on its left enclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket including the name of the party and the device or emblem above and the large circle between the device or emblem and such name, shall be separated from the rest of the ticket by heavy lines and the circle above the name of the party in which the voter is to place the cross mark, if he desires to vote the straight ticket, shall be defined by heavier lines than the lines defining the blank spaces before the names of candidates, and such circle shall be surrounded by the following words printed in heavy face six point type: "For a straight ticket mark within this circle." Each party ticket shall be separated from other party tickets and bordered on either side by a heavy border, or a broad solid line, at least one sixteenth of an inch wide, and the edges of the ballot on either side trimmed off to within one-half inch of the border or solid line described.

The names of the candidates shall be arranged on the ballot in tickets or lists, in separate columns under the
respective party or political or other designation certified, each column or ticket containing the names of candidates nominated by the same political party and no others. In elections for presidential electors, the names of candidates for electors of any political party or group of petitioners, shall not be placed on the ballot, but shall, after nomination, be filed with the secretary of state. In place of their names, there shall be printed first on the ballots the names of the candidates for president and vice president, respectively, of each such party or group of petitioners, and they shall be arranged under the title of the office. Before the names of such candidates for president and vice president of each party, or group, a single square shall be printed, in front of a brace, in which the voter shall place the cross mark for the candidate of his choice for such offices. A vote for any of such candidates shall be a vote for the electors of the party by which such candidates were named, and whose names have been filed with the secretary of state.

The names of the candidates on each ticket shall be arranged in groups, with a heading over each group printed in heavy faced eight point type to indicate the political divisions in which such group is to be voted for. The arrangement of the ballot shall conform as nearly as practicable to the plan here given:
67 The tickets of the several political parties shall be printed on the ballot in parallel columns, each ticket in a separate column headed by the chosen device, and the tickets in such order on the ballot and the names of the office in such order on the ticket as the secretary of state shall direct, preference, however, being given to the political party which cast the highest number of votes for the head of the ticket at the last preceding presidential election, and so on. No ticket or list of
candidates shall be printed under the name of any party containing more candidates for any office than are to be elected.

The ballot shall be so printed as to give each voter a clear opportunity to designate by a cross mark in a large, blank, circular space, three quarters of an inch in diameter, below the device and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon; and by a cross mark, in a blank, enclosed space on the left side and before the name of each candidate, his choice of particular candidates.

For any office or offices for which there is to be more than one candidate elected, that section of the ballot relating to said office shall be printed in such a manner so as to provide for the rotation of names in order to assure that each candidate from each party for said office is opposite the name of each candidate for said office from the other party or parties on the ballot an equal number of times. If any party fails to nominate or to fill a ballot vacancy for as many candidates as there are persons to be elected to said office, then the ballot shall be printed in such a manner so as to provide that the space created by the vacancy shall be opposite the names of each of the candidates for said office from the other party or parties an equal number of times.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

§3-8-5. Detailed accounts and verified financial statements required.

Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by said section eight of this article and also including the treasurer or equivalent officer of such association
or organization, advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, liabilities incurred, by such candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

Each person who files a certificate of candidacy for nomination or election in this state as provided for in article five of this chapter and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind supporting or opposing the candidacy of any such candidate, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, shall file, on the last Saturday in March or within fifteen days thereafter next preceding the primary election day, a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth all contributions and expenditures concerning the candidacy of that person or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon:

Provided, That any candidate for the office of member of the county board of education in the year one thousand nine hundred eighty, who shall have filed such detailed itemized statement prior to the last Saturday in March of that year shall be deemed to have complied with the filing requirements of this paragraph in that year. Such statement shall include all contributions received or expenditures made which have taken place by the date of such report, subsequent to any previous report filed within the previous five years under this section or under the former provisions of this section, or if no report was filed, all contributions received or expenditures made within the preceding five years. The specific informa-
tion required to be included in such statement is provided for
in section five-a of this article.

Not less than five nor more than ten days before each pri-
mary or other election, and again within thirty days after each
primary or other election, every candidate for nomination or
election, and every financial agent, person, the treasurer or
equivalent officer of any association or organization of any
kind advocating or opposing the passage or defeat of any
issue, thing or item to be voted upon or pertaining to the hold-
ing or conducting of any election, and the treasurer of every
political party committee shall file with the officers hereinafter
prescribed a detailed itemized financial statement subscribed
and sworn to before an officer authorized to administer oaths,
setting forth all financial transactions which have taken place
by the date of such report in connection with such primary or
other election as provided for in section five-a of this article.

Every person who shall announce as a write-in candidate
for any elective office and his financial agent or election or-
ganization of any kind, shall comply with all of the require-
ments of this section after public announcement of such per-
son's candidacy has been made.

§3-8-9. Lawful and unlawful election expenses; public opinion
polls and limiting their purposes; limitation upon ex-
penses; use of advertising agencies and reporting re-
quirements; delegation of expenditures.

(a) No candidate, financial agent, or treasurer of a politi-
cal party committee, shall pay, give or lend, either directly
or indirectly, any money or other thing of value for any
election expenses, except for the following purposes:

(1) For rent, maintenance and furnishing of offices to be
used as political headquarters and for the payment of neces-
sary clerks, stenographers, typists, janitors and messengers
actually employed therein;

(2) In the case of a candidate who does not maintain a
headquarters, for reasonable office expenses and for the pay-
ment of necessary clerks, stenographers and typists, actually
employed;
(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, all relating to political issues and candidates;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees, and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate, or question or proposition, submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: Provided, That
nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election; and

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions three, four, five, six, seven, nine and ten of this subsection.

(b) Every liability incurred and payment made shall be at a rate and for a total amount which is proper and reasonable and fairly commensurate with the services rendered.

(c) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(d) Any candidate may designate a financial agent by a writing duly subscribed by him which shall be in such form and filed in accordance with the provisions of section four of this article.

CHAPTER 50

(H. B. 1556—By Mr. Speaker, Mr. See)

[Passed March 3, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a prohibition of candidates running for more than one office; exceptions to such prohibition; and providing for the continuation of joint county and circuit clerkships in existence as of the original effective date of this section.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-47. Candidate not to run for more than one office; exceptions.

1. No person shall be a candidate for more than one office at any election: Provided, That such candidate for an office may also be a candidate for president or vice president of the United States, for membership on a political party executive committee or for delegate to a political party national convention. Any candidate who violates this section shall be disqualified from serving in any office to which he was elected while in violation of this section: Provided, however, That notwithstanding the provisions of this section, nothing shall prohibit a candidate from jointly running for or jointly holding the offices of county clerk and circuit clerk in those counties which have heretofore operated and maintained a joint clerkship system as of January first, one thousand nine hundred seventy-eight.

CHAPTER 51
(H. B. 1613—By Mr. Albright)

[Passed February 25, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article six, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the conduct and administration of elections generally; the preparation and form of the official ballot; providing for the words “official ballot” and space for the signature of poll clerks on the back of the official ballot.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

All ballots prepared under the provisions of this article shall be printed in black ink on number two white book paper sufficiently thick so that the printing cannot be distinguished from the back, and shall contain the names of every candidate whose nomination for any office to be voted for at the election has been certified and filed according to law, and no others, except that if it shall appear to the satisfaction of the ballot commissioners that a person has been legally nominated as a candidate for an office and is lawfully entitled to have his name upon the ballot and no certificate of the nomination has been received by the clerk of the circuit court, they shall print the name of such candidate upon the ballot in its proper place.

The tickets, except the heading, which shall be in display type, shall be printed in eight point type; the name or designation of the office and the residence of the candidate in lower case letters, and the name of the candidate in capital letters. The name and residence of the candidate may be printed in the same line. The name of each candidate shall be printed in a space defined by ruled lines, and with a black square on its left enclosed by heavy dark lines. If, upon any ticket, there be no candidate or candidates for a designated office, a blank space equal to the space that would be occupied by such name or names, if they were printed thereon, with the blank space herein provided for, shall be left. The heading of each party ticket including the name of the party and the device or emblem above and the large circle between the device or emblem and such name, shall be separated from the rest of the ticket by heavy lines and the circle above the
name of the party in which the voter is to place the cross
mark, if he desires to vote the straight ticket, shall be defined
by heavier lines than the lines defining the blank spaces before
the names of candidates, and such circle shall be surrounded
by the following words printed in heavy face six point type:
"For a straight ticket mark within this circle." Each party
ticket shall be separated from other party tickets and bordered
on either side by a heavy border, or a broad solid line, at least
one sixteenth of an inch wide, and the edges of the ballot on
either side trimmed off to within one-half inch of the border
or solid line described.

Then names of the candidates shall be arranged on the bal-
lot in tickets or lists, in separate columns under the respective
party or political or other designation certified, each column or
ticket containing the names of candidates nominated by the
same political party and no others. In elections for presidential
electors, the names of candidates for electors of any political
party or group of petitioners, shall not be placed on the ballot,
but shall, after nomination, be filed with the secretary of state.
In place of their names, there shall be printed first on the
ballots the names of the candidates for president and vice
president, respectively, of each such party or group of peti-
tioners, and they shall be arranged under the title of the office.
Before the names of such candidates for president and vice
president of each party, or group, a single square shall be
printed, in front of a brace in which the voter shall place the
cross mark for the candidate of his choice for such offices. A
vote for any of such candidates shall be a vote for the electors
of the party by which such candidates were named, and whose
names have been filed with the secretary of state.

The names of the candidates on each ticket shall be arranged
in groups, with a heading over each group printed in heavy
faced eight point type to indicate the political divisions in
which such group is to be voted for. The arrangement of the
ballot shall conform as nearly as practicable to the plan here
given:
The tickets of the several political parties shall be printed on the ballot in parallel columns, each ticket in a separate column headed by the chosen device, and the tickets in such order on the ballot and the names of the office in such order on the ticket as the secretary of state shall direct, preference, however, being given to the political party which cast the highest number of votes for the head of the ticket at the last preceding presidential election, and so on. No ticket or list of candidates shall be printed under the name of any party.
containing more candidates for any office than are to be elected.

The ballot shall be so printed as to give each voter a clear opportunity to designate by a cross mark in a large, blank, circular space, three quarters of an inch in diameter, below the device and above the name of the party at the head of the ticket or list of candidates, his choice of a party ticket and desire to vote for each and every candidate thereon; and by a cross mark, in a blank, enclosed space on the left side and before the name of each candidate, his choice of particular candidates.

For any office or offices for which there is to be more than one candidate elected, that section of the ballot relating to said office shall be printed in such a manner so as to provide for the rotation of names in order to assure that each candidate from each party for said office is opposite the name of each candidate for said office from the other party or parties on the ballot an equal number of times. If any party fails to nominate or to fill a ballot vacancy for as many candidates as there are persons to be elected to said office, then the ballot shall be printed in such a manner so as to provide that the space created by the vacancy shall be opposite the names of each of the candidates for said office from the other party or parties an equal number of times.

On the back of the ballot shall be printed or stamped in black ink the words "Official Ballot," with the date of the election and underneath shall be two blank lines, followed by the words "Poll Clerks."

CHAPTER 52

(Com. Sub. for H. B. 1639—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect January 1, 1981. Approved by the Governor.]

AN ACT to amend and reenact section two, article seven, chapter six of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to increasing the salaries of certain state elective officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

1 Effective on and after the first Monday after the second Wednesday in January, one thousand nine hundred eighty-one, the salary of the governor shall be sixty thousand dollars per year.

2 The salary of the attorney general shall be forty-two thousand dollars per year; the salary of the auditor shall be thirty-nine thousand dollars per year; the salary of the secretary of state shall be thirty-six thousand dollars per year; the salary of the commissioner of agriculture shall be thirty-nine thousand dollars per year; and the salary of the state treasurer shall be forty-two thousand dollars per year.

CHAPTER 53

(S. B. 398—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980; 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 twenty-one, relating to establishing statewide energy cost reduction guidelines for new and significantly renovated buildings.

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 twenty-one, to read as follows:

ARTICLE 21. ENERGY COST REDUCTION GUIDELINES.

§5-21-1. Definitions.
§5-21-2. Establishment of energy cost reduction guidelines; certification; training.
§5-21-3. Advisory commission.
§5-21-4. Exemptions.
§5-21-5. Effective date of guidelines on permit applications.

§5-21-1. Definitions.

1. As used in this article:

(a) “ASHRAE” means the organization known as the American Society of Heating, Refrigerating and Air Conditioning Engineers.

(b) “Director” means the director of the governor’s office of economic and community development.

§5-21-2. Establishment of energy cost reduction guidelines; certification; training.

1. The director shall develop statewide energy cost reduction guidelines to be applicable to new and significantly renovated buildings for which a building permit is issued. In developing the guidelines, the director shall establish as the minimum criterion the ASHRAE 90-75 standard energy conservation in new building design.

2. Based on the state guidelines each local jurisdiction in the state having a building code shall require each permit application to be accompanied by sufficient information to determine that the energy conservation measures under the guidelines are met. A letter of certification from an architect or a registered professional engineer may provide adequate certification that the new construction or renovation is in compliance with the minimum criteria as established by the director.

3. The director shall provide training to local jurisdictions on the application of the state guidelines, which may include training programs developed by agencies of the federal government.
§5-21-3. Advisory commission.

1 To assist in the development and implementation of statewide energy guidelines under this article, the director shall appoint an advisory commission of seven members who shall serve without compensation. In appointing the commission, the director shall include representatives of building code enforcement agencies, the architectural and engineering professions, public utilities, the construction industry, legislative bodies of local units of government and the general public.

§5-21-4. Exemptions.

1 The following shall be exempt from compliance with the energy cost reduction guidelines developed under this article:

4 (a) Any type or class of building specifically made exempt by the local jurisdiction;

6 (b) Mobile homes;

7 (c) Any structure neither heated nor cooled, nor designed for human occupancy; and

9 (d) Any building specifically designated by a local jurisdiction as being of historical significance.

§5-21-5. Effective date of guidelines on permit applications.

1 The provisions of this article shall not apply to any application for a building permit made before the first day of January, one thousand nine hundred eighty-one.

CHAPTER 54
(S. B. 152—By Mr. Brotherton, Mr. President, and Mr. Harman)

[Passed January 24, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter five-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the creation and composition of the council of finance and administration, and providing for the annual joint meeting of the council of finance and administration with the joint committee on government and finance and providing for this meeting to be in November on call jointly by the president of the Senate, speaker of the House and commissioner of finance and administration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF FINANCE AND ADMINISTRATION.


1 The council of finance and administration is hereby created and shall be composed of ten members, four of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the governor, attorney general, the state treasurer and the state auditor. From the membership of the Legislature, the president of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the House shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House shall serve at the will and pleasure of the officer making their appointment. The commissioner of finance and administration shall serve as chairman of the council. Meetings of the council shall be upon call of the chairman or a majority of the members thereof. It shall be the duty of the chairman to call at least four meetings in each fiscal year, one in each quarter, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second
quarterly meeting in each fiscal year shall be held in No-

vember and shall be a joint meeting with the joint com-

mittee on government and finance of the Legislature call-
ed jointly by the president of the Senate, speaker of the

House and commissioner of finance and administration.

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

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

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

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

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

CHAPTER 55

(S. B. 345—By Mr. Brotherton, Mr. President, and Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three,
chapter five-a of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to empowering
the state director of purchasing to review and, if
necessary, rewrite the specifications and product descrip-
tions in the requests for quotations of all other state agencies bidding out purchases to assure that they do not favor a particular brand of product or vendor; and excluding construction and repair contracts entered into by the state commissioner of highways from review and approval of director of purchasing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-3. Powers and duties of director of purchasing.

1 The director, under the direction and supervision of the commissioner, shall be the executive officer of the purchasing division and shall have the power and duty to:

4 (1) Purchase or contract for, in the name of the state, the commodities and printing required by the departments of the state government;

7 (2) Apply and enforce standard specifications established in accordance with section five of this article as hereinafter provided;

10 (3) Transfer to or between departments or sell commodities that are surplus, obsolete or unused as hereinafter provided;

13 (4) Have charge of central storerooms for the supply of departments;

15 (5) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided;

19 (6) Direct the state agency for surplus property as provided in sections forty-four and forty-five of this article;

22 (7) Recommend to the commissioner that the right and privilege of a person to bid on state purchases be suspended when the director has evidence that such
person has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(8) Examine the provisions and terms of every contract entered into for and on behalf of the state of West Virginia that impose any obligation upon the state to pay any sums of money or perform any particular service or do any act or deed and approve each such contract as to such provisions and terms; and the duty of examination and approval herein set forth does not supersede the responsibility and duty of the attorney general to approve such contracts as to form: Provided, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the state commissioner of highways; and

(9) Assure that the specifications and product descriptions in all "requests for quotations" are prepared so as to permit all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid. If a state department or agency other than the purchasing division prepared the specifications or descriptions, the director of the purchasing division shall review such specifications and descriptions before soliciting bids to assure that the specifications and descriptions do not favor a particular brand of product or vendor. If he determines that any such specifications or descriptions as written favor a particular brand of product or vendor or if it is decided, either before or after the bids are opened, that a product having different specifications or quality or in different quantity will be bought, the director shall rewrite the "requests for quotations" and the matter shall be rebid.

CHAPTER 56
(S. B. 112—By Mr. Shaw)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new section, designated section seven-a; and to amend and reenact section three, article six of said chapter, relating to permitting the manufacture of ethyl alcohol for use in the production of gasohol for personal use; providing for licensing of persons manufacturing ethyl alcohol for use in the production of gasohol for personal use.

Be it enacted by the Legislature of West Virginia:

That article four, 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 seven-a; and that section three, article six of said chapter be amended and reenacted to read as follows:

Article
4. Licenses.

ARTICLE 4. LICENSES.

§60-4-7a. Individuals authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use.

1 The commission shall issue a license without fee authorizing an individual to manufacture ethyl alcohol solely for personal use by the individual in the production of gasohol and not for sale.

5 For purposes of this section, the term "gasohol" means any product suitable for use as a fuel in an internal combustion engine containing at least ten percent alcohol distilled from agricultural products or from any other nonpetroleum organic material.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-3. Applicability of chapter to certain uses of ethyl alcohol.

1 The provisions of this chapter relating to state monopoly shall not apply to ethyl alcohol used:

3 (1) For scientific, chemical, mechanical or industrial purposes;
(2) By those authorized to procure ethyl alcohol tax-free under the acts of Congress and regulations thereunder;

(3) In the manufacture of denatured alcohol produced and used as provided by the acts of Congress and regulations thereunder;

(4) In the manufacture of scientific, chemical, mechanical and industrial preparations or products unfit for beverage purposes;

(5) By those authorized to manufacture ethyl alcohol for use in the production of gasohol for personal use pursuant to section seven-a, article four of this chapter.

Nothing in this section shall be so construed as to exempt such users of ethyl alcohol from the license and transportation provisions of this chapter.

CHAPTER 57

(S. B. 507—By Mr. Huffman)

[Passed March 4, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article two-a of said chapter, all relating to requiring physicians to report to public health authorities only those diseases or conditions for which the state board of health requires a report and in the manner specified by the state health director; and eliminating the requirement that physicians report all communicable and infectious diseases regardless of type.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Local Health Officers.

2A. Alternative Method of Organizing Local Health Agencies.

ARTICLE 2. LOCAL HEALTH OFFICERS.

§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. If
the West Virginia director of health fails to confirm
the nomination of the person recommended as county
or municipal health officer, or if the West Virginia di-
rector of health or the county or municipal authority
removes 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 travel-
ing 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, those diseases or conditions for which a
report is required by the state board of health and in
the manner specified by the state health director which
may arise or come under the physician's treatment. The
health officer receiving such reports shall make to the
state health department a weekly report in a manner
specified by the director of health.

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 jurisdiction 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. 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 depart-
ment 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 is a misdemeanor, and, upon conviction
thereof, the offender shall be fined not more than one
hundred dollars.

ARTICLE 2A. ALTERNATIVE METHOD OF ORGANIZING LOCAL
HEALTH AGENCIES.

§16-2A-5. Powers and duties of county or municipal health
officers; required reporting of diseases.

The county or municipal health officer appointed by
any local board of health created pursuant to the provi-
sions of this article shall be the executive officer of
such board of health. Under the supervision of the board,
he shall administer the provisions of this article, all
other laws of this state relating to public health and
applicable to his county or municipality, and the rules,
regulations and orders of such county or municipal board
of health and of the state board of health, so far as
such rules, regulations and orders are applicable to his
county or municipality.

Such health officer shall attend, but not vote, at all
meetings of his county or municipal board of health.
He shall act as secretary of such board and shall be in
charge of its offices. He shall supervise and direct the
activities of county or municipal health services, em-
ployees and facilities, except that the duties of such
health officer shall not include the rendering of medical
or surgical services on an individual basis to wards of
the county or municipality or to inmates of any public
institution operated or maintained by any county com-
mission or municipality.
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, those diseases or conditions for which a report is required by the state board of health and in the manner specified by the state health director which may arise or come under the physician's treatment. Any health officer receiving such reports shall make to the state director of health a weekly report in a manner specified by the director of health.

CHAPTER 58

(Com. Sub. for S. B. 376—By Mr. Steptoe)

[Passed March 7, 1980; 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 ten; and to amend section one, article nineteen of said chapter sixteen, all relating generally to the Uniform Brain Death Act; the definition of the term "death" as used in the code with respect thereto; providing that for legal and medical purposes in the state an individual who has sustained irreversible cessation of all functioning of the brain is dead; and civil and criminal immunity.

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 ten; and that section one, article nineteen of said chapter, be amended and reenacted, all to read as follows:

Article

ARTICLE 10. UNIFORM BRAIN DEATH ACT.

§16-10-1. Title.
This article shall be known and may be cited as the "Uniform Brain Death Act."

§16-10-2. Brain death.
For legal and medical purposes, an individual who has sustained irreversible cessation of all functioning of the brain is dead. A determination under this section must be made in accordance with reasonable medical standards.

§16-10-3. Civil and criminal immunity.
A physician or any other person authorized by law to determine death who makes such determination in accordance with section two of this article is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. Any person who acts in good faith in reliance on a determination of death is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for such act.

ARTICLE 19. UNIFORM ANATOMICAL GIFT ACT.

§16-19-1. Definitions.
(a) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage or distribution of human bodies or parts thereof.
(b) "Certification of death" means a written pronouncement of death by the attending physician. Such certification shall be required before the attending physician shall allow removal of any bodily organs of the decedent for transplant purposes.
(c) "Death" means that a person will be considered dead if in the announced opinion of the attending physician, made in accordance with reasonable medical
standards, the patient has sustained irreversible cessation of all functioning of the brain.

(d) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

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

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

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

(h) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association, or any other legal entity.

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

(j) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

CHAPTER 59

(S. B. 413—By Mr. Brotherton, Mr. President, and Miss Herndon)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two-a, article thirteen, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the authority of a municipal corporation or sanitary dis-
strict to accept grants and procure loans or temporary advances to pay part or all of the cost of acquisition or construction of its sewage works and construction of betterments and improvements thereto from any state, federal or public agency or any private party and to enter into necessary contracts and agreements with such federal or public agency or private party; and authorizing the payment of any such loan or temporary advance, and interest thereon, from bond proceeds, revenues of said sewage works or grants to the municipality or sanitary district from any state, federal or public agency or any private party or from any combination of such sources of payment.

Be it enacted by the Legislature of West Virginia:

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

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

§16-13-22a. Acceptance of grants and procurement of loans or temporary advances from, and contracts and agreements with, federal agencies or private parties.

1 Any municipality is authorized and empowered to accept grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of acquisition or construction of said sewage works and the construction of betterments and improvements thereto from any authorized agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances may be repaid out of the proceeds of bonds authorized to be issued under the provisions of this article; and to enter into the necessary contracts and
agreements to carry out the purposes hereof with the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual.

In no event shall any such loan or temporary advance be a general obligation of the municipality and such loans or temporary advances, including the interest thereon, shall be paid solely from the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said sewage works so recited in each such contract and agreement, grants to the municipality from any agency of the state or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual or from any combination of such sources of payment.

CHAPTER 60
(H. B. 1661—By Mr. Tucker)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, eight, nine and twenty-four, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting public service districts to provide natural gas services for industrial, private, public or other uses; authorizing governing boards of public service districts to acquire privately or publicly owned public service properties; prohibiting governing boards from constructing, acquiring or establishing water, sewer or gas facilities within municipal corporations which own or operate such facilities, and exceptions thereto; prohibiting the establishment, construction or acquirement of a water, sewer or gas facility by a municipal corporation if such facility presently exists; requiring public service commission approval prior to any public service district acquiring any waterworks or gas system; prohibiting condemnation
proceedings by public service districts in acquiring privately
owned waterworks or gas systems; granting authority to govern­
ing boards to promulgate rules and regulations in connection
with public service properties owned or controlled by public
service districts; providing a basis for a schedule of rates and
charges; requiring the board to discontinue services to delin­
quent users of facilities; granting authority to districts to fore­
close on liens against real property created due to delinquent
fees; and granting districts the authority to accept loans and
temporary advances from federal agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWER­
AGE AND GAS SERVICES.


§16-13A-2. Creation of districts by county commission; enlarging or re­
ducing district; consolidation; agreements, etc., infringing upon
powers of county commission.

§16-13A-8. Acquisition and purchase of public service properties; right of
eminent domain; extraterritorial powers.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance
of service to delinquent users; requiring connections with sewer
facilities; lien for delinquent fees; certain sewer disposal
systems exempted.

§16-13A-24 Acceptance of loans or temporary advances from, and contracts
and agreements with, federal agencies or private parties.


1 Any territory constituting the whole or any part of one or
2 more counties in the state so situated that the construction or
3 acquisition by purchase or otherwise and the maintenance,
4 operation, improvement and extension of, properties supplying
5 water or sewerage services, or gas distribution services or all
6 of these within such territory, will be conducive to the pre­
7 servation of the public health, comfort and convenience of
8 such area, may be constituted a public service district under
9 and in the manner provided by this article. The words "public
service properties,” when used in this article, shall mean
and include any facility used or to be used for or in connection
with (1) the diversion, development, pumping, impounding,
treatment, storage, distribution or furnishing of water to or for
the public for industrial, public, private or other uses (herein
sometimes referred to as “water facilities,” (2) the collection,
treatment, purification or disposal of liquid or solid wastes,
sewage or industrial wastes (herein sometimes referred to as
“sewer facilities” or “land fills”) or (3) the distribution or the
furnishing of natural gas for the public, for industrial, public,
private or other uses (herein sometimes referred to as “gas
utilities or gas system”).

§16-13A-2. Creation of districts by county commission; enlarging
or reducing district; consolidation; agreements, etc.,
infringing upon powers of county commission.

The county commission of any county may on its own
motion by order duly adopted propose the creation of such
public service district within such county, setting forth in
such order a description sufficient to identify the territory to
be embraced therein and the name of such proposed district,
or any one hundred legal voters resident within and owning
real property within the limits of such proposed public service
district within one or more counties may petition for the
creation thereof, which petition shall contain a description
sufficient to identify the territory to be embraced therein and
the name of such proposed district. Any territory may be in-
cluded regardless of whether or not such territory includes one
or more cities, incorporated towns or other municipal corpora-
tions which own and operate any public service properties and
regardless of whether or not it includes one or more cities,
incorporated towns or other municipal corporations being
served by privately owned public service properties: Provided,
That the boundaries of any public service district organized
under this article shall conform to or follow magisterial dis-

tricit lines except where less than a whole of any magisterial
district is to be included, in which latter case that part of any
such boundary shall conform to other natural boundary lines,
or the lines of a fixed survey: Provided, however, That the
same territory shall not be included within the boundaries of
more than one public service district except where such terri-
tory or part thereof is included within the boundaries of a
separate public service district organized to supply water,
sewerage services or gas facilities not being furnished within
such territory or part thereof: Provided further, That no city,
incorporated town or other municipal corporation shall be in-
cluded within the boundaries of such proposed district except
upon the adoption of a resolution of the governing body of such
city, incorporated town or other municipal corporation con-
senting thereto.

Such petition shall be filed in the office of the clerk of the
county commission of the county in which the territory to con-
stitute the proposed district is situated, and if such territory
is situated in more than one county then such petition shall
be filed in the office of the clerk of the county commission of
the county in which the major portion of such territory ex-
tends, and a copy thereof (omitting signatures) shall be filed
with each of the clerks of the county commission of the other
county or counties into which the territory extends. It shall be
the duty of the clerk of the county commission receiving such
petition to present same to the county commission of such
county at the first regular meeting after such filing or at a
special meeting called for the consideration thereof.

When the county clerk of any county enters an order on its
own motion proposing the creation of a public service district,
as aforesaid, or when a petition for such creation is presented,
as aforesaid, the county commission shall at the same session
fix a date of hearing in such county on the creation of the
proposed public service district, which date so fixed shall be
not more than forty days nor less than twenty days from the
date of such action. If the territory proposed to be included
is situated in more than one county, the county commission,
when fixing a date of hearing, shall provide for notifying the
county commission and clerk thereof of each of the other
counties into which the territory extends of the date so fixed.
The clerk of the county commission of each county in which
any territory in the proposed public service district is located
shall cause notice of such hearing and the time and place
thereof, and setting forth a description of all of the territory
proposed to be included therein to be given by publication 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 each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before said hearing.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. When it shall have been thus determined that the construction or acquisition by purchase or otherwise, and maintenance, operation, improvement, and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, then such county commission shall by order create such public service district, and such order shall be conclusive and final in that regard. If the commission shall, after due consideration, determine that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area, or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the same, or it may enter an order amending the description of the proposed district, and create said district as amended. The clerk of the county commission of each county
into which any part of such district extends shall retain in his
office an authentic copy of the order creating the same:

Provided, That if at such hearing written protest is filed by
thirty percent or more of the qualified voters registered and
residing within said district, then the county commission shall
not take any further action in creating such district unless the
creation of such district shall be approved by a majority vote
of the qualified registered voters voting at a referendum to be
called by the county commission for such purpose. Such refer-
endum shall be called and held in the manner provided in the
general election laws of the state of West Virginia applicable
thereto and the funds therefor shall be supplied from any
county funds available for such purpose, or from funds sup-
plied from the persons who petitioned for the creation of such
district. If a majority of the qualified registered electors par-
ticipating in said election shall vote against the creation of
said district, then such district shall not be created. If, however,
a majority of the qualified registered voters participating in
such referendum vote in favor of the creation of such district,
then the county commission shall duly enter its order creating
such district.

After the creation of such district the county commission
may, if in its discretion it deems it necessary, feasible and
proper, enlarge the said district to include additional areas,
reduce the area of said district, where facilities, equipment,
service or materials have not been extended, or establish or
consolidate two or more such districts: Provided, That where
the county commission determines on its own motion by order
entered of record, or there is a petition, to enlarge the district
or reduce the area of the district, all of the applicable pro-
visions of this article providing for hearing, notice of hearing
and protest shall apply with like effect as if a district were be-
ing created. The districts may not enter into any agreement,
contract or covenant that infringes upon, impairs, abridges or
usurps the duties, rights or powers of the county commission,
as set forth in this article, or conflicts with any provision of
this article.
§16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.

The board is hereby authorized to acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation, included within the district, and shall have power to purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board shall have power and authority to construct any public service properties within or outside the district necessary or incidental to its purposes, and each such district is hereby empowered and authorized to acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town, or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district shall own and operate either water facilities, sewer facilities, or gas facilities, or all of these, then the district shall not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations, or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the consent of such cities, incorporated towns or other municipal corporations, and in conformity and compliance with the rights of the holders of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding, and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district shall have constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then
such city, incorporated town or other municipal corporation shall not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district shall have the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board shall not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor shall any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof.

§16-13A-9. Rules and regulations; service rates and charges; discontinuance of service to delinquent users; requiring connections with sewer facilities; lien for delinquent fees; certain sewer disposal systems exempted.

The board shall have the power to make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and it shall be the duty of such board to establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation
and depreciation of such public service properties and principal
of and interest on all bonds issued and other obligations in-
curred under the provisions of this article and all reserve or
other payments provided for in the proceedings which autho-
rise the issuance of any bonds hereunder. The schedule of such
rates and charges may be based upon either (a) the consump-
tion of water or gas on premises connected with such facilities,
taking into consideration domestic, commercial, industrial and
public use of water and gas; or (b) the number and kind of
fixtures connected with such facilities located on the various
premises; or (c) the number of persons served by such facilities;
or (d) any combination thereof; or (e) may be determined on
any other basis or classification which the board may deter-
mine to be fair and reasonable, taking into consideration the
location of the premises served and the nature and extent of
the services and facilities furnished. Where water, sewer and
gas services are all furnished to any premises the schedule of
charges may be billed as a single amount for the aggregate
thereof. Whenever any rates, rentals or charges for services or
facilities furnished shall remain unpaid for a period of thirty
days after the same shall become due and payable the prop-
erty and the owner thereof, as well as the user of the services
and facilities shall be delinquent until such time as all such
rates and charges are fully paid. The board shall be obligated
under reasonable rules and regulations, to shut off and dis-
continue water, sewer and gas services to all delinquent users
of either water facilities, sewer facilities, or gas facilities or all
of these, and shall not restore either water facilities, sewer
facilities, or gas facilities to any delinquent user of either water
facilities, sewer facilities, or gas facilities, until all delinquent
charges for water facilities, sewer facilities, and gas facilities,
including reasonable interest and penalty charges, have been
paid in full.

In the event that any city, incorporated town or other munic-
ipal corporation included within the district shall own and
operate separately either water facilities, sewer facilities, or gas
facilities, and the district shall own and operate within such
city, incorporated town or other municipal corporation the
other kind of facilities, either water, sewer or gas facilities,
as the case may be, then the district and such city, incorporated
town or other municipal corporation shall have power to coven-
and contract with each other to shut off and discontinue
the supplying of the kind of facilities furnished by the district
or such city, incorporated town or other municipal corpora-
tion, as the case may be, for the nonpayment of fees and
charges for the other kind of facilities furnished by the district
or city, incorporated town or other municipal corporation, as
the case may be.

Any district furnishing sewer facilities within the district
shall also have power to require all owners, tenants or occu-
pants of any houses, dwellings and buildings located near any
such sewer facilities, where sewage will flow by gravity from
such houses, dwellings or buildings into such sewer facilities, to
connect with and use such sewer facilities, and to cease the
use of all other means for the collection, treatment and dis-
posal of sewage and waste matters from such houses, dwell-
ings and buildings where there is such gravity flow and such
houses, dwellings and buildings can be adequately served by the
sewer facilities of the district, and it is hereby found, determin-
ed and declared that the mandatory use of such sewer facilities
provided for in this paragraph is necessary and essential for the
health and welfare of the inhabitants and residents of such
districts and of the state.

Whenever any district has made available sewer facilities
to any owner, tenant or occupant of any house, dwelling or
building located near such sewer facility, and the engineer for
the district has certified that such sewer facilities are available
to and are adequate to serve such owner, tenant, or occupant,
and sewage will flow by gravity from such house, dwelling or
building into such sewer facilities, the district shall have the
immediate right and duty to charge, and such owner, tenant or
occupant shall have the duty to pay from and after the date
of receiving notice that such facilities are available, the rates
and charges for services established under this article.

All delinquent fees, rates and charges of the district for
either water facilities, sewer facilities or gas facilities shall be
liens on the premises served of equal dignity, rank and priority
with the lien on such premises of state, county, school and
municipal taxes. When such fees, rates and charges have been
delinquent for thirty days, the district shall have power to
forthwith foreclose the lien on the premises served in the same
manner now provided in the laws of the state of West Virginia
for the foreclosure of mortgages on real property.

Anything in this section to the contrary notwithstanding,
any establishment, as defined in chapter twenty, article five-a,
section two, now or hereafter operating its own sewage disposal
system, pursuant to a permit issued by the department of
natural resources, as prescribed by chapter twenty, article
five-a, section seven of this code, shall be exempt from the
provisions of this section.

§16-13A-24. Acceptance of loans or temporary advances from,
and contracts and agreements with, federal agencies or
private parties.

Any public service district created pursuant to the provisions
of this article is authorized and empowered to accept loans or
grants or temporary advances for the purpose of paying part or
all of the cost of construction or acquisition of water systems,
sewage systems, or gas facilities, or all of these, and the other
purposes herein authorized, from the United States of Ameri-
ca or any federal or public agency or department of the United
States or any private agency, corporation or individual, which
temporary advances may be repaid out of the proceeds of the
bonds authorized to be issued under the provisions of this
article and to enter into the necessary contracts and agreements
to carry out the purposes hereof with the United States of
America or any federal or public agency or department of the
United States, or with any private agency, corporation or indi-
vidual.

CHAPTER 61

(S. B. 20—By Mr. Hamilton)

[Passed January 29, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter
two of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to legal holidays; redesignating the last Monday in May as Memorial Day.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.

The following days shall be regarded, treated and observed as legal holidays, viz: The first day of January, commonly called “New Year’s Day”; the twelfth day of February, commonly called “Lincoln’s Birthday”; the third Monday of February, commonly called “Washington’s Birthday”; the last Monday in May, commonly called “Memorial Day”; the twentieth day of June, commonly called “West Virginia Day”; the fourth day of July, commonly called “Independence Day”; the first Monday of September, commonly called “Labor Day”; the second Monday of October, commonly called “Columbus Day”; the eleventh day of November, hereafter referred to as “Veterans Day”; the fourth Thursday of November, commonly called “Thanksgiving Day”; the twenty-fifth day of December, commonly called “Christmas Day”; any national, state or other election day throughout the district or municipality wherein the election is held; and all days which may be appointed or recommended by the governor of this state, or the president of the United States, as days of thanksgiving, or for the general cessation of business; and when any of these days or dates falls on a Sunday, then the succeeding Monday shall be regarded, treated and observed as the legal holiday.

When the return day of any summons or other court proceeding or any notice or time fixed for holding any court or doing any official act shall fall on any of these holidays, the next ensuing day which is not a Saturday,
Sunday or legal holiday shall be taken as meant and intended: Provided, That nothing herein contained shall increase nor diminish the legal school holidays provided for in section two, article five, chapter eighteen-a of this code.

CHAPTER 62
(H. B. 933—By Mr. Stephens)

[Passed March 5, 1980; 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-b, relating to the observance of Martin Luther King’s birthday by public employees.

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-b, to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1b. Martin Luther King day.

1 Notwithstanding the provisions of section one-a of this article the observance of Martin Luther King day may be observed on his actual birthday, the fifteenth of January, by public employees. No public employer shall refuse to allow any employee time off for the observance of Martin Luther King day on his actual birthday; however, such time off in observance of Martin Luther King day shall be charged, if the employer so agrees, against the participating employee’s annual leave or accrued vacation time: Provided, That in no event shall the observance of Martin Luther King day result in the closing of the office of the clerk of any circuit court or
clerk of any county commission or clerk of the supreme court of appeals on any day other than a Sunday, a Saturday or a legal holiday.

CHAPTER 63
(H. B. 1136—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the corporate powers of the West Virginia housing development fund generally; providing for the housing development fund to make and to refinance loans for the rehabilitation or improvement of existing residential housing.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-6. Corporate powers.

1 The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development for residential housing for occupancy by eligible persons and families or to sponsors of residential housing for occupancy by eligible persons and families. Such loans shall be made only upon determination by the housing development fund that construction loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;
(2) To make temporary loans, with or without interest, but with such security for repayment as the housing development fund determines reasonably necessary and practicable, from the operating loan fund, if created, established, organized and operated in accordance with the provisions of section nineteen of this article, to defray development costs to sponsors of land development for residential housing for occupancy by persons and families of low and moderate income or residential housing construction for occupancy by persons and families of low and moderate income which is eligible or potentially eligible for federally insured construction loans, federally insured mortgages, federal mortgages, or uninsured construction loans or uninsured mortgage loans;

(3) To make or participate in the making of long-term federally insured mortgage loans to sponsors of residential housing for occupancy by eligible persons and families, or to eligible persons and families, who may purchase or construct such residential housing. Such loans shall be made only upon determination by the housing development fund that long-term mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions;

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

(5) To make and execute contracts, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its corporate purpose;

(6) To collect reasonable fees and charges in connection with making and servicing its loans, notes, bonds, obligations, commitments and other evidences of indebtedness, and in connection with providing technical, consultative and project assistance services. Such fees and charges shall be limited to the amounts required to pay the costs of the housing development fund, including operating and administrative expenses, and reasonable allowances for losses which may be incurred;
(7) To invest any 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: Banks 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 of 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 requisition 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, 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 (1)
such corporation has earned a profit in eight of the preceding
ten fiscal years as reflected in its statements, and (2) such cor-
poration 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 equiva-
 lent thereof by at least two or more nationally recognized
rating services such as Standard and Poor's, Dun & Bradstreet
or Moody's;

(8) To sue and be sued;

(9) To have a seal and alter the same at will;

(10) To make, and from time to time, amend and repeal
bylaws and rules and regulations not inconsistent with the
provisions of this article;

(11) To appoint such officers, employees and consultants
as it deems advisable and to fix their compensation and pre-
scribe their duties;

(12) To acquire, hold and dispose of personal property for
its corporate purposes;

(13) To enter into agreements or other transactions with any
federal or state agency, any person and any domestic or for-
 eign partnership, corporation, association or organization;

(14) To acquire real property, or an interest therein, in its
own name, by purchase or foreclosure, where such acquisition
is necessary or appropriate to protect any loan in which the
housing development fund has an interest and to sell, transfer
and convey any such property to a buyer and, in the event such
sale, transfer or conveyance cannot be effected with reasonable
promptness or at a reasonable price, to lease such property to
a tenant;

(15) To sell, at public or private sale, any mortgage or
other negotiable instrument or obligation securing a construc-
tion, rehabilitation, improvement, land development, mortgage
or temporary loan;

(16) To procure insurance against any loss in connection
with its property in such amounts, and from such insurers, as
may be necessary or desirable;

(17) To consent, whenever it deems it necessary or desir-
able in the fulfillment of its corporate purpose, to the modifi-
cation of the rate of interest, time of payment or any install-
ment of principal or interest, or any other terms, of mortgage
loan, mortgage loan commitment, construction loan, rehabili-
tation loan, improvement loan, temporary loan, contract or
agreement of any kind to which the housing development fund
is a party;

(18) To make and publish rules and regulations respecting
its federally insured mortgage lending, uninsured mortgage
lending, construction lending, rehabilitation lending, improve-
ment lending and lending to defray development costs and any
such other rules and regulations as are necessary to effectuate
its corporate purpose;

(19) To borrow money to carry out and effectuate its cor-
porate purpose and to issue its bonds or notes as evidence of
any such borrowing in such principal amounts and upon such
terms as shall be necessary to provide sufficient funds for
achieving its corporate purpose, except that no notes shall be
issued to mature more than ten years from date of issuance and
no bonds shall be issued to mature more than fifty years from
date of issuance;

(20) To issue renewal notes, to issue bonds to pay notes
and, whenever it deems refunding expedient, to refund any
bonds by the issuance of new bonds, whether the bonds to be
refunded have or have not matured except that no such re-
newal notes shall be issued to mature more than ten years from
date of issuance of the notes renewed and no such refunding
bonds shall be issued to mature more than fifty years from the
date of issuance;

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

(22) To provide technical services to assist in the planning,
processing, design, construction, rehabilitation or improve-
(23) To provide consultative project assistance services for residential housing for occupancy by eligible persons and families and for land development for residential housing for occupancy by eligible persons and families;

(24) To promote research and development in scientific methods of constructing low cost residential housing of high durability;

(25) With the proceeds from the issuance of notes or bonds of the housing development fund, including, but not limited to, mortgage finance bonds, or with other funds available to the housing development fund for such purpose, to participate in the making of or to make loans to mortgagees approved by the housing development fund and take such collateral security therefor as is approved by the housing development fund and to invest in, purchase, acquire, sell or participate in the sale of, or take assignments of, notes and mortgages, evidencing loans for the construction, rehabilitation, improvement, purchase or refinancing of residential housing in this state: Provided, That the housing development fund shall obtain such written assurances as shall be satisfactory to it that the proceeds of such loans, investments or purchases will be used, as nearly as practicable, for the making of or investment in long-term federally insured mortgage loans or federally insured construction loans, uninsured mortgage loans, or uninsured construction loans, for residential housing for occupancy by eligible persons and families in this state or that other moneys in an amount approximately equal to such proceeds shall be committed and used for such purpose;

(26) To make or participate in the making of uninsured construction loans to sponsors of land development for residential housing for occupancy by eligible persons and families or to sponsors of residential housing for occupancy by eligible persons and families, or to eligible persons and families who
may construct such housing. Such loans shall be made only
upon determination by the housing development fund that
construction loans are not otherwise available, wholly or in
part, from private lenders upon reasonably equivalent terms
and conditions;

(27) To make or participate in the making of long-term
uninsured mortgage loans to sponsors of residential housing
for occupancy by eligible persons and families, or to eligible
persons and families who may purchase or construct such resi-
dential housing. Such loans shall be made only upon determi-
nation by the housing development fund that long-term mort-
gage loans are not otherwise available, wholly or in part, from
private lenders upon reasonably equivalent terms and condi-
tions;

(28) To obtain options to acquire and to acquire real prop-
erty, or any interest therein, in its own name, by purchase, or
lease, or otherwise, which is found by the housing develop-
ment fund to be suitable, or potentially suitable, as a site, or
as part of a site, for the construction of residential housing; to
hold such real property; to make loans to finance the per-
formance of land development activities on or in connection
with any such real property or to perform land development
activities on or in connection with any such real property; to
sponsor the development of residential housing for occupancy
by eligible persons and families on such real property; and to
sell, transfer and convey, lease or otherwise dispose of such
real property, or lots, tracts or parcels of such real property,
or residential housing, for such prices, upon such terms, con-
ditions and limitations, and at such time or times as the hous-
ing development fund shall determine, to sponsors of resi-
dential housing: Provided, however, That if the housing devel-
opment fund shall determine that any such real property or any
lots, tracts or parcels of such real property are not at any time
or times needed for present or future residential housing, the
housing development fund may sell, transfer and convey, lease
or otherwise dispose of the same, to such purchasers or leasees,
for such prices, upon such terms, conditions and limitations,
and for such uses and purposes as the housing development
fund shall determine;
(29) To make loans, with or without interest, but with such
security for repayment as the housing development fund deter-
mines reasonably necessary and practicable from the land de-
velopment fund, if created, established, organized and operated
in accordance with the provisions of section twenty-a of this
article, to sponsors of land development, to defray development
costs and other costs of land development;

(30) To exercise all of the rights, powers and authorities of
a public housing authority as set forth and provided in article
fifteen, chapter sixteen of this code in any area or areas of the
state which the housing development fund shall determine by
resolution to be necessary or appropriate; and

(31) To make or participate in the making of loans to
eligible persons and families for the purpose of rehabilitating
or improving existing residential housing, or to owners of
existing residential housing for occupancy by eligible persons
and families for the purpose of rehabilitating or improving such
residential housing and, in connection therewith, to refinance
existing loans involving the same property. Such loans shall
be made only upon determination by the housing development
fund that rehabilitation or improvement loans are not otherwise
available, wholly or in part, from private lenders upon reason-
ably equivalent terms and conditions.

(32) Whenever the housing development fund deems it
necessary, in order to exercise any of its powers set forth in
subdivision twenty-eight of this section, and upon being un-
able to agree with the owner or owners of real property or
interest therein sought to be acquired by the fund upon a price
for acquisition of private property not being used or operated
by the owner in the production of agricultural products, to
exercise the powers of eminent domain in the acquisition of
such real property or interest therein in the manner provided
under chapter fifty-four of this code, and the purposes set
forth in subdivision twenty-eight of this section are hereby
declared to be public purposes for which private property may
be taken. For the purposes of this section, the determination
of “use or operation by the owner in the production of agri-
cultural products” means that the principal use of such real
estate is for the production of food and fiber by agricultural
production other than forestry, and the fund shall not initiate
or exercise any powers of eminent domain without first re-
ceiving an opinion in writing from both the governor and the
commissioner of agriculture of this state that at the time the
fund has first attempted to acquire such real estate or inter-
est therein, such real estate or interest therein was not in fact
being used or operated by the owner in the production of agri-
cultural products.

CHAPTER 64
(H. B. 1135—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing 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
2 by the housing development fund shall not exceed seven hun-
3 dred million dollars outstanding at any one time: Provided,
4 That in computing the total amount of bonds and notes which
5 may at any one time be outstanding, the principal amount of
6 any outstanding bonds or notes refunded or to be refunded
7 either by application of the proceeds of the sale of any refund-
AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve, relating to continuing and reestablishing the state board of insurance changing the name thereof to the state board of risk and insurance management.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-12. Reestablishment of board as state board of risk and insurance management.

1 After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature hereby finds and declares that the state board of insurance should be continued and reestablished but shall be known and referred to as the state board of risk and insurance management. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state board of insurance shall continue to exist until the first day of July, one thousand nine hundred eighty-six, but shall be
known and referred to as the state board of risk and insurance management.

CHAPTER 66
(S. B. 454—By Mr. Susman)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section nine, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state insurance commissioner; creating a commissioner's examination revolving fund; and provision for the Legislature to appropriate money to start the fund.

Be it enacted by the Legislature of West Virginia:

That section nine, article two, 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 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; commissioners examination revolving fund; access to books, records, etc.

(a) The commissioner or his accredited examiners shall, at such times as he deems necessary, but at least once every three years, visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The commissioner at such times as he deems necessary may cause an examination to be conducted of any foreign or alien insurer licensed to transact insurance in this state; personnel conducting an examination of either a domestic or foreign insurer shall be compensated for each day worked at a rate set by the commissioner. Such personnel shall also be reimbursed for their travel and living
expenses at the rate set by the commissioner. Personnel
who are appointed by the commissioner, but are not em-
ployees of the department of insurance, shall be compen-
sated for their work, and travel and living expenses at
rates approved by the commissioner, or as otherwise
provided by law. If the laws of another state require
or permit the insurance department or other authority
thereof to make examinations of insurance companies
of this state at the expense of such companies, the ex-
penses of the commissioner in making an examination
of an insurance company of such other state shall be
charged to and collected from such company in the man-
ner prescribed by the commissioner. The commissioner
shall provide each company with an itemized statement
of the expenses incurred in conducting the examination
and shall certify a copy of such statement to the treasurer
of the state. Upon receipt of the commissioner's state-
ment, the company shall remit the amount thereof to
the commissioner who shall remit that amount to the
treasurer of the state for deposit in the commissioner's
examination revolving fund. As used in this section
“expenses” means: (1) The entire compensation for each
day worked by all personnel, including those who are
not employees of the department of insurance, the con-
duct of such examination calculated as hereinbefore
provided; (2) travel and living expenses of all personnel,
including those who are not employees of the depart-
ment of insurance, directly engaged in the conduct of
such examination, calculated at the rates as hereinbefore
provided for; (3) all other incidental expenses incurred
by or on behalf of such personnel in the conduct of such
authorized examination. All moneys collected by the
commissioner of insurance for expenses incurred by him
in conducting examinations of the financial affairs of any
insurance company doing business in this state for
which such insurance company examined is required to
pay the costs, shall be paid to the commissioner and by
him paid to the treasurer of the state to the credit of a
special revolving fund to be known as the “commis-
sioner's examination revolving fund” which is hereby
established: Provided, That at the end of each fiscal year
should such fund contain a sum of money in excess of
one hundred thousand dollars then the amount of such
excess shall revert to and be placed in the general
revenue fund of this state. The Legislature may appropri-
ate moneys to start such rotary fund. Any funds ex-
pended or obligated therefrom by the commissioner shall
be expended or obligated solely for defrayment of the
costs of examinations of the financial affairs of insurance
companies made by the commissioner pursuant to this
section. For purposes of this section, "insurance com-
pany" includes any domestic or foreign stock company,
mutual company, mutual protective association, farmers
mutual fire companies, fraternal benefit society, reciprocal
or inter-insurance exchange, nonprofit medical care
corporation, nonprofit health care corporation, nonprofit
hospital service association, nonprofit dental care corpor-
ation, health maintenance organization, or other insurer,
regardless of the type of coverage written, benefits pro-
vided, or guarantees made by each. The commissioner
shall make a full written report of each such examina-
tion of an insurer, certified to by the commissioner or
the examiner in charge of such examination. The com-
mis
sioner shall furnish a copy of the report to the in-
surer examined not less than ten days prior to filing the
same in his office. If such insurer so requests in writing,
within such ten-day period, the commissioner shall con-
sider the objections of such insurer to the report as
proposed, and shall not so file the report until after such
modifications, if any, have been made therein as the
commissioner deems proper. The report, when filed, shall
be admissible in evidence in any action or proceeding
brought by the commissioner against the insurer ex-
amined, or its officers or agents, and shall be prima
facie evidence of the facts stated therein. The commis-
sioner or his examiners may at any time testify and
offer other proper evidence as to information secured
during the course of an examination, whether or not a
written report of the examination has at that time been
either made, served or filed in the commissioner's office.
The examination of an alien insurer shall be limited
to its United States business. In lieu of making his own
examination, the commissioner may accept a full report of the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory official of the state of domicile of a foreign insurer or the state of entry into the United States of an alien insurer.

(b) The commissioner may also cause to be examined at such times as he deems necessary the books, records, papers, documents, correspondence and methods of doing business of any agent, broker or solicitor licensed by this state.

(c) For such purposes the commissioner, his deputies and employees shall have free access to all books, records, papers, documents and correspondence of all such insurers (whether domestic, foreign or alien), agents, brokers and solicitors wherever such books, records, papers, documents and records are situate.

(d) The commissioner may revoke the license of any such insurer, agent, broker or solicitor who refuses to submit to such examination.

(e) The commissioner may withhold from public inspection any examination or investigation report for such time as he may deem prudent, but no such report shall be withheld from public inspection for longer than ninety days after the same has been filed.

CHAPTER 67
(S. B. 450—By Mr. Susman)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen-c, relating to annual financial statement and premium tax return of certain insurers
transacting insurance in this state; payment of premium
taxes by insurers; providing that insurers who were liable
for more than five thousand dollars in premium taxes in
the preceding year shall pay estimated taxes on a quar­
terly basis.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by
insurer of premium tax, less certain deductions.

§33-3-14c. Computation of tax; payment.

§33-3-14. Annual financial statement and premium tax return;
remittance by insurer of premium tax, less certain
deductions.

1 Every insurer transacting insurance in West Virginia
2 shall file with the commissioner, on or before the first day
3 of March, each year, a financial statement made under
4 oath of its president or secretary and on a form pre-
5 scribed by the commissioner. Such insurer shall also, on
6 or before the expiration of one month after the end of
7 the calendar year, subject to the provisions of section
8 fourteen-c of this article, under the oath of its president
9 or secretary, make a premium tax return for the previous
10 calendar year, on a form prescribed by the commissioner
11 showing the gross amount of direct premiums (whether
12 designated as a premium or by some other name) col-
13 lected and received by it during the previous calendar
14 year on policies covering risks resident, located or to be
15 performed in this state and compute the amount of
16 premium tax chargeable to it in accordance with the
17 provisions of this article, deducting the amount of quar-
18 terly payments as required to be made pursuant to the
19 provisions of section fourteen-c of this article, if any, less
20 any adjustments to the gross amount of such direct
premiums made during such calendar year, if any, and
transmit with such return to the commissioner a remit-
tance in full for the tax due. The tax shall be a sum equal
to two percent of the gross direct premiums, including
dividends (by whatever name called) on participating
policies applied in reduction of premiums, less premiums
returned to policyholders because of cancellation of
policies, and shall also include any additional tax due
under section fourteen-a of this section. All taxes received
by the commissioner shall be paid by him into the state
treasury for the benefit of the state fund.

§33-3-14c. Computation of tax; payment.

1 The taxes levied hereunder shall be due and payable in
quarterly installments on or before the expiration of one
month from the end of the quarter in which they accrue.
The insurer subject to making such payments shall,
within one month from the expiration of each quarter,
prepare an estimate of the tax based on the estimated
amount of taxable premiums during the preceding calen-
dar quarter, less adjustments to the gross amount of direct
premiums from the preceding quarter, sign the same by
its president or secretary, under oath, and mail the same
together with a remittance of the amount of tax to the
office of the commissioner.

Any insurer failing or refusing to pay estimated taxes
for more than thirty days after the time specified is liable
for a civil penalty of up to one hundred dollars for each
additional day of delinquency, to be assessed by the com-
sioner. Failure of an insurer to make quarterly payments,
if required, of at least one fourth of either the total tax
paid during the preceding calendar year or eighty percent
of the actual tax for the current calendar year is con-
sidered the same as a failure or refusal to pay the esti-
mated taxes and subjects the insurer to the penalties pro-
vided in this section. The amount of estimated taxes
and the penalties collected shall be paid to the commis-
sioner and he may suspend the insurer until estimated
taxes and penalty, should any penalty be imposed, are
fully paid.
CHAPTER 68
(S. B. 521—By Mr. Rogers)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibited interests of officers and directors in certain transactions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§33-4-17. Prohibited interests of officers and directors in certain transactions.

1 (a) No director or officer or an insurer shall accept, except for and on behalf of the insurer, or be the beneficiary of any fee, commission, brokerage, gift or other emolument or thing of value in addition to his fixed salary or compensation, because of any investment, loan, deposit, purchase, sale, exchange, or other similar transaction made by or for the insurer, or be pecuniarily interested in any capacity except on behalf of the insurer.

9 (b) No insurer shall guarantee the financial obligation of any of its officers or directors.

11 (c) This section shall not prohibit such a director or officer from becoming a policyholder of the insurer and enjoying thereunder the rights customarily provided therein for holders of such policies, nor shall this section prohibit a director or officer of an insurer from serving as an agent or general agent of such insurer and receiving regular established agency commissions therefor: Provided, That the contract between the insurer and its officer and/or director has been approved by the board
of directors of the insurer and a true copy thereof, certified to by the secretary of the board of directors of such insurer, has been filed with the commissioner of insurance; nor shall this section prohibit such a director or officer of an insurer from receiving his share of the commission earnings of a stock exchange firm of which he is a partner, or a percentage of underwriting profits under a management contract: Provided, however, That such contract is subject to review and termination by the board of directors, nor shall this section prohibit the payment to a director or officer of a fee for legal services actually rendered to any such insurer provided such compensation is not in excess of the amounts customarily charged for the same type of service; nor shall this section prohibit an officer, in connection with the relocation by the insurer of the place of employment of such officer, including any relocation in connection with the initial employment of such officer, from (i) accepting a mortgage loan made by the insurer on real property owned by such officer which is to serve as such officer’s residence or (ii) selling to the insurer, at not more than the fair market value thereof, the residence of such officer.

CHAPTER 69
(H. B. 1391—By Mr. Tompkins and Mr. Shiflet)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advance notice of nonrenewal of an automobile liability or physical damage policy required; assigned risk policies; reasons for nonrenewal; renewal within ninety days of certain policies.

Be it enacted by the Legislature of West Virginia:

That section four, article six-a, chapter thirty-three of the code
ARTICLE 6A. CANCELLATION OR NONRENEWAL OF AUTOMOBILE LIABILITY POLICIES.

§33-6A-4. Advance notice of nonrenewal required; assigned risk policies; reasons for nonrenewal; hearing and review after nonrenewal.

No insurer shall fail to renew an outstanding automobile liability or physical damage insurance policy unless such nonrenewal is preceded by at least forty-five days of advance notice to the named insured of such insurer's election not to renew such policy: Provided, That subject to this section, nothing contained in this article shall be construed so as to prevent an insurer from refusing to issue an automobile liability or physical damage insurance policy upon application to such insurer, nor shall any provision of this article be construed to prevent an insurer from refusing to renew such a policy upon expiration, except as to the notice requirements of this section, and except further as to those applicants lawfully submitted pursuant to the West Virginia assigned risk plan: Provided, however, That an insurer may not fail to renew an outstanding automobile liability or physical damage insurance policy which has been in existence for two consecutive years or longer except for the following reasons:

(a) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for such policy or any installment thereof;

(b) The policy was obtained through material misrepresentation;

(c) The insured violates any of the material terms and conditions of the policy;

(d) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy:

   (1) Has had his operator's license suspended or revoked during the policy period; or
(2) Is or becomes subject to epilepsy or heart attacks, and such individual cannot produce a certificate from a physician testifying to his ability to operate a motor vehicle;

(e) The named insured or any other operator, either resident in the same household or who customarily operates an automobile insured under such policy is convicted of or forfeits bail during the policy period for any of the following:

(1) Any felony or assault involving the use of a motor vehicle;

(2) Negligent homicide arising out of the operation of a motor vehicle;

(3) Operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug;

(4) Leaving the scene of a motor vehicle accident in which the insured is involved without reporting as required by law;

(5) Theft of a motor vehicle or the unlawful taking of a motor vehicle;

(6) Making false statements in an application for a motor vehicle operator’s license; or

(7) A second violation, committed within a period of twelve months, of any moving traffic violation which constitutes a misdemeanor, whether or not the violations were repetitions of the same offense or were different offenses;

(f) The named insured or any other operator has had a second at-fault motor vehicle accident within a period of twelve months.

Nonrenewal of such policy for any reason is subject to hearing and review as provided in section five of this article. Cost of the hearing shall be assessed against the losing party but shall not exceed seventy-five dollars.

Notwithstanding the provisions of subsection (a) of this section, the insurer shall renew any automobile liability or physical damage insurance policy that has not been renewed due to the insured’s failure to pay the renewal premium when
due, if none of the other grounds for nonrenewal as set forth in subsections (b) through (f) of this section exist and the insured makes application for renewal within ninety days of the original expiration date of the policy. If a policy be renewed as provided in this paragraph, the coverage afforded shall not be retroactive to the original expiration date of the policy, but shall resume upon the renewal date at the current premium levels offered by the company.

CHAPTER 70
(Com. Sub. for H. B. 980—By Mrs. Spears and Mrs. Neal)
[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend article sixteen, 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 three-b; and to amend article twenty-eight of said chapter by adding thereto a new section, designated section five-a, all relating to requiring individual and group basic hospital expense and major medical expense insurers to offer home health care coverage; defining "home health care"; and providing requirements for and optional limits on services provided under such coverage.

Be it enacted by the Legislature of West Virginia:

That article sixteen, 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 three-b; that section five, article twenty-eight of said chapter be amended by adding thereto a new section, designated section five-a, all to read as follows:

Article
16. Group Accident and Sickness Insurance.
ARTICLE 16.  GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3b.  Home health care coverage.

(a) Any insurer who, on or after the first day of January, one thousand nine hundred eighty-one, delivers or issues for delivery in this state group basic hospital expense or major medical expense coverage under this article shall make available to the policyholder home health care coverage consistent with the provisions of this section. For purposes of this section, "home health care" means health services provided by a home health agency certified in the state in which the home health services are delivered or under Title XVIII of the Social Security Act.

(b) Home health care coverage offered shall include:

(1) Services provided by a registered nurse or a licensed practical nurse;

(2) Health services provided by physical, occupational, respiratory and speech therapists;

(3) Health services provided by a home health aide to the extent that such services would be covered if provided to the insured on an inpatient basis;

(4) Medical supplies, drugs, medicines and laboratory services to the extent that they would be covered if provided to the insured on an inpatient basis; and

(5) Services provided by a licensed midwife or a licensed nurse midwife as these occupations are defined in section one, article fifteen, chapter thirty of the code.

(c) Home health care coverage may be limited to:

(1) Services provided on the written order of a licensed physician, provided such order is renewed at least every sixty days;

(2) Services provided, directly or through contractual agreements, by a home health agency certified in the state in which the home health services are rendered or under Title XVIII of the Social Security Act; and
(3) Services as set forth in subsection (b) of this section without which the insured would have to be hospitalized.

(d) Coverage under this section shall be provided for at least one hundred home visits per insured per policy year, with each home visit by a member of a home health care team to be considered as one home health care visit including up to four hours of home health care services.

(e) No such policy need provide such coverage to persons eligible for medicare.

ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSURANCE MINIMUM STANDARDS.


(a) Any insurer who, on or after the first day of January, one thousand nine hundred eighty-one, delivers or issues for delivery in this state individual basic hospital expense or major medical expense coverage shall make available to the policyholder home health care coverage consistent with the provisions of this section. For purposes of this section, "home health care" means health services provided by a home health agency certified in the state in which the home health services are delivered or under Title XVIII of the Social Security Act.

(b) Home health care coverage offered shall include:

(1) Services provided by a registered nurse or a licensed practical nurse;

(2) Health services provided by physical, occupational, respiratory and speech therapists;

(3) Health services provided by a home health aide to the extent that such services would be covered if provided to the insured on an inpatient basis;

(4) Medical supplies, drugs, medicines and laboratory services to the extent that they would be covered if provided to the insured on an inpatient basis; and

(5) Services provided by a licensed midwife or a licensed nurse midwife as these occupations are defined in section one, article fifteen, chapter thirty of the code.
(c) Home health care coverage may be limited to:

(1) Services provided on the written order of a licensed physician, provided such order is renewed at least every sixty days;

(2) Services provided, directly or through contractual agreements, by a home health agency certified in the state in which the home health services are delivered or under Title XVIII of the Social Security Act; and

(3) Services as set forth in subsection (b) of this section without which the insured would have to be hospitalized.

(d) Coverage under this section shall be provided for at least one hundred home visits per insured per policy year, with each home visit by a member of a home health care team to be considered as one home health care visit including up to four hours of home health care services.

(e) No such policy need provide such coverage to persons eligible for medicare.

CHAPTER 71

(S. B. 198—By Mr. Galperin)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to medical service corporations; composition of board of directors.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS AND DENTAL SERVICE CORPORATIONS.


1 For the purpose of this article:

2 (a) "Corporation" shall mean either a hospital service corporation, a medical service corporation or a dental service corporation.

3 (b) "Hospital service corporation" shall mean a non-profit, nonstock corporation, organized in accordance with the provisions of article one, chapter thirty-one of this code, for the sole purpose of contracting with the public and with hospitals and other health agencies for hospital or other health services to be furnished to subscribers under terms of their contract with the corporation.

4 (c) "Hospital service" shall mean only such hospital or other health care, to be provided by hospitals or other health agencies, or such payment therefor, as may be specified in the contract made by the subscriber with the corporation.

5 (d) "Medical service corporation" shall mean a non-profit, nonstock corporation, organized in accordance with the provisions of article one, chapter thirty-one of this code, for the sole purpose of contracting with the public and with duly licensed physicians, duly licensed dentists and duly licensed chiropodists-podiatrists for medical or surgical services and with duly licensed chiropractors and other health agencies for other health services to be furnished to subscribers under terms of their contract with the corporation, and controlled by a board of directors, not more than twenty percent of whom, or whose spouse, parent, child, brother or sister by blood or marriage, are engaged in the providing of health care and at least eighty percent of whom shall be chosen as representatives of the interests of consumers, elderly persons, organized labor and business subscribers.

6 (e) "Medical service" shall mean only such medical,
surgical, or other health care, to be provided by duly licensed physicians, duly licensed dentists, duly licensed chiropodists-podiatrists or other health agencies and only such health care, to be provided by duly licensed chiropractors, or such payment therefor, as may be specified in the contract made by the subscriber with the corporation.

(f) "Dental service corporation" shall mean a nonprofit, nonstock corporation, organized in accordance with the provisions of article one, chapter thirty-one of this code, for the sole purpose of contracting with the public and with duly licensed dentists for dental services to be furnished to subscribers under terms of their contracts with the corporations, and controlled by a board of directors, the majority of whom are duly licensed dentists.

(g) "Dental service" shall mean only such dental care, to be provided by duly licensed dentists, duly licensed physicians, or such payment therefor, as may be specified in the contract made by the subscriber with the corporation.

(h) "Service" shall mean such hospital, medical, dental or other health service as shall be provided under the terms of the contracts issued by the corporation to subscribers.

(i) "Commissioner" shall mean the insurance commissioner of West Virginia.

CHAPTER 72

(H. B. 1366—By Mr. Tucker)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one hundred one, one hundred two and one hundred four, article three, chapter forty-six-
a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one hundred seventeen, all relating to sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes; sales finance charges for certain consumer credit sales of real estate; loan finance charges for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charges on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located; alternative finance charges authorized.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.

§46A-3-102. Sales finance charge for certain consumer credit sales of real estate.

§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located.

§46A-3-117. Alternative finance charges authorized.
§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.

1. (1) With respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on that part of the unpaid balance of the amount financed which is fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balances of the amount financed which is in excess of fifteen hundred dollars, calculated according to the actuarial method.

2. (2) This section does not limit or restrict the manner of calculating the sales finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the sales finance charge does not exceed that permitted by this section. If the sale is precomputed:

   (a) The sales finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

   (b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation, contained in section one hundred eleven of this article.

3. (3) For the purposes of this section, the term of a sale agreement commences on the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently
used to obtain a greater yield than would otherwise be permitted.

(4) Subject to classifications and differentiations the seller may reasonably establish, he may make the same sales finance charge on all amounts financed within a specified range. A sales finance charge so made does not violate subsection (1) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) When applied to the lowest amount within each range, it does not produce a rate of sales finance charge exceeding the rate calculated according to subdivision (a) by more than eight percent of the rate calculated according to subdivision (a).

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

(6) Notwithstanding any provision of this section to the contrary, with respect to a consumer credit sale involving a motor vehicle or a mobile home or a consumer credit sale from the same seller of both a mobile home and the real estate upon which such mobile home is or will be located, or a consumer credit sale of a mobile home where a security interest in real estate owned by the buyer is given to the seller as collateral, a seller may from the effective date of this section and until and including the fifteenth day of April, one thousand nine hundred eighty-one, contract for and receive a sales finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved with the consumer credit sale of a mobile home upon which such finance charge is contracted for and received shall not exceed one acre.

§46A-3-102. Sales finance charge for certain consumer credit sales of real estate.

With respect to a consumer credit sale of real estate, other
than a sale involving a mobile home and real estate as referred
to in section one hundred one of this article or goods which
become fixtures, where title is retained or there is created or
retained by agreement a purchase money lien against the real
estate, the seller may contract for and receive a sales finance
charge not exceeding the interest permitted by section five,
article six, chapter forty-seven of this code.

In addition to the sales finance charge permitted by this
section with respect to such sale, a seller may also contract
for and receive additional charges, delinquency charges, and
deferral charges and compute rebates upon prepayment, re-
financing or consolidation as defined and authorized by this
chapter.

§46A-3-104. Loan finance charge for consumer loans made by
supervised financial organizations and certain other
lenders other than loans made pursuant to revolving
loan accounts and finance charge on assigned con-
tracts; subject to exceptions as to loans involving
motor vehicles and mobile homes and a specified
quantity of real estate upon which mobile homes
are or will be located.

(1) With respect to a consumer loan, other than a consumer
loan made pursuant to a revolving loan account, (a) a bank,
as defined in section two, article one, chapter thirty-one-a of
this code, may contract for and receive a loan finance charge
not exceeding the charge or interest permitted by the provi-
sions of section thirty, article four, chapter thirty-one-a or by
the provisions of section five, section five-a, or section five-b,
article six, chapter forty-seven of this code, (b) an industrial
loan company, as defined in section three, article seven, chap-
ter thirty-one of this code, may contract for and receive a
loan finance charge not exceeding the aggregate of the interest
and charges permitted by subdivisions (5) and (6), subsection
(a), section eleven, article seven, chapter thirty-one of this
code or by the provisions of section five, article six, chapter
forty-seven of this code, (c) a building and loan association,
as defined in section two, article six, chapter thirty-one of this
code, may contract for and receive a loan finance charge not
exceeding the charge or interest permitted by the provisions of
section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, section five-a or section five-b, article six, chapter forty-seven of this code.

(2) Notwithstanding any provision of this section to the contrary, with respect to a consumer loan involving a motor vehicle or a mobile home or with respect to a consumer loan to finance the sale from one seller of both a mobile home and the real estate upon which such mobile home is or will be located, or with respect to a consumer loan where a security interest in real estate owned by the borrower is given to the lender as collateral for such loan, a lender may from the effective date of this section and until and including the fifteenth day of April, one thousand nine hundred eighty-one, contract for and receive a loan finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved in such consumer loan transactions involving a mobile home and real estate where such finance charge is contracted for and received shall not exceed one acre.

(3) If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

(4) Notwithstanding subsection (1), the lender may con-
tract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

§46A-3-117. Alternative finance charges authorized.

Notwithstanding any other provisions of this chapter, a person making any sale or loan subject to the provisions of this chapter, may charge a sales finance charge, loan finance charge or rate of interest for such sale or loan not exceeding the charge or interest permitted by the provisions of section thirty-one-a, article four, chapter thirty-one-a or section five-b, article six, chapter forty-seven of this code for the loan of money, or permitted by the provisions of section five-c, article six, chapter forty-seven of this code for the forbearance of money, or the appropriate rate authorized by this chapter for such sale or loan, whichever is greater.

CHAPTER 73
(5. B. 535—By Mr. Ward)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred five, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitations upon interest rates on loans and consumer credit sales guaranteed or insured by the United States or its agencies.
Be it enacted by the Legislature of West Virginia:

That section one hundred five, article three, chapter forty-six-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. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-105. Maximum rate on loans and credit sales guaranteed or insured by United States or agency thereof.

1 Nothing contained in this chapter or other law of this state shall be taken or construed as limiting the permissible interest rates or finance charges upon loans or credit sales evidenced by notes, bonds or other obligations secured by mortgages, deeds of trust or other security instruments insured or guaranteed by the federal housing commissioner or United States administrator of veterans’ affairs or by any other officer, department, agency or instrumentality of the United States or evidenced by notes, bonds, debentures and other obligations and securities issued by, insured by or guaranteed by the federal housing commissioner, federal national mortgage association, government national mortgage association, small business administration or other federal officer, department, agency or instrumentality.

CHAPTER 74

(Com. Sub. for H. B. 760—By Mr. Hendricks)

[Passed February 13, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three; and to amend article five, chapter sixty-one of said code, by adding thereto a new section, designated section twenty-five-a, re-
lating to discriminating against an employee summoned for
jury duty; creating a civil cause of action for such discrimination;
making it unlawful to discriminate against an employee sum-
moned for jury duty; and providing criminal penalties for
unlawful discrimination.

Be it enacted by the Legislature of West Virginia:

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

Chapter
52. Juries.
61. Crimes and Their Punishment.

CHAPTER 52. JURIES.

ARTICLE 3. DISCRIMINATION FOR JURY SERVICE.

§52-3-1. Right of action for discrimination against employee sum-
moned for jury duty.

(a) Any person who, as an employee, is discriminated
against by his employer because such employee received, or
was served with a summons for jury duty, or was absent from
work to respond to a summons for jury duty or to serve on
any jury in any court of this state, the United States or any
state of the United States, shall have an action against his
employer in the circuit court of the county where the jury
summons originated or where the discrimination occurred. If
the circuit court finds that an employer terminated or threat-
ened to terminate from employment, or decreased the regular
compensation of employment of an employee for time the em-
ployee was not actually away from his employment because
the employee served as a juror, the court may order the
employer to cease and desist from this unlawful practice and
order affirmative relief, including, but not limited to, rein-
statement of the employee with or without back pay, and
reasonable attorney's fees as may be determined by the court,
as will effectuate the purposes of this section.
(b) Nothing in this section shall be construed to require an employer to pay an employee any wages or other compensation for the time the employee is actually away from his employment for jury services or to respond to a jury summons.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-25a. Discrimination against employee summoned for jury duty; penalty.

It is unlawful for any person to terminate or threaten to terminate from employment, or decrease the regular compensation of employment of an employee for time the employee was not actually away from his employment because an employee received, or was served with a summons for jury duty, or was absent from work to respond to a summons for jury duty or to serve on any jury in any court of this state, the United States or any state of the United States.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than sixty days, or both fined and imprisoned.

CHAPTER 75

(H. B. 1601—By Mr. Wiedebusch and Mr. Cook)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the duration of the West Virginia labor-management advisory council extended.

Be it enacted by the Legislature of West Virginia:

That section three, article one-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1C. WEST VIRGINIA LABOR-MANAGEMENT ADVISORY COUNCIL.

§21-1C-3. Duration of council.

1 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-three.

CHAPTER 76

(S. B. 76—By Mr. Brotherton, Mr. President)

[Passed March 6, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to officers and employees of the Legislature; providing that officers of any political party executive committee may not serve as clerk of either house.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS; MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-8. Officers and employees; tenure.

1 Each house of the Legislature shall, at the commencement of the regular session thereof assembled and held in odd-numbered years, elect a presiding officer, a clerk, a sergeant at arms and a doorkeeper, whose terms of office shall, unless sooner vacated by death, resignation or removal, be and continue until the regular meeting of the
Legislature in the odd-numbered year next thereafter, and until their successors are elected and qualified. Any person who is an officer of any state, county, district or municipal political party executive committee shall not be eligible to serve as clerk of either house of the Legislature. The clerk of each house shall devote full time to his public duties to the exclusion of any other employment. At each session of the Legislature, there shall be appointed for each house such employees and technical assistants as may be authorized by law or by resolution of the respective houses. Any person so appointed may be removed by the appointing authority and another appointed in his stead: Provided, That nothing in this section shall be construed to prevent either house from removing any appointee.

CHAPTER 77
(Com. Sub. for S. B. 106—By Mr. Brotherton, Mr. President)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to vacancies in clerkships in the Senate or House of Delegates; appointment by the president of the Senate for a vacancy in the office of clerk of the Senate, and by the speaker of the House of Delegates for a vacancy in the office of clerk of the House of Delegates.

Be it enacted by the Legislature of West Virginia:

That section eleven, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS.

§4-1-11. Vacancies in clerkships.

1 A vacancy in the office of clerk of the Senate or clerk of the House of Delegates, happening when the Legislature is not in session, shall be filled by appointment by the president of the Senate for a vacancy occurring in the office of clerk of the Senate and by the speaker of the House of Delegates for a vacancy occurring in the office of clerk of the House of Delegates, to expire at the meeting of the next regular or extraordinary session of the Legislature. If any such vacancy happen when the Legislature is in session, it shall be filled in the same manner as is provided for the election of such officer at the commencement of each regular session.

CHAPTER 78

(S. B. 356—By Mr. Brotherton, Mr. President)

(Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact sections one and two, article five, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and changing the name of the state purchasing practices and procedures commission to the state “commission on special investigations”; expanding the powers of said commission to permit investigations for violations of criminal or civil statutes at any level of state government; allowing personnel of said commission to administer oaths and take affidavits and depositions within the state; providing for referring matters to and cooperating with the United States attorney; and generally broadening the powers and duties of said commission to
investigate and take actions upon certain violations of state law.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.

§4-5-1. Commission continued as “commission on special investigations”; composition; appointment and terms of members.

§4-5-2. Powers and duties generally.

§4-5-1. Commission continued as “commission on special investigations”; composition; appointment and terms of members.

1 The purchasing practices and procedures commission, heretofore created, shall continue in existence but on and after the effective date of this section shall be named and designated the “commission on special investigations.” The commission shall continue to be composed of five members of the Senate, to be appointed by the president thereof, no more than three of whom shall be appointed from the same political party, and five members of the House of Delegates, to be appointed by the speaker thereof, no more than three of whom shall be appointed from the same political party. The commission shall be headed by two cochairs, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates. All members of the commission shall serve until their successors shall have been appointed as heretofore provided.

§4-5-2. Powers and duties generally.

1 The commission on special investigations shall have the power, duty and responsibility, upon a majority vote of the members appointed, to:

4 (1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;
7 (2) Determine if there is reason to believe that the
laws or public policy of the state in connection with
purchasing practices and procedures have been violated
or are inadequate;

11 (3) Determine if any criminal or civil statutes relating
to the purchasing practices and procedures in this state
are necessary to protect and control the expenditures
of money by the state;

15 (4) Investigate or examine any matter involving con-
flicts of interest, bribery of state officials, malfeasance,
misfeasance or nonfeasance in office by any employee
or officer of the state;

19 (5) Conduct comprehensive and detailed investiga-
tions to determine if any criminal or civil statutes have
been violated at any level of state government;

22 (6) Determine whether to recommend criminal prose-
cution or civil action for any violation, either criminal
or civil, at any level of state government and, if it is
determined that action is necessary, to make appropriate
recommendation to the attorney general, prosecuting
attorney or other authority empowered to act on such
recommendation; and

29 (7) Make such written reports to the members of the
Legislature between sessions thereof as the commission
may deem advisable and on the first day of each regular
session of the Legislature make an annual report to
the Legislature containing the commission's findings and
recommendations including in such report drafts of any
proposed legislation which it deems necessary to carry
such recommendations into effect.

The commission is also expressly empowered and
authorized to:

39 (1) Sit during any recess of the Senate and House of
Delegates;

41 (2) Recommend to the judge of any circuit court
that a grand jury be convened pursuant to the provisions
of section fourteen, article two, chapter fifty-two of this
code, to consider any matter which the commission may
deem in the public interest and, in support thereof,
make available to such court and such grand jury the
contents of any reports, files, transcripts of hearings or
other evidence pertinent thereto;

(3) Employ such legal, technical, investigative, clerical,
stenographic, advisory and other personnel as it
deems needed and, within the appropriation herein
specified, fix reasonable compensation of such persons
and firms as may be employed: Provided, That such
personnel as the commission may determine shall have
the authority to administer oaths and take affidavits and
depositions anywhere in the state;

(4) Consult and confer with all persons and agencies,
public (whether federal, state or local) and private, that
have information and data pertinent to an investigation;
and all state and local governmental personnel and
agencies shall cooperate to the fullest extent with the
commission;

(5) Call upon any department or agency of state or
local government for such services, information and as-
sistance as it may deem advisable; and

(6) Refer such matters as are appropriate to the
office of the United States attorney and cooperate with
such office in the disposition of matters so referred.

CHAPTER 79

(Com. Sub. for H. B. 877—By Mr. Greer)

[Passed January 23, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter
thirty-eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to vendor's liens and
deed of trust liens generally; notice by publication of the trustee
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4. Notice of sale.

Unless property is to be sold under a deed of trust executed and delivered prior to the first day of July, one thousand nine hundred eighty, which contains a provision waiving the requirement of published notice, or the property to be sold is in the opinion of the trustee of less value than three hundred dollars, the trustee shall publish a notice of such sale 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 where the property is located. If, in the opinion of the trustee, the property be of less value than three hundred dollars, such notice of sale shall be posted at least twenty days prior thereto at the front door of the courthouse of the county in which the property to be sold is, and three other public places at least in the county, one of which shall be as near as the premises to be sold (in case the sale be of real estate) as practicable; and in all cases whether the notice be published or not, a copy of such notice shall be served on the grantor in such trust deed, or his agent or personal representative, if he or they be within the county, at least twenty days prior to the sale, unless service of such notice be expressly waived by the grantor in any such trust deed. Every notice of sale by a trustee under a trust deed shall show the following particulars: (a) The time and place of sale; (b) the names of the parties to the deed under which it will be made; (c) the date of the deed; (d) the office and book in which it is recorded; (e) the quantity and description of the land or other property, or both, conveyed thereby; and (f) the terms of sale: Provided, That except as expressly provided in this section, no trust deed shall waive the requirements of publication of notice as required by this section.
AN ACT to amend and reenact sections two, three, eight, nine and eleven, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing for an additional magistrate to be elected in Putnam and Raleigh Counties; increased compensation for magistrates, magistrate court clerks, magistrate assistants and magistrate court deputy clerks; providing for salaries and maximum salary levels to be paid on a population basis; and providing for travel expenses for magistrates traveling between offices.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§ 50-1-2. Number of magistrates.


§ 50-1-11. Offices for magistrates; location; expenses; copy of state code.

§ 50-1-2. Number of magistrates.

In each county which has less than thirty thousand in population there shall be elected two magistrates; except that in the county of Putnam there shall be elected three magistrates.

In each county which has thirty thousand or more in population but less than sixty thousand in population there shall be elected three magistrates; except that in the county of McDowell there shall be elected four magistrates. In each county which has sixty thousand or more in population but less than one hundred five thousand in population there shall be elected four magistrates; except that in the county of Raleigh there shall be elected five magistrates. In each county which has one hundred
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In each county which has two hundred thousand or more in population there shall be elected ten magistrates. For the purpose of this article, the population of each county shall be considered to be the population as determined by the last preceding census taken under the authority of the United States government. No change in the number of magistrates caused by the publication of more recent such census figures shall be effective until the next regular election for such office occurring after the year of such publication.


The salary of each magistrate shall be paid by the state. Beginning on the first day of July, one thousand nine hundred eighty, magistrates who serve less than ten thousand in population shall be paid annual salaries of fourteen thousand dollars; magistrates who serve ten thousand or more in population but less than fifteen thousand in population shall be paid annual salaries of seventeen thousand dollars: Provided, That magistrates in the county of Putnam shall be paid annual salaries of seventeen thousand dollars. Magistrates who serve fifteen thousand or more in population shall be paid annual salaries of twenty-one thousand dollars: Provided, however, That magistrates in the county of Raleigh shall be paid annual salaries of twenty-one thousand dollars. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. Magistrates shall be paid once a month.


In each county having three or more magistrates the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall appoint a magistrate court clerk. In all other counties such judge may appoint a magistrate court clerk or may by rule require the duties of the magistrate court clerk to be performed by the clerk of the circuit court, in which event said circuit court clerk shall be entitled to additional compensation in the amount of two thou-
and five hundred dollars per year. In any county a magistrate
court clerk may be appointed prior to the first day of January,
one thousand nine hundred seventy-seven. The magistrate
court clerk shall serve at the will and pleasure of such circuit
judge.

Magistrate court clerks shall be paid a monthly salary by the
state. Beginning on the first day of July, one thousand nine
hundred eighty, magistrate court clerks serving magistrates who
serve five thousand or less in population shall be paid up to
six hundred twenty dollars per month; magistrate court clerks
serving magistrates who serve more than five thousand in popu-
lation but less than ten thousand in population shall be paid up
to seven hundred ninety-eight dollars per month; magistrate
court clerks serving magistrates who serve more than ten thou-
sand in population but less than fifteen thousand in population
shall be paid up to one thousand twenty-six dollars per month;
and magistrate court clerks serving magistrates who serve fif-
ten thousand or more in population shall be paid up to one
thousand two hundred fifty-four dollars per month. For the
purpose of determining the population served by each magis-
trate, the number of magistrates authorized for each coun-
ty shall be divided into the population of each county. The
salary of the magistrate court clerk shall be established by
the judge of the circuit court, or the chief judge thereof if
there is more than one judge of the circuit court, within the
limits set forth in this section.

In addition to other duties as may be imposed by the pro-
visions of this chapter or by the rules of the supreme court of
appeals or the judge of the circuit court, or the chief judge
thereof if there is more than one judge of the circuit court, it
shall be the duty of the magistrate court clerk to establish and
maintain appropriate dockets and records in a centralized
system for the magistrate court, to assist in the preparation
of such reports as may be required of the court and to carry
out on behalf of the magistrates, or chief magistrate if a chief
magistrate is appointed, the administrative duties of the court.

The magistrate court clerk or, if there is no magistrate court
clerk in the county, the clerk of the circuit court shall have
the authority to issue all manner of civil process and to re-

In each county there shall be one magistrate assistant for each magistrate. Each magistrate assistant shall be appointed by the magistrate under whose authority and supervision and at whose will and pleasure he shall serve. Such assistant shall not be a member of the immediate family of any magistrate and shall not have been convicted of a felony or any misdemeanor involving moral turpitude and shall reside in the county where appointed. For the purpose of this section, immediate family shall mean the relationships of mother, father, sister, brother, child or spouse.

A magistrate assistant shall have such duties, clerical or otherwise, as may be assigned by the magistrate and as may be prescribed by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. In addition to these duties, magistrate assistants shall perform and be accountable to the magistrate court clerk with respect to the following duties:

1. The preparation of summons in civil actions;
2. The assignment of civil actions to the various magistrates;
3. The collection of all costs, fees, fines, forfeitures and penalties which may be payable to the court;
4. The submission of such moneys, along with an accounting thereof to appropriate authorities as provided by law;
5. The daily disposition of closed files which are to be located in the magistrate clerk's office;
6. All duties related to the gathering of information and documents necessary for the preparation of administrative reports and documents required by the rules of the supreme court of appeals or the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court;
(7) All duties relating to the notification, certification and payment of jurors serving pursuant to the terms of this chapter;

(8) All other duties or responsibilities whereby the magistrate assistant shall be accountable to the magistrate court clerk as the magistrate shall determine.

Magistrate assistants shall be paid a monthly salary by the state. Beginning on the first day of July, one thousand nine hundred eighty, magistrate assistants serving magistrates who serve five thousand or less in population shall be paid up to five hundred six dollars per month; magistrate assistants serving magistrates who serve more than five thousand in population but less than ten thousand in population shall be paid up to six hundred twenty-seven dollars per month; magistrate assistants serving magistrates who serve more than ten thousand in population but less than fifteen thousand in population shall be paid up to seven hundred forty-one dollars per month; and magistrate assistants serving magistrates who serve fifteen thousand or more in population shall be paid up to eight hundred fifty-five dollars per month. For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. The salary of the magistrate assistant shall be established by the magistrate within the limits set forth in this section.

§50-1-11. Offices for magistrates; location; expenses; copy of state code.

Subject to the rules of the supreme court of appeals, the location of offices for magistrates shall be determined by order of the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court. When required by geography or population dispersion and in order to make such offices accessible to the public, an order may require more than one location for each magistrate. As near as practicable within a county, all office accommodations shall be comparable. All expenses of acquiring or renting offices and utility and telephone expenses shall be paid by the county. All other expenses, including, but not limited to, expenses for furniture, equipment and supplies, shall be paid by the state.
The administrative director of the supreme court of appeals shall supply each magistrate with a current copy of the West Virginia code which shall remain the property of the state.

Magistrates who serve at more than one location within the county, whether on a regular or temporary basis, shall be reimbursed travel expenses for travel between locations at a rate per mile equal to that allowed for reimbursement of travel expenses of officers in the judicial branch of state government.

CHAPTER 81

(S. B. 284—By Mr. Jones)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a, relating to the appearance of parties in magistrate court by agent or attorney.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-4a. Appearance in civil cases.

1 Any party to a civil action in a magistrate court may appear and conduct such action in person, by agent or by attorney. Appearance by an agent or attorney shall have the same effect as appearance by the party represented, and the appearance by an agent shall not constitute the unlawful practice of law. No magistrate may act as such agent or attorney.
AN ACT to amend article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section three-z, relating to the authority of counties to govern the business of massage when carried on within the county; licensing standards; grounds for denial of license; activities to which section does not apply; limitation upon county powers.

Be it enacted by the Legislature of West Virginia:

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

§7-1-3z. Authority of counties to govern business of massage.

1 (a) In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered, by order duly entered of record, to adopt an ordinance which provides for the licensing for the regulation of the business of massage when carried on within the county. Such ordinances may be adopted either for the entire county, or for any portion or portions of such county which may constitute an effective area or areas for such purposes, without the necessity of adopting such ordinances for any other portion of such county. Notwithstanding any other provision of this section to the contrary, no such ordinance shall apply to or affect any territory within the boundaries of any municipal corporation which has adopted and in effect an ordinance which provides for the regulation of the business of massage, unless and until such municipal corporation so provides by ordinance.

17 (b) The ordinance may condition the issuance of a license to engage in the business of massage upon proof that a massage
business meets the reasonable standards set by the ordinance, which standards may include, but need not be limited to, the following areas;

(1) Requirement that massage personnel be at least eighteen years of age;

(2) Sanitary conditions of the massage establishment;

(3) Hours of operation of the massage business;

(4) Prohibition of the sale or serving of food or beverage or the conducting of nonmassage business on the premises of the massage business. In the event that the business premises in which such massage business is conducted has separate quarters used for purposes other than the massage business, the prohibition of this subsection shall apply only to the portion of the premises exclusively devoted to the conduct of the massage business.

(c) The ordinance may also provide that a license to engage in the business of massage may be denied upon a showing by the licensing authority of any of the following:

(1) Proof that the massage personnel or the owners or operators of a massage business have been convicted of a violation of any of the provisions of article eight, eight-a, eight-b or eight-c, chapter sixty-one of this code or proof that massage personnel or the owners or operators of a massage business have been convicted in any other state of any offense which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses of this subsection.

(2) Proof that the massage personnel, or the owners, or operators of a massage business have been convicted of any felony offense involving the sale of a controlled substance specified in section two hundred four, two hundred six, two hundred eight, two hundred ten or two hundred twelve, article two, chapter sixty-a of this code or proof that the massage personnel or the owners or operators of the massage business have been convicted in any other state of any offense, which if committed or attempted in this state, would have been
punishable as one or more of the above-mentioned offenses of this subsection.

(d) The ordinance may require that application to conduct the business of massage be made on such form as prescribed by the licensing authority, which application may require the following information:

(1) The name of the applicant;

(2) If such applicant be an unincorporated association, the names and addresses of the members of its governing board;

(3) If such applicant be a corporation, the names and addresses of its officers and directors;

(4) The place at which such applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The name of the owner of the place at which the applicant will conduct its operation, if not the same as the applicant;

(6) The number of members of the applicant;

(7) The names of all massage personnel, owners, operators or other employees of the massage business;

(8) Such other information as the licensing authority may reasonably require which may include, but need not be limited to, the criminal records, if any, of each member of the applicant's governing board and/or its officers and directors, or any of the massage personnel, owners, operators or other employees of the massage business who have been convicted of any violation of any of the provisions set forth in subsection (c).

The ordinance may require that such application be verified by the applicant or by each member of the governing board of the applicant if an unincorporated association or, if the applicant be a corporation, by each of its officers and all members of its board of directors. The ordinance may also require that such application be accompanied by a license fee not exceeding the sum of one hundred dollars. Any license
issued under the provisions of this section shall be effective for one year and may be renewed upon the same showing as required for the issuance of the initial license, together with the payment of fees, if any. The ordinance may require license holders to notify the licensing authority of any changes in the information required by the application within a reasonable period after such changes may occur.

(e) This section does not apply to barbers or beauticians licensed to practice, or to persons licensed to practice in any of the health professions, under the provisions of chapter thirty of this code when engaging in such practice within the scope of his or her license.

(f) Nothing contained in this chapter shall preclude a county commission from prohibiting a person of one sex from engaging in the massage of a person of the other sex.

CHAPTER 83
(Com. Sub. for S. B. 470—By Mr. Huffman)
[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to repeal articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and re-enact article three of said chapter, all relating to completely revising the law of this state on physicians and surgeons, podiatrists and assistants to physicians; establishing the West Virginia board of medicine in lieu of the medical licensing board of West Virginia and giving it certain broad powers and duties with respect to the licensing of the practices of medicine and surgery and podiatry and certifying of physician assistants in the state and to the disciplining of said practices and related matters; giving legislative findings, a certain purpose, short title and certain definitions; providing for the creation of the West Virginia board of medicine, transfer of powers and
duties from the medical licensing board, appointment and terms of members, filling vacancies and removal of members; providing for the conduct of business of the board of medicine; relating to meetings, officers, compensation and expenses of the board; providing for the powers and duties of the board; providing for the state director of health to act as secretary of the board; requiring the maintenance of records; relating to the expungement, examination, confidentiality and release of records; prescribing criminal penalties for unauthorized disclosure of records; relating to the physician-patient privilege; prescribing qualifications for licenses to practice medicine and surgery and podiatry; providing for examinations, fees, educational training permits, temporary permits and for the continuance of former licenses and permits; relating to endorsement of licenses to practice medicine and surgery and podiatry, fees and temporary licenses; providing for biennial renewal of licenses to practice medicine and surgery and podiatry, fees and inactive licenses; regulating the unauthorized practice of medicine and surgery and podiatry and prescribing criminal penalties and limitations; giving broad powers to the board of medicine to discipline physicians and podiatrists; providing for the disclosure of medical peer review committee information and reporting of professional malpractice and professional incompetence; requiring reporting to the board by hospital officer, professional societies, professional liability insurers and clerks of courts of record; relating to the independence of board action; prescribing the grounds for license denial and discipline of physicians and podiatrists; relating to investigations by the board and physical and mental examinations; providing for hearings and reporting by the board; relating to the suspension, revocation, termination and restriction of licenses to practice medicine and surgery and podiatry and the denial of applicants seeking to be so licensed, both after and before a hearing; relating to reapplication for license, civil and criminal immunity and the voluntary limitation of licenses; providing for medical corporations, podiatry corporations, applications for registration thereof, fees, notice to the secretary of state of issuance of certificate, action by secretary of state
and rights and limitations generally; providing for the biennial registration of medical and podiatry corporations, when practice must cease, admissibility and effect of certificate signed by secretary of board, criminal penalties and severability; regulating the practice of physician assistants; providing certain definitions, rules and regulations by the board and annual reports regarding physician assistants; relating to certification, temporary certification, recertification, reciprocity, job descriptions and revocation or suspension of certification for physician assistants; prescribing responsibilities of supervising physicians, legal responsibilities for physician assistants, identification, limitations on employment and duties and fees; prohibiting the unlawful use of title of physician assistant, unlawful representation of physician assistant as a physician and criminal penalties therefor; and limiting application of the article for persons with the degree of doctor of osteopathy.

Be it enacted by the Legislature of West Virginia:

That articles two-a, three-a and eleven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-1. Legislative findings.
§30-3-2. Purpose.
§30-3-3. Short title.
§30-3-4. Definitions.
§30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.
§30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.
§30-3-7. Power and duties of West Virginia board of medicine.
§30-3-8. State director of health to act as secretary of the board.
§30-3-9. Records of board; expungement; examination; confidentiality; release of records; criminal penalties for unauthorized disclosure; physician-patient privilege.
§30-3-10. Qualifications for license to practice medicine and surgery and to practice podiatry; examinations; fees; educational training permit; temporary permits; continuance of former licenses and permits.
§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.

§30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.

§30-3-13. Unauthorized practice of medicine and surgery and podiatry; criminal penalties; limitations.

§30-3-14. Professional discipline of physicians and podiatrists; disclosure of medical peer review committee information; reporting of professional malpractice and professional incompetence to board; reporting to board by hospital officers; professional societies, professional liability insurers, and clerks of courts of record; independence of board action; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the board; reapplication; civil and criminal immunity; voluntary limitation of license.

§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistants as a physician; criminal penalties.

§30-3-17. Limitation of article.

§30-3-1. Legislative findings.

1 The Legislature hereby finds and declares that the practice of medicine and surgery and the practice of podiatry is a privilege and not a natural right of individuals. As a matter of public policy, it is necessary to protect the public interest through enactment of this article and to regulate the granting of such privileges and their use.

§30-3-2. Purpose.

1 The purpose of this article is to provide for the licensure and professional discipline of physicians and podiatrists and for the certification and discipline of physician assistants.
§30-3-3. Short title.

1 This article shall be known and may be cited as the
2 "West Virginia Medical Practice Act."

§30-3-4. Definitions.

1 As used in this article:

2 (1) “Board” means the West Virginia board of medi-
3 cine established in section five of this article. When-
4 ever any other provision of this code refers to the “medical
5 licensing board of West Virginia,” such reference shall
6 be construed to mean and refer to the “West Virginia
7 board of medicine” as created and established in this
8 article.

9 (2) “Medical peer review committee” means a com-
10 mittee of or appointed by a state or local professional
11 medical society, or a committee of or appointed by a
12 medical staff of a licensed hospital, long-term care facili-
13 tity or other health care facility, or any health care peer
14 review organization as defined in section one, article
15 three-c of this chapter, or any other organization of pro-
16fessionals in this state formed pursuant to state or federal
17 law and authorized to evaluate medical and health care
18 services.

19 (3) “Practice of medicine and surgery” means the
20 diagnosis or treatment of or operation or prescription
21 for any human disease, pain, injury, deformity or other
22 physical or mental condition.

23 (4) “Practice of podiatry” means the examination,
24 diagnosis, treatment, prevention and care of conditions
25 and functions of the human foot by medical, surgical and
26 other scientific knowledge and methods; and medical
27 and surgical treatment of warts and other dermatological
28 lesions of the hand which similarly occur in the foot.
29 When a podiatrist uses other than local anesthesia, in
30 surgical treatment of the foot, such anesthesia must be
31 administered by or under the direction of an anesthesi-
32 ologist or certified nurse anesthetist authorized under
33 the state of West Virginia to administer anesthesia. A
34 medical evaluation shall be made by a physician of
every patient prior to the administration of other than local anesthesia.

§30-3-5. West Virginia board of medicine created; transfer of powers and duties from medical licensing board; appointment and terms of members; vacancies; removal.

There is hereby created a medical licensing board to be known as the "West Virginia board of medicine." The West Virginia board of medicine shall assume, carry on and succeed to all the duties, rights, powers, obligations and liabilities heretofore belonging to or exercised by the medical licensing board of West Virginia. All the rules and regulations, orders, rulings, licenses, certificates, permits and other acts and undertakings of the medical licensing board of West Virginia as heretofore constituted shall continue as those of the West Virginia board of medicine until they expire or are amended, altered or revoked. The board shall be the sole authority for the issuance of licenses to practice medicine and surgery and to practice podiatry and certificates for physician assistants in this state and shall be a regulatory and disciplinary body for the practice of medicine and surgery and the practice of podiatry and for physician assistants in this state.

The board shall consist of thirteen members. One member shall be the state director of health ex officio, with the right to vote as a member of the board. The other twelve members shall be appointed by the governor, with the advice and consent of the Senate. Eight of the members shall be appointed from among individuals holding the degree of doctor of medicine and two shall hold the degree of doctor of podiatric medicine. Each of these members must be duly licensed to practice his profession in this state on the date of his appointment and must have been licensed and actively practicing his profession for at least five years immediately preceding the date of his appointment. Two lay members shall be appointed to further represent health care consumers. Neither the lay members nor any person within the lay member's immediate family shall be a provider of or
be employed by a provider of health care services. The state director of health's term shall continue for the period that he holds office as state director of health. Each other member of the board shall be appointed to serve a term of five years: Provided, That the members of the medical licensing board holding appointments on the effective date of this section shall continue to serve as members of the board of medicine until the expiration of their term unless sooner removed. Each term shall begin on the first day of October of the applicable year, and a member shall not be appointed to more than two consecutive full terms on the board.

Not more than four physicians, one podiatrist and one lay member appointed by the governor as members of the board shall belong to the same political party. A person is not eligible for membership on the board who is a member of any political party executive committee or, with the exception of the state director of health, who holds any public office or public employment under the federal government or under the government of this state or any political subdivision thereof or who is an appointee or employee of the state board of health.

In making appointments to the board, the governor shall, so far as practicable, select the members from different geographical sections of the state. When a vacancy on the board occurs and less than one year remains in the unexpired term, the appointee shall be eligible to serve the remainder of the unexpired term and two consecutive full terms on the board.

No member may be removed from office except for official misconduct, incompetence, neglect of duty or gross immorality: Provided, That the expiration or revocation of the professional license of a member of the board shall be cause for his removal.

§30-3-6. Conduct of business of West Virginia board of medicine; meetings; officers; compensation; expenses; quorum.

1 Every two years the board shall elect from among its members a president and vice president. Regular
meetings shall be held as scheduled by the rules and regulations of the board. Special meetings of the board may be called by the joint action of the president and vice president or by any three members of the board on seven days' prior written notice by mail or, in case of emergency, on two days' notice by telephone. With the exception of the state director of health, members of the board shall receive one hundred dollars for each day actually spent in attending the sessions of the board or its committees. A board member shall be reimbursed for all reasonable and necessary expenses actually incurred when a meeting is held in a location that is removed from the member's place of residence.

A majority of the membership of the board constitutes a quorum for the transaction of business, and business is transacted by a majority vote of a quorum, except for disciplinary actions which shall require the affirmative vote of not less than five members or a majority vote of those present, whichever is greater.

Meetings of the board shall be held in public session, except that the board may hold closed sessions to prepare, approve, grade or administer examinations and disciplinary proceedings shall be held in closed sessions, unless the party subject to discipline requests that the hearing be held in public session.

§30-3-7. Power and duties of West Virginia board of medicine.

(a) The board, in accordance with the provisions of this article, shall administer and supervise examinations and determine qualifications of applicants for licenses to practice medicine and surgery and to practice podiatry, shall issue licenses to qualified applicants and shall regulate the professional conduct and discipline of such individuals. In carrying out its functions, the board may:

(1) Adopt such regulations as are necessary to carry out the purposes of this article;

(2) Hold hearings and conduct investigations, subpoena witnesses and documents and administer oaths;
(3) Institute proceedings in the courts of this state to enforce its subpoenas for the production of witnesses and documents and its orders and to restrain and enjoin violations of this article and of any regulations promulgated under it;

(4) Employ investigators, attorneys, hearing examiners, consultants and such other employees as may be necessary;

(5) Enter into contracts and receive and disburse funds according to law;

(6) Establish and certify standards for the supervision and certification of physician assistants;

(7) Authorize medical and podiatry corporations in accordance with the provisions and subject to the limitations of section fifteen of this article to practice medicine and surgery or podiatry through duly licensed physicians or podiatrists;

(8) Establish a fee, not to exceed fifty dollars, for a reciprocal endorsement; and

(9) Perform such other duties as are set forth in this article or otherwise provided for in this code.

(b) The board shall submit an annual report of its activities to the Legislature. The report shall include a statistical analysis of complaints received, charges investigated, charges dismissed after investigation, the grounds for each such dismissal and disciplinary proceedings and disposition.

§30-3-8. State director of health to act as secretary of the board.

The state director of health, in addition to being a member of the board, shall act as its secretary and shall be in charge of its offices and responsible to the board for the maintenance of the offices and the preparation of application forms, licenses, reports and all other papers or documents that may be required by the board in the
performance of its duties. He shall, together with the 

president of the board, sign all licenses, reports and other 
documents.

§30-3-9. Records of board; expungement; examination; con-

fidentiality; release of records; criminal penalties 

for unauthorized disclosure; physician-patient priv-

ilege.

(a) The board shall maintain a permanent record of 

the names of all physicians and podiatrists licensed or 

otherwise lawfully practicing in this state and of all 

persons applying to be so licensed to practice, along with 

an individual historical record for each such individual 

containing reports and all other information furnished 

the board under this article or otherwise. Such record 

may include, in accordance with rules established by 

the board, additional items relating to the individual's 

record of professional practice that will facilitate proper 

review of such individual's professional competence.

(b) Upon a determination by the board that any report 

submitted to it is without merit, the report shall be 

expunged from the individual's historical record.

(c) A physician, podiatrist or applicant, or authorized 

representative thereof, has the right, upon request, to 

examine his own individual historical record maintained 

by the board pursuant to this article and to place into 

such record a statement of reasonable length of his own 

view of the correctness or relevance of any information 

existing in such record. Such statement shall at all times 

accompany that part of the record in contention.

(d) A physician, podiatrist or applicant has the right 

to seek through court action the amendment or ex-

pungement of any part of his historical record.

(e) A physician, podiatrist or applicant shall be pro-

vided written notice within thirty days of the placement 

and substance of any information in his individual his-

torical record that pertains to him and that was not 

submitted to the board by him.
(f) Except for information relating to biographical background, education, professional training and practice, prior disciplinary action by any entity and information contained on the licensure application, the board shall expunge information in an individual's historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

(g) Any reports, information or records received and maintained by the board pursuant to this article, including any such material received or developed by the board during any investigation or hearing, shall be strictly confidential. The board may only disclose any such confidential information in the following circumstances:

1. In an examination or disciplinary hearing sanctioned by the board or in any subsequent trial or appeal of a board action or order;

2. To physician or podiatrist licensing or disciplinary authorities of other jurisdictions, medical peer review committees, hospital governing bodies or other hospital or medical staff committees located within or outside this state which are concerned with granting, limiting or denying a physician or podiatrist hospital privileges: Provided, That the board shall include along with any such disclosure an indication as to whether or not such information has been substantiated;

3. Pursuant to an order of a court of competent jurisdiction; and

4. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any patient or physician is first deleted.

(h) Orders of the board, except for private reprimands, relating to disciplinary action against a physician or podiatrist are public information.

(i) Confidential information received, maintained or developed by the board or disclosed by the board to others as provided for in this article shall not under any circumstances be available for discovery or court sub-
poena or be introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide health care services.

(j) Any person who discloses confidential information possessed by the board in violation of the provisions of this article is 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.

(k) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.

§30-3-10. Qualifications for license to practice medicine and surgery and to practice podiatry; examinations; fees; educational training permit; temporary permits; continuance of former licenses and permits.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he must meet the following requirements:

(1) He shall submit an application to the board on a form provided by the board and remit to the board an examination fee not to exceed two hundred fifty dollars, the amount of such fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he is physically and mentally capable of engaging in the practice of medicine and surgery;
(2) He must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine which is approved by the liaison committee on medical education or by the board;

(3) He must submit evidence to the board of having completed a minimum of one year of graduate clinical training in a program approved by the board; and

(4) He must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the said board, or a majority of them, may accept in lieu of an examination of applicants, the certificate of the national board of medical examiners issued within the previous eight years, or diplomate certificate from an American specialty board: Provided, however, That any certificate or license to practice which is granted by the board by virtue of such diplomate certificate shall only be valid so long as the holder thereof maintains such diplomate certificate in good standing with the applicable American specialty board and no longer and such certification shall be limited to that specific specialty in the practice of medicine and surgery in this state. If an applicant fails to pass the examination on two occasions, he shall successfully complete a course of study or training, as approved by the board, designed to improve his ability to engage in the practice of medicine and surgery, before being eligible for reexamination.

(c) In addition to the requirements of subsection (b) hereof, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada, to be licensed to practice medicine in this state, must also meet the following additional requirements and limitations:

(1) He must be able to demonstrate to the satisfaction of the board his ability to communicate in the English language; and
(2) He must have fulfilled the requirements of the educational council for foreign medical graduates for certification before taking a licensure examination, including the receipt of a passing score on the educational council for foreign medical graduates examination; and

(3) An individual subject to the provisions of this subsection shall not be awarded a temporary permit unless such individual was a bona fide resident of this state for the six-month period preceding the filing of his application for such temporary permit: Provided further, That an individual subject to the provisions of this subsection who did not hold a temporary permit before June eight, one thousand nine hundred seventy-nine, shall be ineligible for a temporary permit if he has failed to pass the medical examination prescribed by the board on two or more occasions.

(d) For an individual to be licensed to practice podiatry in this state, he must meet the following requirements:

(1) He shall submit an application to the board on a form provided by the board and remit to the board an examination fee not to exceed two hundred fifty dollars, the amount of such fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine or its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant's fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he shall successfully complete a course of study or training, as approved by the board,
95 designed to improve his ability to engage in the practice
96 of podiatric medicine, before being eligible for reexamina-
97 tion.

98 (e) An individual meeting the requirements set forth
99 in subdivisions (1) and (2), subsection (b) and subdivi-
100 sions (1) and (2), subsection (c), if applicable, of this
101 section, may be granted an educational training permit to
102 practice medicine and surgery. Such permits shall autho-
103 rize the permit holder to practice medicine and surgery
104 only under the supervision of a licensed physician in a
105 training program approved by the liaison committee on
106 graduate medical education or the board. The board may
107 fix and collect a fee not to exceed fifty dollars for this
108 class of permit.

109 (f) If the board determines that the public health in a
110 specified geographical area of the state requires such
111 action, the board may grant a temporary permit to an
112 individual who meets the requirements set forth in sub-
113 divisions (1) and (2), subsection (b) and subdivisions (1)
114 and (2), subsection (c), if applicable, of this section. Such
115 license shall be limited to the specified geographical area
116 and is limited for a period of not more than one year. The
117 board may fix and collect a fee not to exceed fifty dollars
118 for this class of temporary permit.

119 (g) All licenses or temporary permits granted prior to
120 the effective date of this article and valid on the effect-
121 ive date of this article shall continue in full effect for
122 such term and under such conditions as provided by law
123 at the time of the granting of the license or temporary
124 permit: Provided, That any physician who has been
125 certified by the educational council for foreign medi-
126 cal graduates or who, as of the effective date of this
127 section, holds a temporary permit to practice in a pre-
128 scribed area, shall not when under the supervision of a
129 licensed physician be ineligible for a temporary license
130 permit to practice in any mental health or state-owned
131 facility and, in any hospital, clinic, physician's office and
132 any other approved health care facility until July one, one
133 thousand nine hundred eighty-two, by virtue of his failure
134 to pass the medical examination prescribed by the board,
so long as such physician shall take said examination at least once each year: Provided, however, That any such physician granted a temporary permit who fails to pass the medical examination prescribed by the board before July one, one thousand nine hundred eighty-two, shall be thereafter disqualified from obtaining any further temporary permits in this state: Provided further, That the provisions of subsection (d) of this section shall not apply to any person legally entitled to practice chiropody or podiatry in this state prior to June eleventh, one thousand nine hundred sixty-five: And provided further, That all persons licensed to practice chiropody prior to June eleventh, one thousand nine hundred sixty-five, shall be permitted to use the term "chiropody-podiatry" and shall have the rights, privileges and responsibilities of a podiatrist set out in this article.

§30-3-11. Endorsement of licenses to practice medicine and surgery and podiatry; fees; temporary license.

(a) Any person seeking to be licensed to practice medicine and surgery in this state who holds a valid license to practice medicine and surgery attained under requirements substantially similar to the requirements of section ten of this article from another state, the District of Columbia, the Commonwealth of Puerto Rico or Canada and any person seeking to be licensed to practice podiatry in this state who holds a valid license to practice podiatry attained under requirements substantially similar to the requirements in section ten of this article from another state, territory or foreign country or the District of Columbia shall be issued a license to practice medicine and surgery or podiatry, as appropriate, in this state if he meets the following requirements:

(1) He must submit an application to the board on forms provided by the board and remit a licensure fee, not to exceed one hundred fifty dollars, the amount of such fee to be set by the board. The application must, as a minimum, require a statement that the applicant is a licensed physician or podiatrist in good standing and indicate whether any medical disci-
plenary action has been taken against him in the past; and

(2) He must demonstrate to the satisfaction of the board that he has the requisite qualifications to provide the same standard of care as a physician or podiatrist initially licensed in this state.

(b) The board may investigate the applicant and may request a personal interview to review the applicant's qualifications and professional credentials.

(c) The board may, at its discretion, grant a temporary permit to an individual applying for licensure under this section if the individual meets the requirements of subdivision (1), subsection (a) of this section. Such temporary permit shall only be valid until the board is able to meet and consider the endorsement request. The board may fix and collect a fee not to exceed fifty dollars for a temporary permit.

§30-3-12. Biennial renewal of license to practice medicine and surgery and podiatry; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years and shall be renewed upon a receipt of a fee, not to exceed fifty dollars, as set by the board, and submission of an application on forms provided by the board.

(b) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state, but he may convert his inactive license to an active one upon a request to the board that accounts for his period of inactivity to the satisfaction of the board. An inactive license may be obtained upon receipt of a fee, not to exceed fifty dollars, as set by the board, and submission of an application on forms provided by the board on an annual basis.
§30-3-13. Unauthorized practice of medicine and surgery and podiatry; criminal penalties; limitations.

1 (a) A person shall not engage in the practice of medicine and surgery or podiatry, hold himself out as qualified to practice medicine and surgery or podiatry or use any title, word or abbreviation to indicate to or induce others to believe that he is licensed to practice medicine and surgery or podiatry in this state unless he is actually licensed under the provisions of this article. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

13 (b) The provisions of this section do not apply to:

14 (1) Persons who are duly licensed health care providers under other pertinent provisions of this code and are acting within the scope of their license;

17 (2) Physicians or podiatrists licensed in other states or foreign countries who are acting in a consulting capacity with physicians or podiatrists duly licensed in this state, for a period of not more than three months;

21 (3) Persons holding licenses granted by another state or foreign country who are commissioned medical officers of, a member of or employed by the armed forces of the United States, the United States public health service, the veterans' administration of the United States, any federal institution or any other federal agency while engaged in the performance of their official duties;

28 (4) Any person providing first aid care in emergency situations;

30 (5) The practice of the religious tenets of any recognized church in the administration of assistance to the sick or suffering by mental or spiritual means;

33 (6) Visiting medical faculty engaged in teaching or research duties at a medical school or institution recognized by the board and who are in this state for periods
of not more than six months: Provided, That such indi-
viduals do not otherwise engage in the practice of medi-
cine or podiatry outside of the auspices of their sponsor-
ing institutions;

(7) Persons enrolled in a school of medicine approved
by the liaison committee on medical education or by the
board, or persons enrolled in a school of podiatric medi-
cine approved by the council of podiatry education or by
the board, or engaged in graduate medical training in a
program approved by the liaison committee on graduate
medical education or the board who are performing func-
tions in the course of training; and

(8) The fitting, recommending or sale of corrective
shoes, arch supports or similar mechanical appliances
in commercial establishments.

(c) This section shall not be construed as being in any
way a limitation upon the services of a physician as-
assistant performed in accordance with the provisions of
this article.

§30-3-14. Professional discipline of physicians and podiatrists;
disclosure of medical peer review committee in-
formation; reporting of professional malpractice
and professional incompetence to board; report-
ing to board by hospital officer, professional so-
cieties, professional liability insurers, and clerks
of courts of record; independence of board ac-
tion; grounds for license denial and discipline of
physicians and podiatrists; investigations; physical
and mental examinations; hearings; sanctions;
summary sanctions; reporting by the board; re-
application; civil and criminal immunity; volun-
tary limitation of license.

(a) The board may independently initiate disciplinary
proceedings as well as initiate disciplinary proceedings
based on information received from medical peer review
committees, physicians, podiatrists, hospital administra-
tors, professional societies and others.

(b) Any medical peer review committee in this state
shall, upon request of the board, disclose to the board
information that may relate to the practice or perfor-
mance of any physician or podiatrist known to that
medical peer review committee.

Any medical peer review committee, any physician
or podiatrist licensed to practice or otherwise lawfully
practicing his profession within this state, any physician
assistant and any other person may report to the board
relevant facts about the conduct of any physician or
podiatrist in this state which in the opinion of the medi-
cal peer review committee, physician, podiatrist or physi-
cian assistant amounts to professional malpractice
or professional incompetence: Provided, That copies
of requests for information from a medical peer
review committee under the first paragraph of this sub-
section may be provided to the subject physician or
podiatrist, and in such case the physician or podiatrist
has fifteen days to comment on the requested informa-
tion and his comments must be considered by the board,
however, such notification shall not be given if the
board determines notification may jeopardize its in-
vestigation.

The chief executive officer of every hospital shall
within sixty days after the completion of the hospital's
formal disciplinary procedure and also after any result-
ing legal action, report in writing to the board the name
of any member of the medical staff or any other physi-
cian or podiatrist practicing in the hospital whose hospi-
tal privileges have been revoked, restricted, reduced or
terminated for any cause, including resignation, to-
gether with all pertinent information relating to such
action. The chief executive officer shall also report any
other formal disciplinary action taken against any phy-
sician or podiatrist by the hospital upon the recom-
mendation of its medical staff relating to professional
ethics, medical incompetence, medical malpractice, moral
turpitude or drug or alcohol abuse. This paragraph does
not apply to any temporary suspension for failure to
maintain records on a timely basis or for failure to attend
staff or section meetings.
Any professional society in this state comprised primarily of physicians or podiatrists which takes formal disciplinary action against a member relating to professional ethics, professional incompetence, professional malpractice, moral turpitude or drug or alcohol abuse, shall within sixty days of a final decision report in writing to the board the name of such member, together with all pertinent information relating to such action.

The filing of a report with the board pursuant to any provision of this article, any investigation by the board or any disposition of a case by the board does not preclude any action by a hospital, other health care facility or professional society comprised primarily of physicians or podiatrists to suspend, restrict or revoke the privileges or membership of such physician or podiatrist.

Every insurer providing professional liability insurance to a physician or podiatrist in this state shall submit to the board the following information within thirty days from any judgment, dismissal or settlement of a civil action involving the insured; the date of any judgment, dismissal or settlement; whether any appeal has been taken on the judgment, and, if so, by which party; the amount of any settlement or judgment against the insured; and such other information within the knowledge of the insurer as the board requires.

Within thirty days after the conviction of a person known to be a physician or podiatrist licensed or otherwise lawfully practicing medicine and surgery or podiatry in this state or applying to be so licensed of a felony under the laws of this state, the clerk of the court of record in which the conviction was entered shall forward to the board a certified true and correct abstract of record of the convicting court. The abstract shall include the name and address of such physician or podiatrist or applicant, the nature of the offense committed and the final judgment and sentence of the court.

The board shall provide forms for filing reports pursuant to this section. Reports submitted in other forms shall be accepted by the board.
(c) The board may deny an application for license or other authorization to practice medicine and surgery or podiatry in this state and may discipline a physician or podiatrist licensed or otherwise lawfully practicing in this state who, after a hearing, has been adjudged by the board as unqualified due to any of the following reasons:

(1) Attempting to obtain, obtaining, renewing or attempting to renew a license to practice medicine and surgery or podiatry by bribery, fraudulent misrepresentation or through known error of the board.

(2) Being found guilty of a crime in any jurisdiction, which offense is a felony, involves moral turpitude or directly relates to the practice of medicine. Any plea of nolo contendere is a conviction for the purposes of this subdivision.

(3) False or deceptive advertising.

(4) Aiding, assisting, procuring or advising any unauthorized person to practice medicine and surgery or podiatry contrary to law.

(5) Making or filing a report that the person knows to be false; intentionally or negligently failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record required by state or federal law; or inducing another person to do any of the foregoing. Such reports and records as are herein covered mean only those that are signed in the capacity as a licensed physician or podiatrist.

(6) Requesting, receiving or paying directly or indirectly a payment, rebate, refund, commission, credit or other form of profit or valuable consideration for the referral of patients to any person or entity in connection with providing medical or other health care services or clinical laboratory services, supplies of any kind, drugs, medication or any other medical goods, services or devices used in connection with medical or other health care services.
(7) It is unprofessional conduct for any physician or podiatrist to refer a patient to any clinical laboratory in which the physician or podiatrist has a proprietary interest unless such physician or podiatrist discloses in writing such interest to the patient. Such written disclosure shall indicate that the patient may choose any clinical laboratory for purposes of having any laboratory work or assignment performed.

As used herein “proprietary interest” does not include an ownership interest in a building in which space is leased to a clinical laboratory at the prevailing rate under a lease arrangement that is not conditional upon the income or gross receipts of the clinical laboratory.

(8) Exercising influence within a patient-physician relationship for the purpose of engaging a patient in sexual activity.

(9) Making a deceptive, untrue or fraudulent representation in the practice of medicine and surgery or podiatry.

(10) Soliciting patients, either personally or by an agent, through the use of fraud, intimidation or undue influence.

(11) Failing to keep written records justifying the course of treatment of a patient, such records to include, but not be limited to, patient histories, examination and test results and treatment rendered, if any.

(12) Exercising influence on a patient in such a way as to exploit the patient for financial gain of the physician or podiatrist or a third party. Any such influence includes, but is not limited to, the promotion or sale of services, goods, appliances or drugs.

(13) Prescribing, dispensing, administering, mixing or otherwise preparing a prescription drug, including any controlled substance under state or federal law, other than in good faith and in a therapeutic manner in accordance with accepted medical standards and in the course of the physician's or podiatrist's professional practice.
(14) Performing any procedure or prescribing any therapy that, by the accepted standards of medical practice in the community, would constitute experimentation on human subjects without first obtaining full, informed and written consent.

(15) Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities that the person knows or has reason to know he is not competent to perform.

(16) Delegating professional responsibilities to a person when the physician or podiatrist delegating such responsibilities knows or has reason to know that such person is not qualified by training, experience or licensure to perform them.

(17) Violating any provision of this article or a rule or order of the board, or failing to comply with a subpoena or subpoena duces tecum issued by the board.

(18) Conspiring with any other person to commit an act or committing an act that would tend to coerce, intimidate or preclude another physician or podiatrist from lawfully advertising his services.

(19) Gross negligence in the use and control of prescription forms.

(20) Professional incompetence.

(21) The inability to practice medicine and surgery or podiatry with reasonable skill and safety due to physical or mental disability, including deterioration through the aging process or loss of motor skill or abuse of drugs or alcohol. A physician or podiatrist adversely affected under this subdivision shall be afforded an opportunity at reasonable intervals to demonstrate that he can resume the competent practice of medicine and surgery or podiatry with reasonable skill and safety to patients. In any proceeding under this subdivision, neither the record of proceedings nor any orders entered by the board shall be used against the physician or podiatrist in any other proceeding.
(d) The board shall deny any application for a license or other authorization to practice medicine and surgery or podiatry in this state to any applicant who, and shall revoke the license of any physician or podiatrist licensed or otherwise lawfully practicing within this state who, is found guilty by any court of competent jurisdiction of any felony involving prescribing, selling, administering, dispensing, mixing or otherwise preparing any prescription drug, including any controlled substance under state or federal law, for other than generally accepted therapeutic purposes. Presentation to the board of a certified copy of the guilty verdict or plea rendered in the court is sufficient proof thereof for the purposes of this article. A plea of nolo contendere has the same effect as a verdict or plea of guilt.

(e) The board may refer any cases coming to its attention to an appropriate state committee of an appropriate professional organization for investigation and report. Any such report shall contain recommendations for any necessary disciplinary measures and shall be filed with the board within ninety days of any such referral. The recommendations shall be considered by the board and the case may be further investigated by the board. The board after full investigation shall take whatever action it deems appropriate, as provided herein.

(f) The investigating body, as provided for in subsection (e) of this section, may request and the board under any circumstances may require a physician or podiatrist or person applying for licensure or other authorization to practice medicine and surgery or podiatry in this state to submit to a physical or mental examination by a physician or physicians approved by the board. A physician or podiatrist submitting to any such examination has the right, at his expense, to designate another physician to be present at the examination and make an independent report to the investigating body or the board. The expense of the examination shall be paid by the board. Any individual who applies for or accepts the privilege of practicing medicine and surgery
or podiatry in this state is deemed to have given his consent to submit to all such examinations when requested to do so in writing by the board and to have waived all objections to the admissibility of the testimony or examination report of any examining physician on the ground that the testimony or report is privileged communication. If a person fails or refuses to submit to any such examination under circumstances which the board finds are not beyond his control, such failure or refusal is prima facie evidence of his inability to practice medicine and surgery or podiatry competently and in compliance with the standards of acceptable and prevailing medical practice.

(g) In addition to any other investigators it employs, the board may appoint one or more licensed physicians to act for it in investigating the conduct or competence of a physician.

(h) In every disciplinary or licensure denial action the board shall furnish the physician or podiatrist or applicant with written notice setting out with particularity the reasons for its action. Disciplinary and licensure denial hearings shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code. However, hearings shall be heard upon sworn testimony and the rules of evidence for trial courts of record in this state shall apply to all such hearings. A transcript of all hearings under this section shall be made, and the respondent may obtain a copy of the transcript at his expense. The physician or podiatrist has the right to defend against any such charge by the introduction of evidence, the right to be represented by counsel, the right to present and cross-examine witnesses and the right to have subpoenas and subpoenas duces tectum issued on his behalf for the attendance of witnesses and the production of documents. Except for private reprimands, the board shall make all its final actions public. The order shall contain the terms of all action taken by the board.

(i) Whenever it finds any person unqualified because
of any of the grounds set forth in subsection (c) of this section, the board may enter an order imposing one or more of the following:

(1) Deny his application for a license or other authorization to practice medicine and surgery or podiatry;

(2) Administer a public or private reprimand;

(3) Suspend, limit or restrict his license or other authorization to practice medicine and surgery or podiatry for not more than five years, including limiting the practice of such person to, or by the exclusion of, one or more areas of practice, including limitations on practice privileges;

(4) Revoke his license or other authorization to practice medicine and surgery or podiatry or to prescribe or dispense controlled substances;

(5) Require him to submit to care, counseling or treatment designated by the board as a condition for initial or continued licensure or renewal of licensure or other authorization to practice medicine and surgery or podiatry;

(6) Require him to participate in a program of education prescribed by the board; and

(7) Require him to practice under the direction of a physician or podiatrist designated by the board for a specified period of time.

(j) Notwithstanding the provisions of section eight, article one, chapter thirty of this code, if the board determines the evidence in its possession indicates that a physician's or podiatrist's continuation in practice or unrestricted practice constitutes an immediate danger to the public, the board may take any of the actions provided for in subsection (i) of this section on a temporary basis and without a hearing, if institution of proceedings for a hearing before the board are initiated simultaneously with the temporary action and begin within fifteen days of such action. The board shall render its decision within five days of the conclusion of a hearing under this subsection.
(k) Any person against whom disciplinary action is taken pursuant to the provisions of this article has the right of judicial review as provided in articles five and six, chapter twenty-nine-a of this code. Except with regard to an order of temporary suspension of a license for six months or less, a person shall not practice medicine and surgery or podiatry or deliver health care services in violation of any disciplinary order revoking or limiting his license while any such review is pending. Within sixty days the board shall report its final action regarding restriction, limitation, suspension or revocation of the license of a physician or podiatrist, limitation on practice privileges or other disciplinary action against any physician or podiatrist to all appropriate state agencies, appropriate licensed health facilities and hospitals, insurance companies or associations writing medical malpractice insurance in this state, the American Medical Association, the American Podiatry Association, professional societies of physicians or podiatrists in the state and any entity responsible for the fiscal administration of medicare and medicaid.

(l) Any person against whom disciplinary action has been taken under the provisions of this article shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the practice of medicine and surgery or podiatry on a general or limited basis. At the conclusion of a suspension, limitation or restriction period, the physician or podiatrist has the right to resume practice pursuant to the orders of the board: Provided, That for a revocation pursuant to subsection (d) of this section a reapplication shall not be accepted for a period of at least five years.

(m) Any entity, organization or person, including the board, any member of the board, its agents or employees and any entity or organization or its members referred to in this article, any insurer, its agents or employees, a medical peer review committee and a hospital governing board, its members or any committee appointed by it acting without malice and without gross negligence in making any report or other information available
to the board or a medical peer review committee pursuant to law and any person, acting without malice and without gross negligence who assists in the organization, investigation or preparation of any such report or information or assists the board or a hospital governing body or any such committee in carrying out any of its duties or functions provided by law is immune from civil or criminal liability, except that the unlawful disclosure of confidential information possessed by the board is a misdemeanor as provided for in this article.

(n) A physician or podiatrist may request in writing to the board a limitation on or the surrendering of his license to practice medicine and surgery or podiatry or other appropriate sanction as provided herein. The board may grant such request and if it considers it appropriate, may waive the commencement or continuation of other proceedings under this section. A physician or podiatrist whose license is limited or surrendered or against whom other action is taken under this subsection has a right at reasonable intervals to petition for removal of any restriction or limitation on or for reinstatement of his license to practice medicine and surgery or podiatry.

§30-3-15. Medical corporations; podiatry corporations; application for registration; fees; notice to secretary of state of issuance of certificate; action by secretary of state; rights and limitations generally; biennial registration; when practice to cease; admissibility and effect of certificate signed by secretary of board; criminal penalty; severability.

(a) When one or more physicians duly licensed to practice medicine and surgery in this state or one or more podiatrists duly licensed to practice podiatry in this state wish to form a medical or podiatry corporation, respectively, such physician or physicians or podiatrist or podiatrists shall file a written application therefor with the board on a form prescribed by it and shall furnish proof satisfactory to the board that each applicant is a duly licensed physician or podiatrist. A
fee, not to exceed five hundred dollars, the amount of
such fee to be set by the board, shall accompany each
application. Upon its determination that each applicant
is duly licensed, the board shall notify the secretary of
state that a certificate of authorization has been issued
to the person or persons making the application. When
the secretary of state receives such notification from
the board, he shall attach such authorization to the
corporation application and, upon compliance by the
corporation with the pertinent provisions of chapter
thirty-one of this code, shall notify the incorporators that
such corporation, through duly licensed physicians or
through duly licensed podiatrists, may engage in the prac-
tice of medicine and surgery or the practice of podiatry.

(b) A medical corporation may practice medicine and
surgery only through individual physicians duly licensed
to practice medicine and surgery in this state and a
podiatrist may practice podiatry only through indivi-
dual podiatrists duly licensed to practice podiatry in this
state, but such physicians or podiatrists may be em-
ployees rather than shareholders of such corporation,
and nothing herein contained shall be construed to re-
quire a license for or other legal authorization of any
individual employed by such corporation to perform
services for which no license or other legal authoriza-
tion is otherwise required. Nothing contained in this
article is meant or intended to change in any way the
rights, duties, privileges, responsibilities and liabilities
incident to the physician-patient or podiatrist-patient
relationship nor is it meant or intended to change in
any way the personal character of the physician-patient
or podiatrist-patient relationship. A corporation holding
such certificate of authorization shall register biennially,
on or before the thirtieth day of June, on a form pre-
scribed by the board, and shall pay an annual registration
fee not to exceed three hundred dollars, the amount of
such fee to be set by the board.

(c) A medical or podiatry corporation holding a
certificate of authorization shall cease to engage in the
practice of medicine and surgery or the practice of
podiatry upon being notified by the board that any of its shareholders is no longer a duly licensed physician or podiatrist, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed physician or podiatrist: Provided, That the personal representative of a deceased shareholder shall have a period, not to exceed twelve months from the date of such shareholder's death, to dispose of such shares; but nothing contained herein shall be construed as affecting the existence of such corporation or its right to continue to operate for all lawful purposes other than the practice of medicine and surgery or the practice of podiatry.

(d) No corporation shall practice medicine and surgery or any of its branches, or hold itself out as being capable of practicing medicine and surgery, or practice podiatry or hold itself out as being capable of practicing podiatry, without a certificate from the board; nor shall any corporation practice medicine and surgery or any of its branches or hold itself out as being capable of practicing medicine and surgery, or practice podiatry or hold itself out as being capable of practicing podiatry, after its certificate has been revoked, or if suspended, during the term of such suspension. A certificate signed by the secretary of the board to which is affixed the official seal of the board to the effect that it appears from the records of the board that no such certificate to practice medicine and surgery or any of its branches, or to practice podiatry, in the state has been issued to any such corporation specified therein or that such certificate has been revoked or suspended shall be admissible in evidence in all courts of this state and shall be prima facie evidence of the facts stated therein.

(e) Any officer, shareholder or employee of such corporation who participates in a violation of any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars.

(f) If any provision of this section is held to be invalid, such invalidity shall not affect the other provisions of this section which can be given effect without
§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; reciprocity; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; unlawful representation of physician assistants as a physician; criminal penalties.

(a) As used in this section:

(1) "Type A physician assistant" means an assistant to a primary care physician who is a graduate of an approved program of instruction in primary health care, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of the primary care physician;

(2) "Type B physician assistant" means an assistant to a physician who is a graduate of an approved program for instruction in a recognized clinical specialty or has received training from a physician adequate to qualify him to perform patient services in that specialty as defined by the supervising physician;

(3) "Supervising physician" means a doctor of medicine or podiatry permanently licensed in this state who assumes legal and supervisory responsibility for the work or training of any physician assistant under his supervision;

(4) "Approved program" means an educational program for physician assistants approved and accredited by the American Medical Association or American Podiatry Association; and

(5) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office.
(b) The board shall promulgate rules and regulations governing the extent to which physician assistants may function in this state. Such regulations shall provide that the physician assistant is limited to the performance of those services for which he is trained and that he performs only under the supervision and control of a physician permanently licensed in this state, but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the supervising physician. The supervising physician may send the physician assistant off the premises to perform duties under his direction, but a separate place of work for the physician assistant shall not be established. In promulgating such rules and regulations, the board shall allow the physician assistant to perform those procedures and examinations submitted to it in the job description required by subsection (g) of this section. The board shall compile and publish an annual report that includes a list of currently certified physician assistants and their employers and location in the state; a list of approved programs; the number of graduates of such approved programs each year and the number of physician assistants from other states practicing in this state.

(c) The board shall certify as a Type A physician assistant any person who files an application and furnishes satisfactory evidence to it that he has met the following standards:

1. He is a graduate of an approved program of instruction in primary health care;

2. He has passed the examination for a primary care physician assistant and is certified by the national board of medical examiners; and

3. He is of good moral character.

The board may certify as a Type B physician assistant any person who files an application and furnishes satis-
factory evidence to it that he has met the following standards:

(1) He is a graduate of an approved program in a recognized clinical specialty;

(2) He has received specialized training and experience from a physician adequate for him to perform patient services in that specialty; and

(3) He is of good moral character.

Certification of an assistant to a physician practicing the specialty of ophthalmology is not permitted or required under this section.

(d) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with subsection (g) of this section, for a Type A physician assistant certificate, the board shall issue to such applicant a temporary certificate allowing such applicant to function as a Type A physician assistant for the period of one year. Said temporary certificate may be renewed for one additional year upon the request of the supervising physician. A Type A physician assistant who has not been certified as such by the National Board of Medical Examiners will be restricted to work under the direct supervision of the supervising physician.

(e) Certification of a Type B physician assistant is subject to review and recertification annually for the five years following the first certification. Recertification
102 requires a report from the supervising physician of a
103 Type B physician assistant which must include a per-
104 formance evaluation, a summary of experience or con-
105 tinuing medical education and any proposed change in
106 job description.

(f) The board may certify as a physician assistant in
108 this state without examination any person who has been
109 certified or licensed by examination in another state of
110 the United States which has requirements substantially
111 equivalent to the requirements of this section.

(g) Any physician applying to the board to supervise
113 either a Type A or Type B physician assistant shall
114 provide a job description that sets forth the range of
115 medical services to be provided by such assistant. Be-
116 fore a physician assistant can be employed or other-
117 wise use his skills, the supervising physician must ob-
118 tain approval of the job description from the board.

The board may revoke or suspend any certification of an
120 assistant to a physician for cause, after giving such per-
121 son an opportunity to be heard in the manner provided
122 by sections eight and nine, article one of this chapter.

(h) The supervising physician is responsible for ob-
124 serving, directing and evaluating the work, records and
125 practices of each physician assistant performing under
126 his supervision. He shall notify the board in writing
127 of any termination of his supervisory relationship with a
128 physician assistant within ten days of the termination.

The legal responsibility for any physician assistant re-
130 mains with the supervising physician at all times, in-
131 cluding occasions when the assistant under his direction
132 and supervision, aids in the care and treatment of a
133 patient in a health care facility. A health care facility
134 is not legally responsible for the actions or omissions
135 of the physician assistant unless the physician assistant
136 is an employee of the facility.

(i) When functioning as a physician assistant, the
138 physician assistant shall wear a name tag that identifies
139 him and specifies his type of classification and the name
140 of his supervising physician. A two and one-half by
three and one-half inch card of identification shall be furnish
ed by the board upon certification of the physician assistant and shall specify the type of classification.

(j) A supervising physician shall not supervise at any one time more than two physician assistants.

A physician assistant shall not sign any prescription. He shall not perform any service that his supervising physician is not qualified to perform. He shall not perform any service that is not included in his job description and approved by the board as provided for in this section.

The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(k) Each job description submitted by a licensed supervising physician shall be accompanied by a fee of fifty dollars. A fee of five dollars shall be charged for the annual renewal of the certificate.

(l) It is unlawful for any person who is not certified by the board as a physician assistant to use the title of "physician assistant" or to represent to any other person that he is a physician assistant. Any person who violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

(m) It is unlawful for any physician assistant to represent to any person that he is a physician, surgeon or podiatrist. Any person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

§30-3-17. Limitation of article.

The practice of medicine and surgery by persons pos-
2 sessing the degree of doctor of osteopathy and authorized
3 by the laws of this state to practice medicine and surgery
4 shall in no way be affected by the provisions of this
5 article.

CHAPTER 84
(Com. Sub. for S. B. 603—By Mr. Nelson)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article seven, chapter twenty-seven of said code; and to amend and reenact section thirty-one, article five, chapter twenty-eight of said code, relating to involuntary commitment of mentally ill persons; providing for magistrates to order temporary detention, not to exceed twenty-four hours, of persons needing immediate protective detention pending presentation of application for involuntary commitment to circuit court or mental hygiene commissioner; relating to discharges from orders of commitment to mental health facilities and removing therefrom provisions for restoration of legal capacity as a result of such discharge; relating to the transfer of convicted persons from jails, prisons and other facilities to treatment facilities; providing for filing of application for transfer in certain circuit courts by chief correctional officer; providing for notice to the person and to the chief administrative officer of the facility to which transfer is sought and for the filing of objections; providing for appointment of counsel for indigent convicted persons; requiring certain procedures; requiring hearings when application is opposed; and providing for transfer upon finding by circuit court that needed treatment of convicted person is not available in penal facility but can be provided with necessary security at another facility.
Be it enacted by the Legislature of West Virginia:

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

Chapter
27. Mentally Ill Persons.

CHAPTER 27. MENTALLY ILL PERSONS.

Article
5. Involuntary Hospitalization.
7. Release, Discharge, and Readmission of Patients; Escapees.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

1 (a) When application for involuntary custody for examination may be made.—Any adult person may make application for involuntary hospitalization for examination of an individual when said person has reason to believe that:

6 (1) The individual is mentally ill, mentally retarded or addicted, and
8 (2) That because of his mental illness, mental retardation or addiction, the individual 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 psychologist.

13 (b) Oath; to whom application for involuntary custody for examination is made; contents of application; custody; probable cause hearing; examination.

16 (1) The person making such application shall do so under oath.
(2) Application for involuntary custody for examination may be made to the circuit court or mental hygiene commissioner of the county in which the individual resides, or of the county in which he may be found.

(3) The person making such application shall give such information and state such facts therein as may be required, upon the form provided for this purpose by the department of health.

(4) The circuit court or mental hygiene commissioner may thereupon enter an order for the individual named in such action to be detained and taken into custody, for the purpose of holding a probable cause hearing described in subdivision (5) of this subsection and for the purpose of an examination of the individual by one physician or one psychologist. The said order shall specify the sequence in which such hearing and examination shall occur, shall require that such hearing be held forthwith, and shall appoint counsel for the individual.

In the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, a magistrate may accept the application and, upon a finding that such immediate detention is necessary pending presentation of the application to the circuit court or mental hygiene commissioner, may order the individual to be temporarily detained in custody until the earliest reasonable time that the application can be presented to the circuit court or mental hygiene commissioner, which temporary period of detention shall not exceed twenty-four hours.

(5) A probable cause hearing shall be held before a magistrate, the mental hygiene commissioner or circuit judge of the county of which the individual is a resident or where he was found. If requested by the individual or his counsel, the hearing may be postponed for a period not to exceed forty-eight hours.

The individual must be present at the hearing and shall have the right to present evidence, confront all witnesses
and other evidence against him, and to examine testimony offered. The individual shall have the right to remain silent and to be proceeded against in accord with the rules of evidence. At the conclusion of the hearing the magistrate, mental hygiene commissioner or circuit court shall find and enter an order stating whether or not there is probable cause to believe that such individual as a result of mental illness, mental retardation or addiction is likely to cause serious harm to himself or others.

ARTICLE 7. RELEASE, DISCHARGE, AND READMISSION OF PATIENTS; ESCAPEES.

§27-7-1. Discharge.

1. The chief medical officer of the mental health facility shall continually review the case of each individual who is an involuntary patient at the facility pursuant to article five of this chapter and shall as frequently as practicable, in any event at least once every three months, cause a complete psychiatric examination of each patient, and whenever it is determined that the conditions justifying involuntary hospitalization no longer exist or that the individual can no longer benefit from hospitalization, the chief medical officer shall discharge the patient, and forward a copy of the patient's discharge to the clerk of the circuit court or mental hygiene commissioner of the county in which the involuntary hospitalization was ordered and to the circuit court or mental hygiene commissioner of the county wherein the individual is a resident.

CHAPTER 28.
STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 5. THE PENITENTIARY.

§28-5-31. Mentally diseased convicts; treatment; transfer between penal and mental health facilities; penal facility procedures.

1. (a) No person who is, or was considered to be, mentally ill, mentally retarded or addicted shall be denied parole or a parole hearing based upon such past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but
for a condition warranting involuntary hospitalization
such person shall be paroled and proceedings instituted
pursuant to section four, article five, chapter twenty-
seven of this code. Any time spent in such
facility shall be considered part of the term, and any
person whose sentence expires while receiving treatment
for a mental condition shall be discharged unless pro-
ceedings have been instituted and a determination made
pursuant to section four, article five, chapter twenty-
seven of this code.

(b) When a convicted person in a jail, prison, or
other facility is believed to be mentally ill, mentally re-
tarded or addicted, as those terms are defined in article
one, chapter twenty-seven of this code, and in need of
treatment, training or other services, the facts relating
to such illness, shall be presented to the chief administra-
tive officer of the facility. Such facts may be presented
by a correctional officer, member of a correctional insti-
tution medical staff, relative, or the convicted person.
Immediately upon receipt of such facts, the chief ad-
mnistrative officer shall arrange for psychiatric or
psychological examination of the person alleged to be
so afflicted. If the report of the examination is to the
effect that the individual is mentally ill, mentally re-
tarded, or addicted and that treatment, training or other
services are required which cannot reasonably be pro-
vided at the correctional facility, the chief administrative
officer shall file within twenty days after presentation
of the facts an application for transfer with the clerk of
the circuit court of the county of location of the cor-
rectional facility. Such application for transfer shall in-
clude a statement of the nature of the treatment which
the person's condition warrants and the facility to which
transfer is sought.

Within ten days of receipt of the application from the
chief administrative officer, the mental hygiene commis-
sioner or circuit judge shall appoint counsel for the con-
victed person if the person is indigent.

The clerk of the circuit court shall forthwith notify
the convicted person, by certified mail, return receipt
46 requested, delivered only to addressee, that such appli-
47 cation has been filed, enclosing therewith a copy of the
48 application with an explanation of the place and purpose
49 of the transfer and the type of treatment to be afforded,
50 together with the name, address, and telephone number
51 of any appointed counsel. The person shall be afforded
52 reasonable telephone access to his counsel. The clerk
53 shall also notify the superintendent or other chief ad-
54 ministrative officer of the facility to which transfer is
55 sought. Within fifteen days after receipt of notice, the
56 convicted person, through counsel, shall file a verified
57 return admitting or denying the allegations and inform-
58 ing the court or mental hygiene commissioner as to
59 whether the respondent wishes to oppose the transfer.
60 Counsel shall file the return only after personal consulta-
61 tion with the convicted person. The superintendent of
62 the facility to which transfer is sought shall also file a
63 return within fifteen days of the receipt of notice, in-
64 forming the court or mental hygiene commissioner as to
65 whether the needed treatment or other services can
66 be provided within that facility. If said superintendent
67 objects to receiving the convicted person for treatment
68 or services, the reasons for such objection shall be speci-
69 fied in detail.

70 If the transfer is opposed by either the convicted person
71 or by the superintendent of the facility to which trans-
72 fer is sought, the matter shall forthwith be set for hear-
73 ing, in no event to exceed thirty days from the date of
74 the return opposing such transfer, and the clerk shall
75 provide to the convicted person, the superintendent of
76 the facility to which transfer is sought, and the super-
77 intendent of the correctional facility, at least ten days’
78 written notice, by certified mail, return receipt requested,
79 of the purpose, time and place of the hearing.

80 The convicted person shall be present at the hearing,
81 and be afforded an opportunity to testify and to present
82 and cross-examine witnesses. Counsel for the convicted
83 person shall be entitled to copies of all medical reports
84 upon request. The person shall have the right to an
85 examination by an independent expert of the person’s
86 choice and testimony from such expert as a medical
witness on the person's behalf. The cost of providing such
medical expert shall be borne by the state if the person
is indigent. The person shall not be required to give
testimony which is self-incriminating. The circuit court
or mental hygiene commissioner shall hear evidence from
all parties, in accord with the rules of evidence. A trans-
script or recording shall be made of all proceedings, and
transcript made available to the person within thirty
days, if the same is requested for the purpose of further
proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of
the evidence presented therein, the circuit court or
mental hygiene commissioner shall make findings of
facts as to whether or not (1) the individual is mentally
ill, mentally retarded or addicted; (2) the individual be-
cause of mental illness, mental retardation or addiction
is likely to cause serious harm to self or others; (3) the
individual could not obtain the requisite treatment or
training at the correctional facility or another appropri-
ate correctional facility; and (4) the designated facility
to which transfer is sought could provide such treat-
ment or training with such security as the court finds
appropriate; and, if all such findings are in the affirmative,
the circuit court may order the transfer of such person
to the appropriate facility. The findings of fact shall be
incorporated into the order entered by the circuit court.
In all proceedings hereunder, proof of mental condition
and of likelihood of serious harm must be established
by clear, cogent and convincing evidence, and the likeli-
hood of serious harm must be based upon evidence of
recent overt acts.

CHAPTER 85
(H. & 961—By Mr. Albright)

[Passed January 29, 1980; in effect ninety days from passage. Approved by the Governor.]
amended, by adding thereto a new section, designated section six, relating generally to the disposition of property of incompetents and the survival of powers of attorney executed prior to incompetency.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. COMMITTEE; DISPOSITION OF PROPERTY.

§27-11-6. Survival of powers of attorney following disability or incompetence.

(a) The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of an attorney-in-fact who acts under a power of attorney in a writing executed by such principal prior to such disability or incompetence if such writing contains the words "This power of attorney shall not be affected or terminated by the subsequent disability or incompetence of the principal," or words of similar import clearly showing the intent of such principal that the authority conferred in such writing shall be exercisable notwithstanding the subsequent disability or incompetence of such principal.

(b) All acts done by an attorney-in-fact pursuant to a power granted pursuant to subsection (a) of this section during any period of disability or incompetence shall have the same effect and inure to the benefit of and bind a principal and his distributees, devisees, legatees and personal representatives as if such principal were competent and not disabled.

(c) The power and authority granted in this section to an attorney-in-fact or other agent is terminated upon the appointment of a committee or conservator for the principal under other provisions of this code.

(d) This section shall not be construed so as to alter or
24 affect any provision for revocation or termination contained in
25 any written power of attorney.

CHAPTER 86
(Com. Sub. for H. B. 928—By Mr. Caudle and Mr. Schifano)

Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend and reenact article ten-a, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one, article three, chapter fifty-eight of said code, all relating to mentally retarded and mentally handicapped persons generally; defining certain terms with respect thereto; providing for guardianships of mentally retarded and handicapped persons in the state; providing for applications to county commission by parents and interested persons, corporations and governmental agencies and by executors of estates of parents when directed by will to make application; providing for consent of parents unless parents cannot be located despite diligent efforts and use of all reasonable means; providing for powers and duties of guardians for control of the person, estate and moneys paid on behalf of such mentally retarded or handicapped persons; providing for duration of guardianship until terminated by county commission; requiring mentally retarded and mentally handicapped persons who are eighteen years of age or older to be present at hearings and providing for certain exceptions when such persons are not required to be present; providing for limited guardianships and standby guardianships; permitting nonprofit corporations to act as guardians, limited guardians and standby guardians of mentally retarded or mentally handicapped persons; giving the state director of health and the county commissions of the state powers, duties and responsibilities with respect thereto; relating to a certain licensure and certain compensation for certain corporations that are guardians; and providing for appeals to circuit courts from orders
of county commissions appointing and qualifying guardians and fiduciaries.

Be it enacted by the Legislature of West Virginia:

That article ten-a, chapter forty-four 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 fifty-eight of said code, as amended, be amended and reenacted, all to read as follows:

Chapter
44. Administration of Estates and Trusts.
58. Appeal and Error.

CHAPTER 44. ADMINISTRATION OF ESTATES
AND TRUSTS.

ARTICLE 10A. GUARDIANS OF MENTALLY RETARDED AND
MENTALLY HANDICAPPED PERSONS.

§44-10A-1. Guardianship of mentally retarded and mentally handicapped persons generally.

§44-10A-2. Limited guardianship.

§44-10A-3. Duration of guardianship.

§44-10A-4. Standby guardianship.

§44-10A-5. Application of other provisions.

§44-10A-6. Guardianship by nonprofit corporations; authority; licensure; compensation.

§44-10A-1. Guardianship of mentally retarded and mentally handicapped persons generally.

1 When it shall appear to the satisfaction of the county commission that a person is a mentally retarded person as defined in section three, article one, chapter twenty-seven of this code, or is otherwise mentally handicapped, that such condition is certified as being permanent in nature by at least two physicians licensed to practice medicine in this state or one such physician and one licensed psychologist having qualifications to make such certification and that such person requires in his best interests the appointment of a guardian, the county commission is authorized and empowered upon application of both parents, natural or adoptive, if living, or upon application of one such parent and the consent of the other, if living,
or upon application of the executor of the estate of the last surviving parent of such person when directed to do so by the last will and testament of such parent, or upon application of any other interested person, corporation or governmental agency, if the parents are not living, or if they both or one of them be living, with the consent of such parents or surviving parent, to appoint a guardian and to specify the powers and duties the guardian shall exercise for the person of such person, the estate of such person, and any moneys from any source as may be paid on behalf of such person to the guardian or to another party: Provided, That such consent of a parent shall not be necessary if it is shown, upon oath or affirmation, that such parent cannot be located to request such consent despite the diligent efforts of applicant by use of all reasonable means to do so. For the purposes of this chapter, "mentally handicapped person" shall mean any person with a condition medically determined which results in a substantial mental impairment of general intellectual functioning and which results in that person’s inability to function normally in society for his own best interests.

§44-10A-2. Limited guardianship.

When it shall appear to the satisfaction of the county commission that such mentally retarded or mentally handicapped person for whom an application for guardianship is made is over the age of eighteen years and is wholly or substantially self-supporting by means of his wages or earnings from employment, the county commission is authorized and empowered to appoint a limited guardian for such mentally retarded or mentally handicapped person who shall receive, manage, disburse and account for only such property of said mentally retarded or mentally handicapped person as shall be received from other than the wages or earnings of said person.

The mentally retarded or mentally handicapped person for whom a limited guardian has been appointed shall have the right to receive and expend any and all wages or other earnings of his employment and shall have the power to contract or legally bind himself for any sum of money which in the aggregate shall not exceed one month’s wages or earnings.
from such employment or the sum of three hundred dollars, whichever is less, in any one month.

In all other respects the requirements, powers and duties of a limited guardian shall be the same as those of a committee as set forth in article eleven, chapter twenty-seven of this code unless otherwise specified by the county commission. A nonprofit corporation may serve as a limited guardian under the conditions set forth in section six of this article.

§ 44-10A-3. Duration of guardianship.

Such guardianship shall not terminate at the age of majority or upon marriage and such limited guardianship shall not terminate upon marriage but shall continue during the life of such mentally retarded or mentally handicapped person or until terminated by the county commission. A person of the age of eighteen or more years for whom a guardian has been appointed and a person for whom a limited guardian has been appointed may however petition the county commission which made such appointment or the county commission of his county of residence to have the guardianship or limited guardianship terminated or, in the alternative, to have the guardian or limited guardian discharged and a successor appointed, or to have the guardian designated as a limited guardian.

Upon such a petition for review or upon a petition for appointment of a guardian in the first instance for a mentally retarded or mentally handicapped person over the age of eighteen years or upon a petition for appointment of a limited guardian in the first instance for any such person, the county commission shall conduct a hearing at which such person shall be present. Notwithstanding any requirement hereof to the contrary such hearing may proceed without the presence of the individual alleged to be mentally retarded or mentally handicapped if (1) proper notice has been served upon the party alleged to be mentally retarded or mentally handicapped, and (2) a duly licensed physician shall have certified in writing and upon affidavit that he or she has examined such individual and that such individual is physically unable to appear at such hearing or that such an appearance would
likely impair or endanger the health of such individual, or
(3) such individual refuses to appear, and (4) upon the
specific written findings by such commission of facts as will
justify a hearing without the presence of such individual
as provided in this section.

§44-10A-4. Standby guardianship.

(a) Upon application or consent of both parents, natural
or adoptive, if living, or of the surviving parent, a standby
guardian of a mentally retarded or mentally handicapped
person may be appointed by the county commission. The
county commission may also upon application or consent of
such parents or surviving parent appoint an alternate to such
guardian to act if such guardian shall die or become incapac-
itated after the death of the last surviving parent of such
person or if such guardian shall renounce his appointment.

(b) Such standby guardian or alternate in the event of
such guardian’s death or incapacity or his renunciation shall
without further proceedings be empowered to assume the duti-
ies of his office immediately upon death or adjudication of
incompetency of the last surviving of the natural or adoptive
parents of such mentally retarded or mentally handicapped
person, subject only to confirmation of his appointment by the
county commission within sixty days following his assumption
of his duties of office.

(c) After the appointment of a standby guardian, the coun-
ty commission shall have and retain general jurisdiction over
the mentally retarded or mentally handicapped person for
whom such guardian shall have been appointed to take of its
own motion or to entertain and adjudicate such steps and
proceedings relating to such standby guardianship as may be
deemed necessary or proper for the welfare of such person.

§44-10A-5. Application of other provisions.

To the extent that the context thereof shall admit, the
provisions of article ten of this chapter shall apply to all pro-
ceedings under this article with the same force and effect
as if a “child,” a “ward” or a “minor” as therein referred to
were a "mentally retarded or mentally handicapped person" as used in this article and as if "guardian" as therein referred to were a "guardian of a mentally retarded or mentally handicapped person" as used in this article.

§44-10A-6. Guardianship by nonprofit corporations; authority; licensure; compensation.

(a) A nonprofit corporation chartered in this state may be appointed to serve as guardian, limited guardian or standby guardian for a mentally retarded or mentally handicapped person if it is licensed in accordance with the requirements of subsection (b) of this section.

(b) The state director of health may license nonprofit corporations that seek to serve as guardians for mentally retarded or mentally handicapped persons. He shall promulgate regulations for the licensure of such nonprofit corporations and shall provide for the review of such licenses. The regulations shall establish standards to assure that any corporation licensed for such guardianship meets the following conditions:

(1) Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

(2) Will respect and maintain the dignity and privacy of the mentally retarded or mentally handicapped person;

(3) Will protect and advocate the legal human rights of the mentally retarded or mentally handicapped person;

(4) Will assure that the mentally retarded or mentally handicapped person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual's personal liberty;

(5) Will encourage the mentally retarded or mentally handicapped person to participate to the maximum extent of his abilities in all decisions affecting him and to act in his own behalf on all matters in which he is able to do so;

(6) Does not provide educational, vocational, residential
or medical services to the mentally retarded or mentally handicapped person; and

(7) Has written provision for distribution of assets and appointment of standby guardian for the mentally retarded or mentally handicapped person in the event the corporation ceases to be licensed by the state director of health or may otherwise become unable to act as guardian.

(c) A duly licensed nonprofit corporation that has been appointed a guardian pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section fourteen, article four of this chapter and is entitled to be compensated for services performed as guardian of the person as well as guardian of the estate.

(d) Except as provided in subsection (c) of this section, no guardian or limited guardian nor any officer, agent, director, servant or employee of any such guardian or limited guardian shall do business with or in any way profit, either directly or indirectly, from the estate or income of any mentally retarded or mentally handicapped person for whom such guardian or limited guardian serves.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 3. APPEALS FROM COUNTY COMMISSIONS.

§58-3-1. When appeal lies to circuit court.

An appeal shall lie to the circuit court of the county from the final order of the county commission in the following cases: (a) In cases of contested elections tried and determined by such court; (b) in cases of contempt; (c) the establishment and regulation of a road, way, bridge, public landing, ferry or mill; (d) the probate of a will; (e) the appointment and qualification of a personal representative, guardian, including, but not limited to, all fiduciaries made pursuant to article ten-a, chapter forty-four of this code, or committee, and the settlement of their accounts; (f) in any other case by law specially provided.
CHAPTER 87
(Com. Sub. for H. B. 1529—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 8, 1980; in effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under section 503 of the federal “Surface Mine Control and Reclamation Act of 1977” has been given by the Secretary of the U. S. Department of the Interior. Approved by the Governor.]

AN ACT to amend and reenact articles six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section sixty-three, article two, chapter twenty-two of said code; to amend and reenact section two, article six of said chapter; and to amend and reenact section three, article six-a of said chapter, all relating to coal surface mining and the surface effects of deep mining of coal generally; establishing the West Virginia surface mining and reclamation act; short title; legislative findings and purpose; jurisdiction of the department of natural resources; authority of the director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation; promulgation of rules and regulations by reclamation commission; definitions; division of reclamation; authority, qualifications and compensation of division chief; duties and function of division; surface-mining reclamation supervisors and inspectors; appointment, qualifications and salary of supervisors and inspectors; duties of surface-mining reclamation inspectors and inspectors in training; reclamation commission; duties, authority, functions and compensation of commission; petition for issuance, amendment or repeal of a rule of the commission; notice of intention to prospect and requirements therefor; bonding; authority of director to deny or limit prospecting; postponement of reclamation; prohibited acts; exceptions; prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; termination of permits; permit fees; permit application requirements and contents; reclamation plan requirements; performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of liability; general environmental pro-
tection performance standards for surface mining; variances from standards; additional general environmental protection performance standards for the surface effects of underground mining; application of article to surface effects of underground mining; inspection; monitoring; right of entry; inspection of records; identification signs; progress maps; limitation of liability; cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal; notice of violation; procedures and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; prosecution; injunctive relief; approval, denial, revision and prohibition of permit; permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; operator reassignments; public notice; written objections; public hearings; informal conferences; decision of director on permit application, and hearing thereon; designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable; appointment and organization of reclamation board of review; authority; compensation, expenses and removal of board members; appeals to the board; hearings before board; subpoena and subpoena duces tecum; records, findings and orders of the board; appeal from order of board; judicial review; temporary relief from order of board; release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release; water rights and replacement; waiver of replacement; citizen suits; order of court; damages; surface-mining operations not subject to this article; leasing of lands owned by state for surface mining of coal; special permits for removal of coal incidental to development of land; application; bond; reclamation plan for existing abandoned coal processing waste piles; existing permits and performance bond conversion; exemption from design criteria; experimental practices; certification and training of blasters; certification of surface miners and surface-mine foreman; monthly report by operator; applicability and enforcement of laws safeguarding life and property; regulations pertaining to safety; authority of department of mines regarding safety laws; conflicting provisions;
conflict of interest prohibited, and criminal penalties therefor; employee protection; severability; validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977; application of article to operations under permit issued hereunder; abandoned mine lands and reclamation act; short title; legislative findings, intent and purpose of article; jurisdiction and authority of director of department of natural resources; definitions; abandoned land reclamation fund; objectives of fund; lands eligible for reclamation; powers and duties of director; program plans and reclamation projects; acquisition and reclamation of land adversely affected by past coal surface-mining practices; liens against reclaimed land; petition by landowner; appeal; priority of liens; filling voids and sealing tunnels; general and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds; interagency cooperation; prior approval of director of department of mines for the opening or reopening of mines; approval fee; inspection by director of department of mines; definition of terms relating to certification of underground and surface coal miners; and definition of terms relating to the board of miner training, education and certification.

Be it enacted by the Legislature of West Virginia:

That articles six and six-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section sixty-three, article two, chapter twenty-two of said code, be amended and reenacted; that section two, article six of said chapter be amended and reenacted; and that section three, article six-a of said chapter be amended and reenacted, all to read as follows:

Chapter
20. Natural Resources.

CHAPTER 20. NATURAL RESOURCES.

Article
6. West Virginia Surface Coal Mining and Reclamation Act.
ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-1. Short title.
§20-6-2. Legislative findings and purpose; jurisdiction vested in department of natural resources; authority of director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation.
§20-6-3. Definitions.
§20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.
§20-6-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
§20-6-6. Duties of surface-mining reclamation inspectors and inspectors in training.
§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.
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§20-6-21. Decision of director on permit application; hearing thereon.

§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

§20-6-23. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

§20-6-24. Appeals to board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of board.

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§20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

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§20-6-30. Leasing of lands owned by state for surface mining of coal.

§20-6-31. Special permits for removal of coal incidental to development of land; prohibited acts; application bond; reclamation for existing abandoned coal processing waste piles.

§20-6-32. Existing permits and performance bond conversion; exemption from design criteria.

§20-6-33. Experimental practices.

§20-6-34. Certification and training of blasters.

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§20-6-36. Certification of surface-mine foremen.

§20-6-37. Monthly report by operator.

§20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.


§20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.

§20-6-41. Severability.
§20-6-42. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.

§20-6-1. Short title.

This article shall be known and cited as the "West Virginia Surface Coal Mining and Reclamation Act."

§20-6-2. Legislative findings and purpose; jurisdiction vested in department of natural resources; authority of director and chief of reclamation; apportionment of responsibility; interdepartmental cooperation.

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the state of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the state of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above it may be necessary for the reclamation commission herein established to promulgate regulations which vary from federal regulations as is provided for in sections 101 (f) and 201 (c) (9) of the Surface Mining Control and Reclamation Act of 1977 "Public Law 95-87."

Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and
(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide program to protect the public and the environment from the adverse effects of surface-mining operations;

(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from such operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface mining operations; and

(8) Assure that the coal production essential to the nation's energy requirements and to the state's economic and social well-being is provided.

(c) In recognition of these findings and purposes, the Legislature hereby vests authority in the reclamation commission of the department of natural resources to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;
(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce regulations pursuant to this article;

(4) Enter into a cooperative agreement with the secretary of the United States department of the interior to provide for state regulations of surface-mining operations on federal lands within West Virginia consistent with section 523 of Public Law 95-87; and

(5) Administer and enforce regulations promulgated pursuant to this chapter to accomplish the requirements of programs under Public Law 95-87.

(d) The director of the department of natural resources and the director of the department of mines shall cooperate with respect to departmental programs and records to effect an orderly and harmonious administration of the provisions of this article. The director of the department of natural resources may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. Also, he may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§20-6-3. Definitions.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

(a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water shall not lower the water quality standards established for the river, stream or drainway into which such water is released.

(b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclama-
tion activities. “Affected area” means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit (1) by surface operations or facilities incident to underground mining activities or (2) by underground operations.

(c) “Adjacent areas” means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact. “Adjacent areas” means, for the purpose of conducting surface-mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface-mining and reclamation operations conducted within a permit area during the life of such operations may have an impact.

(d) “Applicant” means any person who has or should have applied for any permit pursuant to this article.

(e) “Approximate original contour” means that surface configuration achieved by the backfilling and grading of the disturbed areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated: Provided, That water impoundments may be permitted pursuant to subdivision (8), subsection (b), section thirteen of this article: Provided, however, That minor deviations may be permitted in order to minimize erosion and sedimentation, retain moisture, to assist revegetation, or to direct surface runoff.

(f) “Breakthrough” means the release of water which has been trapped or impounded, or the release of air into any underground cavity, pocket or area as a result of surface-mining operations.

(g) “Coal processing wastes” means earth materials which are or have been combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise
(h) "Department" means the department of natural resources.

(i) "Director" means the director of the department of natural resources, deputy directors, the chief of the division of reclamation, the assistant chiefs of the division of reclamation and all duly authorized surface-mining reclamation supervisors, or inspectors and inspectors in training.

(j) "Disturbed area" means an area where vegetation, topsoil, or overburden has been removed by surface-mining operations, and reclamation is incomplete.

(k) "Imminent danger to the health or safety of the public" means the existence of such condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause substantial physical harm or death to any person outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for the abatement.

(l) "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(m) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(n) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article.

(o) "Permit" means a permit to conduct surface-mining operations pursuant to this article.

(p) "Permit area" means the area of land indicated on
the approved proposal map submitted by the operator as part of his application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(q) "Permittee" means a person holding a permit issued under this article.

(r) "Person" means any individual, partnership, firm, society, association, trust, corporation, other business entity or any agency, unit or instrumentality of federal, state or local government.

(s) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics, and which historically have been used for intensive agricultural purposes and as published in the Federal Register.

(t) "Surface mine," "surface mining" or "surface-mining operations" means:

(1) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge therefrom. Such activities include excavation for the purpose of obtaining coal, including, but not limited to, such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation and in situ distillation or retorting, leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, loading of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land,
the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section eight of this article: Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

(u) "Underground mine" means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment connected therewith which contribute directly or indirectly to the mining, preparation or handling of coal.

(v) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife, and fish, and the environmental harm is imminent if a condition or practice exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the abatement time set by the director.
An environmental harm is significant if that harm is appreciable and not immediately repairable.

§20-6-4. Division of reclamation; qualifications and compensation of division chief; duties and functions of division.

There is hereby created within the department of natural resources a division of reclamation, and the director of natural resources shall appoint and fix the compensation of the head of said division who shall be known as the chief of the division of reclamation. Said chief shall have graduated from an accredited four-year college or university with a degree in the field of engineering, agriculture, forestry or related resource field, and shall have four years of full-time paid employment in some phase of natural resources management, two years of which must have been in a supervisory or administrative capacity.

Except as otherwise provided in this article, the division shall administer the provisions of this article relating to surface mining operations and subject to the approval of the director shall exercise all of the powers and perform all of the duties by law vested in and imposed upon said director in relation to said operations. The division of reclamation shall have within its jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter. The division shall cooperate with other offices and divisions of the department.

§20-6-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out
the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the director of natural resources.

Every surface-mining reclamation supervisor or inspector shall be paid not less than fifteen thousand dollars per year.

§20-6-6. Duties of surface-mining reclamation inspectors and inspectors in training.

Except as otherwise provided in this article, surface-mining reclamation inspectors and inspectors-in-training shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. Such inspectors shall note and describe all violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§20-6-7. Reclamation commission; duties, functions and compensation; petition for issuance, amendment or repeal of a rule.

(a) There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division, and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and ap-
point one or more assistant attorneys general, to serve at
the will and pleasure of the attorney general, and such
assistant or assistants, shall be paid out of any funds made
available for that purpose by the Legislature or by Public
Laws 95-87 to the department of natural resources.

(b) The commission shall have authority to:

(1) Promulgate rules and regulations, in accordance with
the provisions of chapter twenty-nine-a of this code, to
implement the provisions of this article: Provided, That the
commission shall give notice by publication of the public
hearing required in article three of chapter twenty-nine-a
of this code: Provided, however, That any forms, handbooks
or similar materials having the effect of a rule or regulation
as defined in article three of chapter twenty-nine-a of this
code, or issued, developed or distributed by the director
pursuant to or as a result of a rule or regulation, shall be
subject to the provisions of article three, chapter twenty-

(2) Make investigations or inspections necessary to ensure
complete compliance with the provisions of this article;

(3) Conduct hearings or appoint persons to conduct hear-
ings under provisions of this article or rules and regulations
adopted by the commission; and for the purpose of any
investigation or hearing hereunder, the commission, any
member, or any appointee thereof may administer oaths or
affirmations, subpoena witnesses, compel their attendance,
take evidence and require production of any books, papers,
correspondence, memoranda, agreements, or other documents
or records relevant or material to the inquiry;

(4) Enforce, through the director, the provisions of this
article as provided herein; and

(5) Appoint such advisory committees as may be of assist-
ance to the commission in the development of programs and
policies: Provided, That such advisory committees shall, in
each instance, include members representative of the general
public.

(c) (1) After the commission has adopted the regulations
required by this article, any person may petition the com-
mission to initiate a proceeding for the issuance, amendment,
or repeal of a rule under this article.

(2) Such petitions shall be filed in the office of the com-
mission and shall set forth the facts which support the
issuance, amendment, or repeal of a rule under this article.

(3) The commission may hold a public hearing or may
conduct such investigation or proceeding as the commission
deems appropriate in order to determine whether or not such
petition should be granted.

(4) Within ninety days after filing of a petition described
in subdivision (1) of this subsection, the commission shall
either grant or deny the petition. If the commission grants the
petition, the commission shall promptly commence an ap-
propriate proceeding in accordance with the provisions of
chapter twenty-nine-a of this code. If the commission denies
such petition, the commission shall so notify the petitioner
in writing setting forth the reasons for such denial.

§20-6-8. Notice of intention to prospect, requirements therefor;
bonding; director's authority to deny or limit; postpone-
ment of reclamation; prohibited acts; exceptions.

(a) Any person intending to prospect for coal in an area
not covered by a surface mining permit, in order to determine
the location, quantity or quality of a natural coal deposit,
making feasibility studies or for any other purpose, shall file
with the director, at least fifteen days prior to commencement of
any disturbance associated with prospecting, a notice of inten-
tion to prospect, which notice shall include a description of the
prospecting area, the period of supposed prospecting and such
other information as required by rules or regulations promul-
gated pursuant to this section: Provided, That prior to the
commencement of such prospecting, the director may issue an
order denying or limiting permission to prospect where he
finds that prospecting operations will damage or destroy a
unique natural area, or will cause serious harm to water qual-
ity, or that the operator has failed to satisfactorily reclaim
other prospecting sites, or that there has been an abuse of
prospect by previous prospecting operations in the area.
(b) Notice of intention to prospect shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The notice shall be accompanied by:

(1) A United States geological survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected, and (2) a bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section twelve of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

(c) Any person prospecting under the provisions of this section shall ensure that such prospecting operation is conducted in accordance with the performance standards in section thirteen of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(d) Information submitted to the director pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, shall not be available for public examination.

(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of sections sixteen and seventeen of this article.

(f) No operator shall remove more than two hundred and fifty tons of coal without the specific written approval of the director.

(g) The bond accompanying said notice of intention to prospect shall be released by the director when the operator demonstrates that a permanent species of vegetative cover is established.
(h) In the event an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number the director may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word "prospect" or "prospecting" does not include core drilling related solely to taxation or highway construction.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

No person may engage in surface-mining operations unless such person has first obtained a permit from the director in accordance with the following:

(a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.

(b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the director: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502 (c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the director.
(c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for such specified longer term, the director may extend a permit for such longer term: Provided, further, That subject to the prior approval of the director, a successor in interest to a permittee who applies for a new permit within thirty days of succeeding to such interest, and who is able to obtain the bond coverage of the original permittee, may continue surface-mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until such successor's application is granted or denied.

(d) Proof of insurance shall be required on an annual basis.

(e) A permit shall terminate if the permittee has not commenced the surface-mining operations covered by such permit within three years of the date the permit was issued: Provided, That the director may grant reasonable extensions of time upon a showing that such extensions are necessary by reason of litigation precluding such commencement, or threatening, substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided further, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface-mining operations at such time as the construction of the synthetic fuel or generating facility is initiated.

(f) Each application for a new surface-mining permit filed pursuant to this article shall be accompanied by a fee of five hundred dollars. All permit fees provided for in this section or elsewhere in this article shall be collected by the director and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and
§20-6-10. Permit application requirements and contents.

(a) The surface-mining permit application shall contain:

(1) The names and addresses of: (A) The permit applicant; (B) the owner of record of the property, surface and mineral, to be mined; (C) the holders of record of any leasehold interest in the property; (D) any purchaser of record of the property under a real estate contract; (E) the operator, if he is a person different from the applicant; and (F) if any of these are business entities other than a single proprietor, the names and addresses of the principals, officers and resident agent;

(2) The names and addresses of the owners of record of all surface and subsurface areas contiguous to any part of the proposed permit area: Provided, That all residents living on property contiguous to the proposed permit area shall be notified by the applicant, by registered or certified mail, of such application on or before the first day of publication of the notice provided for in subdivision (6) of this subsection.

(3) A statement of any current surface-mining permits held by the applicant in this state and the permit number and each pending application;

(4) If the applicant is a partnership, corporation, association or other business entity, the following where applicable: The names and addresses of every officer, partner, resident agent, director or person performing a function similar to a director, together with the names and addresses of any person owning of record ten percent or more of any class of voting stock of the applicant; and a list of all names under which the applicant, officer, director, partner or principal shareholder previously operated a surface-mining operation in the United States within the five-year period preceding the date of submission of the application;

(5) A statement of whether the applicant, or any officer, partner, director, principal shareholder of the applicant, any subsidiary, affiliate or persons controlled by
or under common control with the applicant, has ever been
an officer, partner, director or principal shareholder in a
company which has ever held a federal or state mining permit
which in the five-year period prior to the date of submis-
sion of the application has been permanently suspended or
revoked or has had a mining bond or similar security deposited
in lieu of bond forfeited and, if so, a brief explanation of the
facts involved;

(6) A copy of the applicant's advertisement to be
published in a newspaper of general circulation in the
locality of the proposed permit area at least once a week
for four successive weeks. The advertisement shall contain
in abbreviated form the information required by this section
including the ownership and map of the tract location and
boundaries of the proposed site so that the proposed operation
is readily locatable by local residents, the location of the office
of the department of natural resources where the application
is available for public inspection and stating that written pro-
tests will be accepted by the director until a certain date which
shall be at least thirty days after the last publication of the
applicant's advertisement;

(7) A description of the type and method of surface-
mining operation that exists or is proposed, the engineering
 techniques used or proposed, and the equipment used or
proposed to be used;

(8) The anticipated starting and termination dates of each
phase of the surface-mining operation and the number of
acres of land to be affected;

(9) A description of the legal documents upon which
the applicant bases his legal right to enter and conduct
surface-mining operations on the proposed permit area and
whether that right is the subject of pending court litigation:
Provided, That nothing in this article may be construed as
vesting in the director the jurisdiction to adjudicate property-
rights disputes;

(10) The name of the watershed and location of the
surface stream or tributary into which surface and pit drainage
will be discharged;
(11) A determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and ground water systems, including the dissolved and suspended solids under seasonal flow conditions and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the director of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area, and particularly upon water availability: Provided, That this determination shall not be required until such time as hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency or, if existing and in the possession of the applicant, from the applicant: Provided, however, That the permit application shall not be approved until such information is available and is incorporated into the application.

(12) Accurate maps to an appropriate scale clearly showing: (A) The land to be affected as of the date of application; (B) the area of land within the permit area upon which the applicant has the legal right to enter and conduct surface-mining operations; and (C) all types of information set forth on enlarged topographical maps of the United States geological survey of a scale of 1:24,000 or larger, including all man-made features and significant known archaeological sites existing on the date of application. In addition to other things specified by the director, the map shall show the boundary lines and names of present owners of record of all surface areas abutting the proposed permit area and the location of all structures within one thousand feet of the proposed permit area;

(13) Cross-section maps or plans of the proposed affected area, including the actual area to be mined, prepared by or under the direction of and certified by a person approved by the director, showing pertinent elevation and location of test borings or core samplings, where required by the director, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of sub-
and thickness of any coal or rider seams above the seam to be mined; (D) the nature of the stratum immediately beneath the coal seam to be mined; (E) all mineral crop lines and the strike and dip of the coal to be mined, within the area of land to be affected; (F) existing or previous surface mining limits; (G) the location and extent of known workings of any underground mines, including mine openings to the surface; (H) the location of any significant aquifers; (I) the estimated elevation of the water table; (J) the location of spoil, waste or refuse areas and topsoil preservation areas; (K) the location of all impoundments for waste or erosion control; (L) any settling or water treatment facility or drainage system; (M) constructed or natural drainways and the location of any discharges to any surface body of water on the area of land to be affected or adjacent thereto; and (N) adequate profiles at appropriate cross sections of the anticipated final surface configuration that will be achieved pursuant to the operator’s proposed reclamation plan;

(14) A statement of the result of test borings or core samples from the permit area, including: (A) Logs of the drill holes; (B) the thickness of the coal seam to be mined and analysis of the chemical and physical properties of such coal; (C) the sulfur content of any coal seam; (D) chemical analysis of potentially acid or toxic forming sections of the overburden; and (E) chemical analysis of the stratum lying immediately underneath the coal to be mined: Provided, That the provisions of this subdivision may be waived by the director with respect to the specific application by a written determination that such requirements are unnecessary;

(15) For those lands in the permit application which a reconnaissance inspection suggests may be prime farmlands, a soil survey shall be made or obtained according to standards established by the secretary of agriculture in order to confirm the exact location of such prime farmlands;

(16) A reclamation plan as presented in section eleven of this article;

(17) Information pertaining to coal seams, test borings,
core samplings or soil samples as required by this section shall be made available to any person with an interest which is or may be adversely affected: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental content which is potentially toxic to the environment, shall be kept confidential and not made a matter of public record;

(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and

(19) Such other information that may be required by rules and regulations reasonably necessary to effectuate the purposes of this article.

(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed one hundred thousand tons, the determination of probable hydrologic consequences and the statement of the result of test borings or core samplings shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the department from funds provided by the United States department of the interior pursuant to Public Law 95-87.

(c) Before the first publication of the applicant's advertisement, each applicant for a surface-mining permit shall file, except for that information pertaining to the coal seam itself, a copy of the application for public inspection in the nearest office of the department of natural resources as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the director as a part of the permit application a certificate issued by an insurance company authorized to do business in this state covering the surface-mining operation for which such permit is sought, or evidence that the
applicant has satisfied state self-insurance requirements. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled to compensation under the applicable provisions of state law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations.

(e) Each applicant for a surface-mining permit shall submit to the director as part of the permit application a blasting plan where explosives are to be used, which shall outline the procedures and standards by which the operator will meet the provisions of the blasting performance standards.

(f) The applicant shall file as a part of his permit application a schedule listing all bond forfeitures, permit revocations, cessation orders or permanent suspension orders resulting from a violation of Public Law 95-87, this article or any law or regulation of the United States or any department or agency of any state pertaining to air or environmental protection received by the applicant in connection with any surface mining operation during the three year period prior to the date of application and indicating the final resolution of any such forfeiture, revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an application for a permit, the director shall notify the operator in writing, stating whether the application is complete and whether the operator's advertisement may be published. If the application is not complete, the director shall state in writing why the application is incomplete.

§20-6-11. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface-mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface min-
(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if such land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section ten of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farm lands, and the average yield of food, fiber, forage or wood products from such lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of such use to existing land use policies and plans, and the comments of any owner of the surface, other state agencies and local governments, which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation;

(4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans
to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface-mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and regulations and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on such interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface-mining and reclamation process to assure the protection of: (A) The quality of surface and ground water systems, both on- and off-site, from adverse effects of the surface-mining operation; (B) the rights of present users to such water; and (C) the quantity of surface and ground water systems, both on- and off-site, from adverse effects of the surface-mining operation or to provide alternative sources of water where such protection of quantity cannot be assured;

(12) The results of test borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which are potentially toxic in the en-
vironment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Such other requirements as the reclamation commission may prescribe by regulation.

(b) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

§20-6-12. Performance bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface-mining permit application has been approved pursuant to this article, but before such a permit has been issued, each operator shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The amount of the bond shall be one thousand dollars for each acre or fraction thereof. The bond shall cover (1) the entire permit area, or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface-mining and reclamation operations within the initial term of the permit.

If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, he shall continue bonding in that manner for the term of the permit: Provided, however, That the minimum amount of bond furnished shall be ten thousand dollars.

(b) The period of liability for performance bond coverage
shall commence with issuance of a permit and continue for the
full term of the permit plus any additional period necessary to
achieve compliance with the requirements in the reclamation
plan of the permit.

(c) (1) The form of the performance bond shall be ap-
proved by the director and may include, at the option of the
operator, surety bonding, collateral bonding (including cash
and securities), establishment of an escrow account, self-
bonding or a combination of these methods. If collateral
bonding is used, the operator may elect to deposit cash, or
collateral securities or certificates as follows: Bonds of the
United States or its possessions, of the federal land bank, or
of the home owners' loan corporation; full faith and credit
general obligation bonds of the state of West Virginia, or other
states, and of any county, district or municipality of the state
of West Virginia or other states; or certificates of deposit in
a bank in this state, which certificates shall be in favor of the
department. The cash deposit or market value of such securi-
ties or certificates shall be equal to or greater than the sum
of the bond. The director shall, upon receipt of any such
deposit of cash, securities or certificates, promptly place the
same with the treasurer of the state of West Virginia whose
duty it shall be to receive and hold the same in the name of the
state in trust for the purpose for which such deposit is made
when the permit is issued. The operator making the deposit
shall be entitled from time to time to receive from the state
treasurer, upon the written approval of the director, the whole
or any portion of any cash, securities or certificates so deposit-
ed, upon depositing with him in lieu thereof, cash or other
securities or certificates of the classes herein specified having
value equal to or greater than the sum of the bond.

(2) The reclamation commission may approve an alternative
bonding system if it will (A) reasonably assure that sufficient
funds will be available to complete the reclamation, restoration
and abatement provisions for all permit areas which may be in
default at any time, and (B) provide a substantial economic
incentive for the permittee to comply with all reclamation pro-
visions.

(d) The director may accept the bond of the applicant itself
without separate surety when the applicant demonstrates to
the satisfaction of the director the existence of a suitable
agent to receive service of process and a history of financial
solvency and continuous operation sufficient for authorization
to self-insure.

(e) It shall be unlawful for the owner of surface or mineral
rights to interfere with the present operator in the discharge of
his obligations to the state for the reclamation of lands
disturbed by him.

(f) The director may not release that portion of any bond
filed by any operator which is designated to assure faithful
performance of and compliance with the backfilling and
regarding requirements of the reclamation plan until all acid-
bearing or acid-producing spoil within the permit area has
been treated so that any untreated drainage or discharge
therefrom is not lower than the water quality of the receiving
stream.

(g) All bond releases shall be accomplished in accordance
with the provisions of section twenty-six of this article.

(h) All special reclamation taxes deposited by the director
with the treasurer or the state of West Virginia to the credit of
the special reclamation fund prior to the effective date of this
article shall be transferred to the special reclamation fund
created by this section and shall be expended pursuant to the
provisions of this subsection: Provided, That no moneys trans-
ferred into the special reclamation fund created by this section
shall be subject to refund. The fund shall be administered
by the director, and he is authorized to expend the monies
in the fund for the reclamation and rehabilitation of lands
which were subjected to permitted surface mining operations
and abandoned after the third day of August, one thousand
nine hundred seventy-seven, where the amount of the bond
posted and forfeited on such land is less than the actual cost
of reclamation. The director may also expend such amounts
as are reasonably necessary to implement and administer
the provisions of this chapter.

Whenever the special reclamation fund established by this
subsection sinks below one million dollars at the end of any
given quarterly period, every person then conducting coal
surface-mining operations shall contribute into said fund a
sum equal to one cent per ton of clean coal mined thereafter.
This fee shall be collected by the state tax commissioner in
the same manner as the West Virginia business and corpora-
tion tax in accordance with the provisions of chapter eleven
of this code and shall be deposited by him with the treasurer
of the state of West Virginia to the credit of the special
reclamation fund. At the beginning of each quarter, the
director shall advise the state tax commissioner and the gov-
ernor of the assets, excluding payments, expenditures and
liabilities, in the fund. If such assets are below one million
dollars, a notice of assessment shall be given to all operators
by the state tax commissioner and such one cent per ton
assessment shall be collected until the end of the quarter in
which the fund's assets, excluding payments, expenditures and
liabilities are in excess of two million dollars.

§20-6-13. General environmental protection performance standards
for surface mining; variances.

(a) Any permit issued by the director pursuant to this
article to conduct surface-mining operations shall re-
quire that such surface-mining operations will meet all
applicable performance standards of this article, and such
other requirements as the reclamation commission shall
promulgate.

(b) The following general performance standards shall
be applicable to all surface mines and shall require the
operation as a minimum to:

(1) Maximize the utilization and conservation of the
solid fuel resource being recovered to minimize reaffect-
ing the land in the future through surface mining;

(2) Restore the land affected to a condition capable
of supporting the uses which it was capable of support-
ing prior to any mining, or higher or better uses of
which there is reasonable likelihood so long as such use
or uses do not present any actual or probable hazard
to public health or safety or pose any actual or prob-
able threat of water diminution or pollution, and the
permit applicants' declared proposed land use following reclamation is not deemed to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: Provided, however, That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, such overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this article:
Provided further, That the reclamation commission shall promulgate rules and regulations governing variances to the requirements for return to approximate original contour or high-wall elimination and where adequate material is not available from surface-mining operations permitted after the effective date of this article for (A) underground mining operations existing prior to the third day of August, one thousand nine hundred seventy-seven, or (B) for areas upon which surface-mining prior to the first day of July, one thousand nine hundred seventy-seven, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface-mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: Provided, That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner such other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, as a minimum, shall be required to: (A) Segregate the A horizon of the natural soil, except where it can be shown
that other available soil materials will create a final soil
having a greater productive capacity, and if not utilized
immediately, stockpile this material separately from other
spoil, and provide needed protection from wind and
water erosion or contamination by other acid or toxic
material; (B) segregate the B horizon of the natural soil,
or underlying C horizons or other strata, or a combina-
tion of such horizons or other strata that are shown to be
both texturally and chemically suitable for plant growth
and that can be shown to be equally or more favorable
for plant growth than the B horizon, in sufficient quanti-
ties to create in the regraded final soil a root zone of
comparable depth and quality to that which existed in the
natural soil, and if not utilized immediately, stockpile this
material separately from other spoil and provide needed
protection from wind and water erosion or contamination by
other acid or toxic material; (C) replace and regrade the root
zone material described in subparagraph (B) above with
proper compaction and uniform depth over the regraded spoil
material; and (D) redistribute and grade in a uniform man-
ner the surface soil horizon described in subparagraph (A)
above;

(8) Create, if authorized in the approved surface-mining
and reclamation plan and permit, permanent impoundments of
water on mining sites as part of reclamation activities in
accordance with regulations promulgated by the reclamation
commission;

(9) Where augering is the method of recovery, seal all
auger holes with an impervious and noncombustible material
in order to prevent drainage except where the director
determines that the resulting impoundment of water in
such auger holes may create a hazard to the environment
or the public welfare and safety: Provided, That the
director may prohibit augering if necessary to maximize
the utilization, recoverability or conservation of the mineral
resources or to protect against adverse water quality im-
pacts;

(10) Minimize the disturbances to the prevailing hydro-
logic balance at the mine site and in associated off-site areas.
and to the quality and quantity of water in surface and
ground water systems both during and after surface-mining
operations and during reclamation by: (A) Avoiding acid
to other toxic mine drainage; (B) conducting surface-mining
operations so as to prevent to the extent possible, using the
best technology currently available, additional contributions
of suspended solids to streamflow or runoff outside the per-
mit area, but in no event shall contributions be in excess of
requirements set by applicable state law; (C) constructing
an approved drainage system pursuant to subparagraph (B)
of this subdivision prior to commencement of surface-mining
operations, such system to be certified by a person approved
by the director to be constructed as designed and as approved
in the reclamation plan; (D) avoiding channel deepening or
enlargement in operations requiring the discharge of water
from mines; (E) unless otherwise authorized by the director,
cleaning out and removing temporary or large settling ponds
or other siltation structures after disturbed areas are re-
vegetated and stabilized, and depositing the silt and debris at
a site and in a manner approved by the director; (F) restoring
recharge capacity of the mined area to approximate premining
conditions; and (G) such other actions as the reclamation com-
mission may prescribe;

(11) With respect to surface disposal of mine wastes, tailings,
coal processing wastes and other wastes in areas other than the
mine working excavations, stabilize all wastepiles in designated
areas through construction in compacted layers, including the
use of noncombustible and impervious materials if necessary,
and assure the final contour of the waste pile will be compatible
with natural surroundings and that the site will be stabilized
and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge,
modify and remove or abandon, in accordance with the stan-
ards and criteria developed pursuant to subsection (f) of this
section, all existing and new coal mine waste piles consisting of
mine wastes, tailings, coal processing wastes or other liquid
and solid wastes, and used either temporarily or permanently
as dams or embankments;

(13) Refrain from surface mining within five hundred feet of
any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: 

Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director of the department of mines, and (B) such operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface water and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the regulations promulgated by the reclamation commission, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of such explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed permit area excluding drainage structures, haulroads and access roads unless there will be blasting on or near such structures or roads: Provided, That this notice shall suffice as daily notice to residents or occupants of such areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and
frequency of blasts based upon the physical conditions of the
site so as to prevent (i) injury to persons; (ii) damage to public
and private property outside the permit area; (iii) adverse im-

pacts on any underground mine; and (iv) change in the course,
channel or availability of ground or surface water outside the
permit area; (D) require that all blasting operations be conduct-
ed by persons certified by the director of the department of
mines; and (E) provide that upon written request of a resident
or owner of a man-made dwelling or structure within one-half
mile of any portion of the area identified in subparagraph (A)
of this subdivision, the applicant or permittee shall conduct a
preblasting survey or other appropriate investigation of such
structures and submit the results to the director and a copy to
the resident or owner making the request. The area of the sur-
v

vey shall be determined by the director in accordance with


regulations promulgated by the reclamation commission;

(16) Ensure that all reclamation efforts proceed in an envir-

onmentally sound manner and as contemporaneously as practi-
cable with the surface-mining operations. Time limits shall be
established by the reclamation commission requiring backfills-
ing, grading and planting to be kept current: Provided, That

where surface-mining operations and underground mining op-
erations are proposed on the same area, which operations must
be conducted under separate permits, the director may grant a

variance from the requirement that reclamation efforts pro-
ceed as contemporaneously as practicable to permit under-
ground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit ap-
lication, specific, feasible plans for the proposed underground
mining operations;

(ii) The proposed underground mining operations are neces-
sary or desirable to assure maximum practical recovery of the
mineral resource and will avoid multiple disturbance of the
surface;

(iii) The applicant has satisfactorily demonstrated that the
plan for the underground mining operations conforms to re-
quirements for underground mining in the jurisdiction and that
permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article;

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b), of this section;

(B) If the reclamation commission has promulgated specific regulations to govern the granting of such variances in accordance with the provisions of this subparagraph and has imposed such additional requirements as he deems necessary;

(C) If variances granted under the provisions of this subsection are to be reviewed by the director not more than three years from the date of issuance of the permit; and

(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section twelve of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section twelve and section twenty-six of this article, have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haulroads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: Provided, That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, shall be exempt from specific construction criteria provided that adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such
289 proximity to such channel so as to significantly alter the nor-
290 mal flow of water;

291 (19) Establish on the regraded areas, and all other lands
292 affected, a diverse, effective and permanent vegetative cover
293 of the same seasonal variety native to the area of land to be
294 affected and capable of self-regeneration and plant succession
295 at least equal in extent of cover to the natural vegetation of
296 the area, except that introduced species may be used in the
297 revegetation process where desirable or when necessary to
298 achieve the approved postmining land use plan;

299 (20) Assume the responsibility for successful revegetation,
300 as required by subdivision (19) of this subsection, for a period
301 of not less than five growing seasons, as defined by the direc-
302 tor, after the last year of augmented seeding, fertilizing, irri-
303 gation or other work in order to assure compliance with
304 subdivision (19) of this subsection: Provided, That when the
305 director issues a written finding approving a long-term agricu-
306 lultural postmining land use as a part of the mining and
307 reclamation plan, the director may grant exception to the
308 provisions of subdivision (19) of this subsection: Provided,
309 however, That when the director approves an agricultural
310 postmining land use, the applicable five growing seasons of
311 responsibility for revegetation shall commence at the date of
312 initial planting for such agricultural postmining land use;

313 (21) Protect off-site areas from slides or damage occurring
314 during surface-mining operations and not deposit spoil ma-
315 terial or locate any part of the operations or waste accumu-
316 lations outside the permit area: Provided, however, That spoil
317 material may be placed outside the permit area, if approved
318 by the director, after a finding that environmental benefits
319 will result from such;

320 (22) Place all excess spoil material resulting from surface
321 mining activities in such a manner that: (A) Spoil is transport-
322 ed and placed in a controlled manner in position for con-
323 current compaction and in such a way to assure mass sta-
324 bility and to prevent mass movement; (B) the areas of disposal
325 are within the bonded permit areas and all organic matter shall
326 be removed immediately prior to spoil placements; (C) appro-
priate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and shall be placed, where possible, upon, or above, a natural terrace, bench or berm, if such placement provides additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: 

Provided, That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone, or other rocks that do not slake in water, the director may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: 

Provided, however, That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: 

Provided further, That such approval shall not be unreasonably withheld if the site is suitable; 

(23) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site; 

(24) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and 

(25) Retain a natural barrier to inhibit slides and erosion
on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where (A) natural barriers do not provide adequate stability, (B) natural barriers would result in potential future water quality deterioration and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points;

(c) (1) The reclamation commission may prescribe procedures pursuant to which the director may permit surface-mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, woodland, agricultural, residential or public use is proposed for the post-mining use of the affected land, the director may grant a permit for a surface-mining operation of the nature described in subdivision (2), of this subsection where: (A) The proposed postmining land use is deemed to constitute an equal or better use of the affected land, as compared with the premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that such use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) support-
ed by commitments from public agencies where appropriate; (iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where (i) natural barriers do not provide adequate stability, (ii) natural barriers would result in potential future water quality deterioration and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resources: Provided, however, That at a minimum, the constructed barrier must be of sufficient width and height to provide adequate stability and the stability factor must equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier must be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the out-slopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: Provided, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.
(5) All permits granted under the provisions of this sub-
section shall be reviewed not more than three years from the
date of issuance of the permit, unless the applicant affirmatively-
demonstrates that the proposed development is proceeding
in accordance with the terms of the approved schedule and
reclamation plan.

(d) In addition to those general performance standards
required by this section, when surface mining occurs on slopes
of twenty degrees or greater, or on such lesser slopes as may
be defined by regulation after consideration of soil and cli-
mate, no debris, abandoned or disabled equipment, spoil mat-
erial 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 speci-
fied area of the downslope below the initial cut if the per-
mittee can establish to the satisfaction of the director that
the soil or spoil will not slide and that the order requirements
of this section can still be met.

(e) The reclamation commission may promulgate regula-
tions pursuant to which the director may permit variances
from the requirements of this section: Provided, That the
watershed control of the area is improved: Provided, however,
That complete backfilling with spoil material shall be required
to completely cover the highwall, which material will maintain
stability following mining and reclamation.

(f) The reclamation commission shall promulgate regulations
for the design, location, construction, maintenance, operation,
enlargement, modification, removal and abandonment of new
and existing coal mine waste piles. In addition to engineering
and other technical specifications, the standards and criteria
developed pursuant to this subsection must include provisions
for review and approval of plans and specifications prior to
construction, enlargement, modification, removal or abandon-
ment; performance of periodic inspections during construction;
issuance of certificates of approval upon completion of con-
struction; performance of periodic safety inspections; and is-
suance of notices and orders for required remedial or main-
tenance work or affirmative action: Provided, That whenever
the director finds that any coal processing waste pile constitutes an imminent danger to human life, he may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates the pile or the landowners involved, enter upon the premises where any such coal processing waste piles exist and may take or order to be taken such remedial action as may be necessary or expedient to secure such coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the department of natural resources for such purposes, and such sums so expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part thereof, for the purpose of disposing, depositing, dumping coal processing wastes thereon or removing coal processing waste therefrom, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

§20-6-14. General environmental protection performance standards for the surface effects of underground mining; application of other provisions of article to surface effects of underground mining.

(a) The reclamation commission shall promulgate separate regulations directed toward the surface effects of underground coal mining operations, embodying the requirements in subsection (b) of this section: Provided, That in adopting such regulations, the reclamation commission shall consider the distinct difference between surface coal mines and underground coal mines in West Virginia. Such regulations may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any regulation issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation as minimum to:
(1) Adopt measures consistent with known technology in order to prevent subsidence and to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and regulations promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure that any leachate therefrom will not degrade surface or ground waters below water quality standards established pursuant to applicable federal and state law and that the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

(5) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f), section thirteen of this article, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing
51 wastes and solid wastes and used either temporarily or perma-
52 nently as dams or embankments;

53 (6) Establish on regraded areas and all other disturbed
54 areas a diverse and permanent vegetative cover capable of
55 self-regeneration and plant succession and at least equal in
56 extent of cover to the natural vegetation of the area within
57 the time period prescribed in subdivision (20), subsection
58 (b), section thirteen of this article;

59 (7) Protect off-site areas from damages which may result
60 from such mining operations;

61 (8) Eliminate fire hazards and otherwise eliminate con-
62 ditions which constitute a hazard to health and safety of
63 the public;

64 (9) Minimize the disturbance of the prevailing hydrologic
65 balance at the mine site and in associated off-site areas
66 and to the quantity and the quality of water in surface and
67 ground water systems both during and after mining opera-
68 tions and during reclamation by: (A) Avoiding acid or
69 other toxic mine drainage by such measures as, but not
70 limited to: (i) Preventing or removing water from contact
71 with toxic producing deposits; (ii) treating drainage to re-
72 duce toxic content which adversely affects downstream water
73 before being released to water courses; and (iii) casing,
74 sealing or otherwise managing boreholes, shafts and wells
75 to keep acid or other toxic drainage from entering ground
76 and surface waters; and (B) conducting mining operations
77 so as to prevent, to the extent possible using the best tech-
78 nology currently available, additional contributions of sus-
79 pended solids to streamflow or runoff outside the permit area,
80 but in no event shall such contributions be in excess of re-
81 quirements set by applicable state law, and avoiding channel
82 deepening or enlargement in operations requiring the dis-
83 charge of water from mines: Provided, That in recognition
84 of the distinct differences between surface and underground
85 mining, the monitoring of water from underground coal mine
86 workings shall be in accordance with the provisions of the
87 Clean Water Act of 1977;

88 (10) With respect to other surface impacts of underground
mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section thirteen of this article for such effects which result from surface-mining operations:

Provided, That the reclamation commission shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director after consultation with the department of mines and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in such a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams if he finds imminent danger to inhabitants of the urbanized areas, cities, towns or communities.

(d) The provisions of this article relating to permits, bonds, insurance, inspections, reclamation and enforcement, public review and administrative and judicial review shall also be applicable to surface operations and surface impacts incident to an underground mine with such modifications by regulation to the permit application requirements, permit approval or denial procedures and bond requirements as are necessary to accommodate the distinct difference between surface mines and underground mines in West Virginia.
§20-6-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

(a) The director shall cause to be made such inspections of surface-mining operations as are necessary to effectively enforce the requirements of this article, and for such purposes the director shall without advance notice and upon presentation of appropriate credentials: (A) Have the right of entry to, upon or through surface-mining operations or any premises in which any records required to be maintained under subdivision (1), subsection (b) of this section are located; and (B) at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under this article.

(b) For the purpose of enforcement under this article, in the administration and enforcement of any permit under this article, or for determining whether any person is in violation of any requirement of this article:

(1) The director shall at a minimum require any operator to: (A) Establish and maintain appropriate records; (B) make monthly reports to the department; (C) install, use and maintain any necessary monitoring equipment or methods consistent with subdivision (11), subsection (a), section ten of this article; (D) evaluate results in accordance with such methods, at such locations, intervals and in such manner as the director shall prescribe; and (E) provide such other information relative to surface-mining operations as the director deems reasonable and necessary;

(2) For those surface-mining operations which remove or disturb strata that serve as aquifers which significantly ensure the hydrologic balance of water use either on or off the mining site, the director shall require that: (A) Monitoring sites be established to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence; (B) monitoring sites be established to record level, amount and samples of ground water and aquifers potentially affected by the surface mining and also below the lowermost mineral seam to be mined; (C) records or well logs and borehole date be maintained; and (D)
monitoring sites be established to record precipitation. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth by the reclamation commission in order to assure their reliability and validity.

(c) All surface mining operations shall be inspected at least once every thirty days. Such inspections shall be made on an irregular basis without prior notice to the operator or his agents or employees, except for necessary on-site meetings with the operator. The inspections shall include the filing of inspection reports adequate to enforce the requirements, terms and purposes of this article.

(d) Each permittee shall maintain at the entrances to the surface-mining operations a clearly visible monument which sets forth the name, business address and telephone number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the director shall be made immediately available to the public at central and sufficient locations in the county, multi-county or state area of mining so that they are conveniently available to residents in the areas of mining unless specifically exempted by this article.

(f) Within thirty days after service of a copy of an order of the director upon an operator by registered or certified mail, the operator shall furnish to the director five copies of a progress map prepared by or under the supervision of a person approved by the director showing the disturbed area to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps required by this article, and shall show in detail completed reclamation work as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations
during the preceding year, the operator shall notify the
director of that fact.

(g) Whenever on the basis of available information, in-
cluding reliable information from any person, the director
has cause to believe that any person is in violation of this
article, any permit condition or any regulation promulgated
under this article, the director shall immediately order state
inspection of the surface-mining operation at which the alleged
violation is occurring unless the information is available as
a result of a prior state inspection. The director shall notify
any person who supplied such reliable information when
the state inspection will be carried out. Such person may
accompany the inspector during the inspection: Provided,
That except for deliberate and willful acts, the permittee,
his authorized agent or employees, and the inspector whom
such person is accompanying, shall not be held civilly liable
for any injury to such person during the inspection trip.
Any such person accompanying an inspector on an inspection
shall be responsible for supplying any safety equipment re-
quired for his use.

§20-6-16. Cessation of operation by order of inspector; informal
conference; imposition of affirmative obligations; ap­
peal.

(a) Notwithstanding any other provisions of this article, a
surface-mining reclamation inspector shall have the authority
to issue a cessation order for any portion of a surface-mining
operation when an inspector determines that any condition
or practices exist, or that any permittee is in violation of
any requirements of this article or any permit condition
required by this article, which condition, practice, or violation
also creates an imminent danger to the health or safety of
the public, or is causing or can reasonably be expected to
cause significant, imminent environmental harm to land, air
or water resources. Such cessation order shall take effect
immediately. Unless waived in writing, an informal conference
shall be held at or near the site relevant to the violation set
forth in the cessation order within twenty-four hours after
such order becomes effective or such order shall expire.
Such conference shall be held before a surface-mining reclama-
tion supervisor who shall, immediately upon conclusion of
said hearing, determine when and if the operation or portion
thereof may resume. Any operator who believes he is ag-
grieved by the decision of the surface-mining reclamation
supervisor may immediately appeal to the director, setting
forth reasons why the operation should not be halted. The
director forthwith shall determine whether the operation or
portion thereof may be resumed.

(b) Such cessation order shall remain in effect until the
director determines that the condition, practice or violation
has been abated, or until modified, vacated or released by
the director. Where the director finds that the ordered cessa-
tion of any portion of a surface coal mining operation will
not completely abate the imminent danger to health or safety
of the public or the significant imminent environmental harm
to land, air or water resources, the director shall, in addition
to the cessation order, impose affirmative obligations on the
operator requiring him to take whatever steps the director
deems necessary to abate the imminent danger or the signifi-
cant environmental harm.

(c) Any cessation order issued pursuant to this section or
any other provision of this article may be released by any
inspector. An inspector shall be readily available to vacate
a cessation order upon abatement of the violation.

§20-6-17. Notice of violation; procedure and actions; enforcement;
permit revocation and bond forfeiture; civil and criminal
penalties; prosecution; injunctive relief.

(a) If any of the requirements of this article, rules and regula-
tions promulgated pursuant thereto or permit conditions have
not been complied with, the director may cause a notice of
violation to be served upon the operator or his duly authorized
agent. A copy of such notice shall be handed to the operator
or his duly authorized agent in person or served by certified
mail addressed to the operator at the permanent address
shown on the application for a permit. The notice shall specify
in what respects the operator has failed to comply with this
article, rules and regulations or permit conditions and shall
specify a reasonable time for abatement of the violation not to
If the operator has not abated the violation within the time specified in the notice, or any reasonable extension thereof, not to exceed seventy-five days, the director shall order the cessation of the operation or the portion thereof causing the violation, unless the operator affirmatively demonstrates that compliance is unattainable due to conditions totally beyond the control of the operator. If a violation is not abated within the time specified or any extension thereof, or any cessation order is issued, a mandatory civil penalty of not less than one thousand dollars per day per violation shall be assessed: Provided, That assessments of civil penalties under this subsection shall continue until corrective steps have been initiated by the operator to the satisfaction of the surface-mining reclamation inspector: Provided, however, That if a cessation order is released or expires within twenty-four hours after issuance no mandatory civil penalty shall be assessed.

(b) If the director determines that a pattern of violations of any requirement of this article or any permit condition exists or has existed as a result of the operator's lack of reasonable care and diligence, or that such violations are willfully caused by the operator, the director shall immediately issue an order directing the operator to show cause why the permit should not be suspended or revoked and giving the operator thirty days in which to request a public hearing. If a hearing is requested, the director shall inform all interested parties of the time and place of the hearing. Any hearing under this section shall be recorded and subject to the provisions of chapter twenty-nine-a of this code. Within sixty days following the public hearing, the director shall issue and furnish to the permittee and all other parties to the hearing a written decision, and the reasons therefor, concerning suspension or revocation of the permit. Upon the operator's failure to show cause why the permit should not be suspended or revoked, the director shall immediately revoke the operator's permit, forfeit the operator's bond or other security posted pursuant to section twelve of this article and give notice to the attorney general, who shall collect the forfeiture without delay: Provided, That the entire proceeds of such forfeiture shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund. All forfeitures collected prior to the effective date of
this article shall be deposited in the special reclamation fund and shall be expended back upon the areas for which the bond was posted: Provided, however, That any excess therefrom shall remain in the special reclamation fund.

(c) Any person engaged in surface-mining operations who violates any permit condition or who violates any other provision of this article or rules and regulations promulgated pursuant thereto may also be assessed a civil penalty. Such penalty shall not exceed five thousand dollars. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notifications of the violation.

(d) Notwithstanding the jurisdictional limitations contained in article two, chapter fifty of this code, any such civil penalty may be imposed and collected by the magistrate courts, which shall have jurisdiction over all civil penalty actions brought by the director. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section twelve of this article.

(e) Any person who willfully and knowingly violates a condition of a permit issued pursuant to this article or regulations promulgated pursuant thereto, or fails or refuses to comply with any order issued under said article and regulations or any order incorporated in a final decision issued by the director is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than ten thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(f) Whenever a corporate operator violates a condition of a permit issued pursuant to this article, regulations promulgated pursuant thereto, or any order incorporated in a final decision
issued by the director, any director, officer or agent of such
corporation who willfully and knowingly, authorized, ordered
or carried out such failure or refusal shall be subject to the same
civil penalties, fines and imprisonment that may be imposed
upon a person under subsections (c) and (e) of this section.

(g) Any person who knowingly makes any false statement,
representation or certification, or knowingly fails to make any
statement, representation or certification in any application,
petition, record, report, plan or other document filed or re-
quired to be maintained pursuant to this article or regulations
promulgated pursuant thereto is guilty of a misdemeanor, and,
upon conviction thereof, shall be fined not less than one
hundred dollars nor more than ten thousand dollars, or im-
prisoned in the county jail not more than one year, or both
fined and imprisoned.

(h) Whenever a permittee or his agent: (A) Violates or
fails or refuses to comply with any order or decision issued
by the director under this article; or (B) interferes with, hinders,
or delays the director in carrying out the provisions of this
article; or (C) refuses to admit the director to the mine; or
(D) refuses to permit inspection of the mine by the director;
or (E) refuses to furnish any reasonable information or report
requested by the director in furtherance of the provisions of
this article; or (F) refuses to permit access to, and copying of,
such records as the director determines necessary in carrying
out the provisions of this article; or (G) violates any other
provisions of this article, the regulations promulgated pur-
suant thereto, or the terms and conditions of any permit, the
director, the attorney general, or the prosecuting attorney of
the county in which the major portion of the permit area is
located, may institute a civil action for relief, including a
permanent or temporary injunction, restraining order or any
other appropriate order, in the circuit court of Kanawha
County or any court of competent jurisdiction to compel com-
pliance with and enjoin such violations, failures or refusals.
The court or the judge thereof may issue a preliminary injunc-
tion in any case pending a decision on the merits of any appli-
cation filed without requiring the filing of a bond or other
equivalent security.
(i) Any person who shall, except as permitted by law, will-fully resist, prevent, impede or interfere with the director or any of his agents in the performance of duties pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

§20-6-18. Approval, denial, revision and prohibition of permit.

(a) Upon the receipt of a surface mining application or significant revision or renewal thereof, including public notification and an opportunity for a public hearing, the director shall grant, require revision of, or deny the application for a permit within sixty days and notify the applicant in writing of his decision.

(b) No permit or significant revision of a permit may be approved unless the applicant affirmatively demonstrates and the director finds in writing on the basis of the information set forth in the application or from information otherwise available which shall be documented in the approval and made available to the applicant that:

(1) The permit application is accurate and complete and that all the requirements of this article and regulations thereunder have been complied with;

(2) The applicant has demonstrated that reclamation as required by this article can be accomplished under the reclamation plan contained in the permit application;

(3) The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance, as specified in section ten of this article, has been made by the director and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) The area proposed to be mined is not included within an area designated unsuitable for surface mining pursuant to section twenty-two of this article or is not within an area under administrative study by the reclamation commission for such designation; and
(5) In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted: (A) The written consent of the surface owner to the extraction of coal by surface mining; or (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining; or (C) if the conveyance does not expressly grant the right to extract coal by surface mining, the surface-subsurface legal relationship shall be determined in accordance with applicable law: Provided, That nothing in this article shall be construed to authorize the director to adjudicate property rights disputes.

(c) Where information available to the department indicates that any surface-mining operation located in the state of West Virginia, owned or controlled by the applicant, is currently in violation of this article or other West Virginia environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director or the department or agency which has jurisdiction over such violation, and no permit may be issued to any applicant after a finding by the director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any such applicant if, after such revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area, and
the director is satisfied that such petitioner will comply with this article.

(d) (1) In addition to finding the application in compliance with subsection (b) of this section, if the area proposed to be mined contains prime farmland, the director may, pursuant to regulations promulgated hereunder, grant a permit to mine on prime farmland if the operator affirmatively demonstrates that he has the technological capability to restore such mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management, and can meet the soil reconstruction standards in subdivision (7), subsection (b), section thirteen of this article. Except for compliance with subsection (b) of this section, the requirements of subdivision (1) of this subsection, shall apply to all permits issued after the third day of August, one thousand nine hundred seventy-seven.

(2) Nothing in this subsection shall apply to any permit issued prior to the third day of August, one thousand nine hundred seventy-seven, or to any revisions or renewals thereof, or to any existing surface-mining operations for which a permit was issued prior to said date.

(e) If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides, or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

§20-6-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; operator reassignment.

(a) (1) Any valid permit issued pursuant to this article shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply
for renewal and such renewal shall be issued: Provided, That on application for renewal, the burden shall be on the opponents of renewal, unless it is established that and written findings by the director are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator’s continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the performance bond in effect for said operation will continue in effect for any renewal requested as required pursuant to section twelve of this article; or (E) any additional revised or updated information as required pursuant to rules and regulations promulgated by the reclamation commission has not been provided.

(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, except incidental boundary revisions, the applicant shall apply for a new permit. Incidental boundary revisions shall include, but not be limited to, additional areas of disturbance ancillary to permitted surface effects of underground mining operations, provided that the operator has submitted (A) adequate bond, (B) a map showing the disturbed area and facilities, and (C) a reclamation plan.

(3) Any permit renewal shall be for a term not to exceed the period of time for which the original permit was issued. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(4) Any permit renewal application shall be on forms prescribed by the director and shall contain such information as the director requires pursuant to rule or regulation.
(b) (1) During the term of the permit, the permittee may submit to the director an application for a revision of the permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit shall be subject to all requirements of this article and regulations promulgated pursuant thereto.

(3) Any extension to an area already covered by the permit, except incidental boundary revisions, shall be made by application for another permit.

(c) The director shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed once during their term. The director may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee and opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article shall be made without the prior written approval of the director.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

(a) At the time of submission of an application for a surface-mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The director shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed
mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the director on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the director to the applicant and to the appropriate office of the department.

(b) Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency, shall have the right to file written objections to the proposed initial or revised permit application for a surface-mining operation with the director within thirty days after the last publication of the advertisement required in subsection (a) of this section. Such objections shall be immediately transmitted to the applicant by the director and shall be made available to the public. If written objections are filed and an informal conference requested within thirty days of the last publication of the above notice, the director shall then hold a conference in the locality of the proposed mining within three weeks after the close of the public comment period. Those requesting the conference shall be notified and the date, time and location of the informal conference shall also be advertised by the director in a newspaper of general circulation in the locality at least two weeks prior to the scheduled conference date. The director may arrange with the applicant, upon request by any party to the conference proceeding, access to the proposed mining area for the purpose of gathering information relevant to the proceeding. An electronic or stenographic record shall be made of the conference proceeding unless waived by all parties. Such record shall be maintained and shall be accessible to the parties at their respective expense until final release of the applicant’s performance bond or other security posted in lieu thereof. The director’s authorized agent will preside over the conference. In the event all parties requesting the informal conference stipulate agreement prior to the conference and withdraw their request, a conference need not be held.
§20-6-21. Decision of director on permit application; hearing thereon.

(a) If an informal conference has been held, the director shall issue and furnish the applicant for a permit and persons who were parties to the informal conference with the written finding granting or denying the permit in whole or in part and stating the reasons therefor within thirty days of the informal conference, notwithstanding the requirements of subsection (a), section eighteen of this article.

(b) If the application is approved, the permit shall be issued. If the application is disapproved, specific reasons therefor must be set forth in the notification. Within thirty days after the applicant is notified of the director's decision, the applicant or any person with an interest which is or may be adversely affected may request a hearing before the reclamation board of review as provided in section twenty-four of this article to review the director's decision.

§20-6-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The reclamation commission shall establish a planning process to enable objective decisions based upon competent and scientifically sound data and information as to which, if any, land areas of this state are unsuitable for all or certain types of surface-mining operations pursuant to the standards set forth in subdivisions (1) and (2) of this subsection: Provided, That such designation shall not prevent prospecting pursuant to section eight of this article on any area so designated.

(1) Upon petition pursuant to subsection (b) of this section, the reclamation commission shall designate an area as unsuitable for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this sec-
tion, a surface area may be designated unsuitable for certain types of surface-mining operations, if such operations: (A) Be incompatible with existing state or local land use plans or programs; (B) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; (C) affect renewable resource lands including significant aquifers and aquifer recharge areas, in which such operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or (D) affect natural hazard lands in which such operations could substantially endanger life and property. Such lands to include lands subject to frequent flooding and areas of unstable geology.

(3) The reclamation commission shall develop a process which includes: (A) The review of surface-mining lands; (B) a data base and an inventory system which will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface-mining operations; (C) a method for implementing land use planning decisions concerning surface-mining operations; and (D) proper notice and opportunities for public participation, including a public hearing prior to making any designation or redesignation pursuant to this section.

(4) Determinations of the unsuitability of land for surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at federal, state and local levels.

(5) The requirements of this section shall not apply to lands on which surface-mining operations were being conducted on the third day of August, one thousand nine hundred seventy-seven, or under a permit issued pursuant to this article, or where substantial legal and financial commitments in such operations were in existence prior to the fourth day of January, one thousand nine hundred seventy-seven.

(b) The director, or any person having an interest which is or may be adversely affected, shall have the right to petition the reclamation commission to have an area
designated as unsuitable for surface-mining operations or to have such a designation terminated. Such petition shall contain allegations of fact with supporting evidence which would tend to establish the allegations. After receipt of such petition, the reclamation commission shall immediately begin an administrative study of the area specified in the petition. Within ten months after receipt of the petition, the reclamation commission shall hold a public hearing in the locality of the affected area after appropriate notice and publication of the date, time and location of such hearing. After the director or any person having an interest which is or may be adversely affected has filed a petition and before the hearing required by this subsection, any person may intervene by filing allegations of fact with supporting evidence which would tend to establish the allegations. Within sixty days after such hearing, the reclamation commission shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition and the reasons therefor. In the event that all the petitioners stipulate agreement prior to the requested hearing and withdraw their request, such hearing need not be held.

(c) Prior to designating any land areas as unsuitable for surface-mining operations, the reclamation commission shall prepare a detailed statement on: (1) The potential coal resources of the area; (2) the demand for the coal resources; and (3) the impact of such designation on the environment, the economy and the supply of coal.

(d) After the third day of August, one thousand nine hundred seventy-seven, and subject to valid existing rights, no surface-mining operations, except those which existed on that date, shall be permitted:

(1) On any lands in this state within the boundaries of units of the national park system, the national wildlife refuge systems, the national system of trails, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section five-a of the Wild and Scenic Rivers Act, and national recreation areas designated by act of Congress: Provided, That the director may grant variances to this subdivision after an affirmative
finding that positive environmental benefits will result from such;

(2) Which will adversely affect any publicly owned part or places included in the national register of historic sites, or national register of natural landmarks unless approved jointly by the director and the federal, state or local agency with jurisdiction over the park, the historic site, or natural landmark;

(3) Within one hundred feet of the outside right-of-way line on any public road, except where mine access road or haulage roads join such right-of-way line, and except that the director may permit such roads to be relocated or the area affected to lie within one hundred feet of such road if, after public notice and an opportunity for a public hearing in the locality, the director makes a written finding that the interests of the public and the landowners affected thereby will be protected;

(4) Within three hundred feet from any occupied dwelling, unless waived by the owner thereof, or within three hundred feet of any public building, school, church, community or institutional building, public park, or within one hundred feet of a cemetery; or

(5) On any federal lands within the boundaries of any national forest: Provided, That surface coal mining operations may be permitted on such lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with such surface-mining operations: Provided further, That such surface operations and impacts are incident to an underground coal mine.

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be assessed for taxation purposes according to their value, and the Legislature hereby finds that such coal has no value for the duration of such designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of such coal shall forthwith notify the proper assessing authorities if such
designation or prohibition is removed so that such coal may be reassessed.

§20-6-23. Appointment and organization of reclamation board of review; authority, compensation, etc.

(a) There is hereby created a reclamation board of review consisting of five members to be appointed by the governor with the advice and consent of the Senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years respectively, as designated by the governor at the time of the appointment. Any vacancy in the office of a member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the practice of agriculture and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the modern forestry practices and who represents the general public interest. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in engineering. One of the appointees of such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. Not more than three members shall be members of the same political party.

(b) The board may employ supporting staff including hearings examiners to aid and assist in performing its responsibilities under this article.
(c) Three members shall constitute a quorum and no action of the board is valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings. Each member shall be paid as compensation for his work as such member, from funds appropriated for such purposes, seventy-five dollars per day when actually engaged in the performance of his work as a board member. In addition to such compensation, 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.

(d) Annually, one member shall be elected as chairman and another member shall be elected as vice chairman. Such officers shall serve for terms of one year. The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance or nonfeasance, after delivery to such member the charges against him in writing, together with at least ten days' written notice of the time and place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him, and affording the member such hearing. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings thereon. In such case the action of the governor removing such member from office shall be final.

§20-6-24. Appeals to board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of board.

(a) Any person having an interest which is or may be adversely affected by any order of the reclamation commission or any notice, order or final determination by the director may appeal to the board for an order terminating, vacating or modifying such notice, order or determination, or may intervene in a timely manner in any such pending appeal. The person so appealing to the board shall be known as the appellant, and the commission or director shall be known
as appellees. The appellant and appellee are deemed to be parties to the appeal. Any hearing shall be subject to the requirements of chapter twenty-nine-a of this code.

(b) Such appeal shall be in writing and shall set forth the action complained of and the specific grounds upon which the appeal is based. Within thirty days after the appellant is notified of the notice, order or final determination of the director or the reclamation commission, the appellant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final determination, notice or order complained of. A notice of the filing of such appeal shall be filed with the reclamation commission or the director within three days after the appeal is filed with the board.

(c) Upon the filing of such appeal, the board shall fix the time and place at which the hearing on the appeal will be held, which hearing shall be held within thirty days after the notice of appeal is filed, and shall give the appellant, the commission or the director at least twenty days' written notice thereof by certified mail. The board may postpone or continue any hearing upon its own motion or motion of the parties to the appeal.

(d) Not later than five days prior to the time fixed for the hearing on the appeal, the reclamation commission or director shall prepare and certify to the board a complete record of the proceedings of the reclamation commission or director out of which the appeal arises, including all documents and correspondence related to the matter.

(e) The filing of an appeal provided for in this section shall not stay execution of the order appealed from. Pending completion of the investigation and hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests
relief from an order for cessation of surface mining and
reclamation operations, the decision on such a request shall
be issued within forty-eight hours of its receipt. The director
may grant such relief, under such conditions as he may
prescribe, if:

1. All parties to the proceedings have been notified
and given an opportunity to be heard on a request for tem­
porary relief;

2. The person requesting such relief shows that there
is a substantial likelihood that he will prevail on the merits
of the final determination of the proceedings;

3. Such relief will not adversely affect the public health
or safety or cause significant imminent environmental harm
to land, air or water resources; and

4. The relief sought is not the issuance of a permit
where a permit has been denied, in whole or in part, by the
director.

(f) The board shall hear the appeal de novo and any
party to the appeal may submit evidence. For the purpose of
conducting a hearing on an appeal, the board may require the
attendance of witnesses and the production of books, records
and papers, and it may, and at the request of any party it
shall, issue subpoenas for witnesses or subpoenas duces
tecum to compel the production of any books, records or
papers, directed to the sheriff of the county where such
witnesses, books, records or papers are found, which sub­
poenas and subpoenas duces tecum shall be served and re­
turned in the same manner as subpoenas and subpoenas duces
tecum in civil litigation are served and returned. The fees
and allowances for mileage of sheriffs and witnesses shall
be the same as those permitted in civil litigation in trial
courts. All fees and mileage expenses incurred and the
expense of preparing the record at the request of the appellant
shall be paid by the appellant.

(g) In case of disobedience or neglect of any subpoena
or subpoena duces tecum served on any person, or the refusal
of any witness to testify to any matter regarding which he
may be lawfully interrogated, the circuit court of the county
in which such disobedience, neglect or refusal occurs, on
application of the board or any member thereof, shall com-
pel obedience by attachment proceedings for contempt as
in the case of disobedience of the requirements of a sub-
poena or subpoena duces tecum issued from such court of
a refusal to testify therein. Witnesses at such hearings
shall testify under oath and any member of the board may
administer oaths or affirmations to persons who so testify.

(h) A stenographic record of the testimony and other
evidence submitted shall be made. Such record shall include
all of the testimony and other evidence and the rulings on
the admissibility of evidence, but any party may at the time
object to the admission of any evidence and except to the
rulings of the board thereon, and if the board refuses to admit
evidence the party offering the same may make a proffer
thereof, and such proffer shall be made a part of the record
of such hearing.

(i) If upon completion of the hearing the board finds
that the notice, order or final determination appealed from
was lawful and reasonable, it shall make a written order
affirming the same, or if the board finds that said notice,
order or final determination was not supported by substantial
evidence in the record considered as a whole, it shall make
a written order terminating, vacating or modifying the notice
or order appealed from. Every order made by the board shall
contain a written finding by the board of the facts upon which
the order is based. Notice of the making of such order shall be
given forthwith to each party to the appeal by mailing a
certified copy thereof to each such party by registered or
certified mail. The order of the board shall be final unless
vacated upon judicial review thereof.

§20-6-25. Appeal from order of board; judicial review; temporary
relief.

(a) Within thirty days after receipt of an order from the
board, any applicant, any person with an interest which is
or may be adversely affected, or the appellee who has par-
ticipated in the administrative proceedings before the board
and who is aggrieved by the decision of the board may obtain judicial review thereof by appealing to the circuit court of Kanawha County or of the county in which the surface-mining operations is located. Any party desiring to so appeal shall file with the board a notice of appeal, designating the order appealed from, stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact, and stating specific grounds upon which the appeal is based. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond may be required to make effective an appeal on questions of law, questions of fact or questions of law and fact.

(b) The filing of a notice of appeal shall not, unless specifically ordered by the court, operate as a stay of the order of the board. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(1) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(2) The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(3) Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

(c) Within thirty days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of the proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which was submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. The appellant shall pro-
vide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

(d) Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the case or set out in the briefs of the appellant. Errors not argued by brief may be disregarded. The court shall hear such appeal solely upon the record made before the board.

(e) The court may affirm, vacate, modify, set aside or remand any order of the board for such further action as the court may direct. Any order shall be affirmed if the court concludes that such order is supported by substantial evidence based on the record as a whole. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

(f) The availability of such review shall not be construed to limit the operation of the rights established in section twenty-eight of this article except as provided therein.

(g) Whenever an order is issued under this section, or as a result of any administrative or judicial proceeding under this article, at the request of any person, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the board or the court to have been reasonably incurred by such person for or in connection with his participation in such proceedings, may be assessed against either party by the board or the court.

§20-6-26. Release of performance bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

(a) The permittee may file a request with the director for
the release of a performance bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisement shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee’s approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee’s intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuation or future occurrence of such pollution and the estimated cost of abating such pollution. The director shall notify the permittee in writing of his decision to release or not to release all or part of the performance bond or deposit within sixty days from the date of the initial publication of the advertisement if no public hearing is requested. If a public hearing is held, the director’s decision shall be issued within thirty days thereafter.

(c) If the director is satisfied that reclamation covered by the bond or deposit or portion thereof has been accomplished as required by this article, he may release said bond or deposit, in whole or in part, according to the following schedule:
(1) When the operator completes the backfilling, regrading and drainage control of a bonded area in accordance with his approved reclamation plan, the release of sixty percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after grade release;

(2) Two years after the last augmented seeding, fertilizing, irrigation or other work to ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release of an additional twenty-five percent of the bond or collateral for the applicable bonded area: Provided, That a minimum bond of ten thousand dollars shall be retained after the release provided for in this subdivision; and

(3) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan. No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by sections thirteen or fourteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section ten of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or where a minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and
(e) When any application for total or partial bond release is filed with the director, he shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty days after the last publication of the permittee’s advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of such public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of such hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a
transcript made available on the motion of any party or by
order of the director at the cost of the person requesting the
transcript.

§20-6-27. Water rights and replacement; waiver of replacement.

(a) Nothing in this article shall be construed as affecting
in any way the rights of any person to enforce or protect,
under applicable law, his interest in water resources affected
by a surface-mining operation.

(b) Any operator shall replace the water supply of an
owner of interest in real property who obtains all or part of
his supply of water for domestic, agricultural, industrial
or other legitimate use from an underground or surface source,
where such supply has been affected by contamination, diminu-
tion or interruption proximately caused by such surface-mining
operation, unless waived by said owner.

§20-6-28. Citizen suits; order of court; damages.

(a) Except as provided in subsection (b) of this section,
any person having an interest which is or may be adversely
affected may commence a civil action in the circuit court
of the county to which the surface-mining operation is located
on his own behalf to compel compliance with this article:

(1) Against the state of West Virginia or any other
governmental instrumentality or agency thereof, to the extent
permitted by the West Virginia constitution and by law,
which is alleged to be in violation of the provisions of
this article or any rule, regulation, order or permit issued
pursuant thereto, or against any other person who is alleged
to be in violation of any rule, regulation, order or permit
issued pursuant to this article; or

(2) Against the director, reclamation commission, recla-
mation board of review or appropriate department employees,
to the extent permitted by the West Virginia constitution
and by law, where there is alleged a failure of the above
to perform any act or duty under this article which is not
discretionary.

(b) No action may be commenced:
(1) Under subdivision (1), subsection (a) of this section:
   (A) prior to sixty days after the plaintiff has given notice
   in writing of the violation to the director or to any alleged
   violator, or (B) if the director has commenced and is
diligently prosecuting a civil action in a circuit court to
require compliance with the provisions of this article or any
rule or regulation, order or permit issued pursuant to this
article; or

(2) Under subdivision (2), subsection (a) of this section
prior to sixty days after the plaintiff has given notice in
writing of such action to the director, except that such
action may be brought immediately after such notification
in the case where the violation or order complained of
constitutes an imminent threat to the health or safety of the
plaintiff or would immediately affect a legal interest of the
plaintiff.

(c) Any action respecting a violation of this article or
the regulations thereunder may be brought in any appropriate
circuit court. In such action under this section, the director,
if not a party, may intervene as a matter of right.

(d) The court in issuing any final order in any action
brought pursuant to subsection (a) of this section may award
costs of litigation, including reasonable attorney and expert
witness fees, to any party whenever the court determines such
award is appropriate. The court may, if a temporary re-
straining order or preliminary injunction is sought, require
the filing of a bond or equivalent security.

(e) Nothing in this section shall restrict any right which
any person or class of persons may have under any statute
or common law to seek enforcement of any of the provisions
of this article and the regulations thereunder or to seek any
other relief.

(f) Any person or property who is injured in his person
through the violation by any operator of any rule, regulation,
order or permit issued pursuant to this article may bring an ac-
tion for damages, including reasonable attorney and expert wit-
ness fees, in any court of competent jurisdiction. Nothing
in this subsection shall affect the rights established by or limits imposed under state workmen’s compensation laws.

(g) This section shall apply to violations of this article and the regulations promulgated thereto, or orders or permits issued pursuant to said article insofar as said violations, regulations, orders and permits relate to surface-mining operations.

§20-6-29. Surface-mining operations not subject to article.

The provisions of this article shall not apply to any of the following activities:

1. The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.

2. The extraction of coal by a landowner engaged in construction, which construction does not require the disturbance of more than one acre of privately owned land: Provided, That prior to the extraction of coal by such landowner, he shall affirmatively demonstrate that such construction will occur within a reasonable time after surface disturbance.

3. Notwithstanding any other provision of this article, a person or operator shall not be subject to the reclamation requirements of this article when engaged in the removal of borrow and fill material for grading in federal and state highway or other construction projects: Provided, That the provisions of the construction contract require the furnishing of a suitable bond which provides for reclamation, wherever practicable, of the area affected by such recovery activity.

§20-6-30. Leasing of lands owned by state for surface mining of coal.

No land or interest in land owned by the state may be leased, and no present lease may be renewed by the state, nor any agency of the state, for the purpose of conducting surface-mining operations thereon unless said lease or renewal shall have been first authorized by an act of the Legislature: Provided, That the provisions of this section shall not apply to underground mining on such land.
§20-6-31. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.

(a) Except where exempted by section twenty-nine of this article, 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 director a permit therefor as provided in section nine of this article, unless a special permit therefor shall have been first obtained from the director 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 director 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 person 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 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 name of owner of the surface of the land to be developed;

(4) The name of owner of the coal to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of coal 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, excluding roadways, 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.

(b) 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 in-
surance company authorized to do business in this state af-
fording personal injury protection in accordance with subsec-
tion (d), section ten of this article.

The application for the special permit shall also be accom-
panied by a bond, or cash or collateral securities or certifi-
cates of the same type, in the form as prescribed by the di-
rector and in the minimum amount of two thousand dollars
per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and
conditioned that the applicant shall complete the site prepara-
tion 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 and any cash, securities or certificates furnished with
said bond may be released and returned to the applicant. The
filing fee for the special permit shall be five hundred dollars.
The special permit shall be valid until work permitted is com-
pleted.

(c) The purpose of this section is to vest jurisdiction in the
director, where the surface mining is incidental or secondary to
the preparation of land for commercial, residential, indus-
trial or civic use and where, as an incident to such prepara-
tion of land, minerals must be removed, including, but not
limited to, the building and construction of railroads, shopping
malls, factory and industrial sites, residential and building
sites, and recreational areas. 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 evi-
dence has been submitted to the director that such permit 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 applic-
able to the operator holding a special permit: Provided, That
the reclamation commission shall promulgate regulations es-
Establishing applicable performance standards for operations
permitted under this section.

(d) The director may, in the exercise of his sound dis-
cretion, when not in conflict with the purposes and findings
of this article and to bring about a more desirable land use
or to protect the public and the environment, issue a special
permit solely for the reprocessing of existing abandoned coal
processing waste piles. The reclamation commission shall
promulgate specific regulations for such operations: Provided,
That a bond and a reclamation plan shall be required for
such operations.

§20-6-32. Existing permits and performance bond conversion; ex-
emption from design criteria.

(a) All surface disturbance reclamation bonds submitted
pursuant to the requirements of chapter twenty-two of this
code by the department of mines for operations which con-
tinue to operate eight months after the approval of the state
program shall be released upon notification by the director
of the department of natural resources that the disturbed
areas have been bonded in accordance with the provisions
of this article: Provided, That for those operations permitted
after the first day of July, one thousand nine hundred seventy
six, and which do not continue operation eight months after
the approval of the state program, the director shall notify
the director of the department of mines upon reclamation of
the site in accordance with the underground opening approval
reclamation plan, whereupon such bonds shall be released:
Provided, however, That forfeiture proceedings shall begin up-
On failure of the operator to reclaim within a reasonable time
the disturbed area pursuant to a plan approved after the first
day of July, one thousand nine hundred seventy-six.

(b) With regard to existing structures and facilities, per-
sons need not comply with design criteria if such structures
and facilities meet the environmental performance standards
of this article.
§20-6-33. Experimental practices.

In order to encourage advances in surface mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, agricultural or public use, including recreational facilities, the director may authorize departures, in individual cases and on an experimental basis, from the environmental protection performance standards promulgated under this article. Such departures may be authorized if the experimental practices are potentially more or at least as environmentally protective during and after surface-mining operations as those required by promulgated standards; the surface-mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded health or safety of the public below that provided by promulgated standards.

§20-6-34. Certification and training of blasters.

The director of the department of mines shall be responsible for the training, examination and certification of persons engaging in or directly responsible for blasting or use of explosives in surface-mining operations.

§20-6-35. Surface miner certification required.

After the first day of July, one thousand nine hundred seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles six and six-a, chapter twenty-two of this code and the regulations promulgated thereunder.

§20-6-36. Certification of surface-mine foremen.

(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, chapter twenty-two of this code as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in
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(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 demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, 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 of this code.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one man, one or more assistant mine foreman 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, chapter twenty-two of this code. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, 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.

(c) The director of the department of mines shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

§20-6-37. Monthly report by operator.

The operator of every surface mine shall, on or before the end of each calendar month, file with the director of
§20-6-38. Applicability and enforcement of laws safeguarding life and property; regulations; authority of department of mines regarding safety laws.

All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The director of the department of mines shall promulgate reasonable regulations in accordance with the provisions of chapter twenty-nine-a of this code to protect the safety of those employed in and around surface mines. The enforcement of all laws and regulations relating to the safety of those employed in and around surface mines is hereby vested in the department of mines and shall be enforced according to the provisions of chapter twenty-two of this code.


In the event of any inconsistency or conflict between any provision of this article and any provision of this chapter, the provisions of this article shall control.

§20-6-40. Conflict of interest prohibited; criminal penalties therefor; employee protection.

(a) No employee of the department or employee of the reclamation board of review performing any function or duty under this article shall have a direct or indirect financial interest in any surface-mining operation. Whoever knowingly violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. The director shall establish methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing and the review
of statements and supplements thereto concerning any financial interest which may be affected by this subsection.

(b) No person shall discharge or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed or instituted, or caused to be filed or instituted, any proceeding under this article, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this article.

(c) Any employee or a representative of employees who has reason to believe that he has been fired or otherwise discriminated against by any person in violation of subsection (b) of this section may, within thirty days after such alleged violation occurs, petition to the reclamation board of review for a review of such firing or discrimination. The employee or representative shall be known as the petitioner and shall serve a copy of the petition upon the person or operator who will be the respondent. The participants shall be given ten days' written notice of the hearing before the board, which such hearing shall be held within thirty days of the filing of the petition. The board shall have the same powers and shall hear the petition in the same manner as provided in subsections (e), (f) and (g) of section twenty-four of this article.

(d) If the board finds that the alleged violation did occur, it shall issue an order incorporating therein findings of fact and conclusions requiring the participant committing the violation to take such affirmative action to abate the violation by appropriate action, including, but not limited to, the hiring or reinstatement of the employee or representative to his former position with compensation. If the board finds no violation it shall issue a finding to that effect. Orders issued by the board under this section shall be subject to judicial review in the same manner as other orders of the board issued under this article.

(e) Whenever an order is issued under this section to abate any violation, at the request of the petitioner a sum equal to the aggregate costs and expenses including attorneys' fees to
have been reasonably incurred by the petitioner for, or in con-
nection with, the institution and prosecution of such proceed-
ings, shall be assessed against the person committing the vio-
lation.

§20-6-41. Severability.

1 If any provision of this article or the application thereof to
2 any person or circumstance is held invalid, such invalidity shall
3 not affect other provisions or applications of this article, and
4 to this end the provisions of this article are declared to be
5 severable: Provided, That in promulgating rules pursuant to
6 the provisions of this article, the director and the reclamation
7 commission shall note relevant administrative and judicial de-
8 cisions from both state and federal systems and action by the
9 United States Congress or the United States department of the
10 interior.

§20-6-42. Validity of regulations promulgated under section 502(c)
of the Surface Mining Control and Reclamation Act of 1977.

1 (a) All rules and regulations promulgated under section
2 502(c) of the federal Surface Mining Control and Reclama-
tion Act of 1977 (Public Law 95-87), pursuant to the provi-
sions of chapter sixty-three, acts of the Legislature, regular
session, one thousand nine hundred seventy-nine, shall remain
in full force and effect until the expiration of eight months
after approval of the West Virginia state program under sec-
tion 503 of Public Law 95-87 upon proclamation of the gov-
ernor that such approval has been granted: Provided, That
those persons conducting operations under a permit or under-
ground opening approval issued in accordance with said sec-
tion 502(c), and in compliance therewith, shall be subject to
said regulations until the administrative decision pertaining to
the granting or denying of a permit under this article has been
made by the director.

(b) Permits granted under this article shall be subject to
rules and regulations promulgated hereunder.
ARTICLE 6C. ABANDONED MINE RECLAMATION ACT.

§20-6C-1. Short title.
§20-6C-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.
§20-6C-3. Definitions.
§20-6C-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.
§20-6C-5. Powers and duties of director; program plans and reclamation projects.
§20-6C-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.
§20-6C-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.
§20-6C-8. Filling voids and sealing tunnels.
§20-6C-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

§20-6C-1. Short title.

This article shall be known and cited as the "Abandoned Mine Lands and Reclamation Act."

§20-6C-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

The Legislature finds that there are a substantial number of acres of land throughout the state that were disturbed by surface-mining operations prior to the time of present day effective control and regulation. There was little or no reclamation conducted and the impacts from these unclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continue to impair environmental quality, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public.

Further the Legislature finds and declares that, due to the passage of Public Law 95-87, certain areas within the boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the Surface Mining Control and Reclamation act of 1977 "Public Law 95-87" provides for the collection of thirty-five cents per
ton of coal produced from surface mine operations and fifteen
cents per ton of coal produced from underground mine
operations in West Virginia to be collected by the secretary
of the United States department of the interior for a period
of at least fifteen years. At least fifty percent of the funds
so collected are to be allocated directly to the state of West
Virginia to accomplish reclamation of abandoned coal mining
operations, once the state of West Virginia obtains an
approved abandoned mine reclamation plan in accordance
with sections 405 and 503 of Public Law 95-87.

Therefore, it is the intent of the Legislature by this article
to vest jurisdiction and authority in the director of the depart-
ment of natural resources to allow for expedient program
approval by, and receipt of funds from, the United States de-
partment of the interior to accomplish the desired restoration
and reclamation of our land and water resources.

§20-6C-3. Definitions.

All definitions set forth in article six of this chapter shall
apply to those defined terms which also appear in this article.

§20-6C-4. Abandoned land reclamation fund and objectives of
fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under
Title IV of Public Law 95-87, private donations received, any
state appropriated or transferred funds, or funds received from
the sale of land by the director, under this article shall be de-
posited with the treasurer of the state of West Virginia to the
credit of the abandoned land reclamation fund hereby created,
and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the director for
the following:

(1) Reclamation and restoration of land and water resour-
es adversely affected by past coal surface-mining operations,
including, but not limited to, reclamation and restoration of
abandoned surface mine areas, abandoned coal processing areas
and abandoned coal processing waste areas; sealing and filling
abandoned deep mine entries and voids; planting of land ad-
versely affected by past coal surface-mining operations to pre-
vent erosion and sedimentation; prevention, abatement, treat-
ment and control of water pollution created by coal mine
drainage, including restoration of stream beds and construction
and operation of water treatment plants; prevention, abatement
and control of burning coal processing waste areas and burning
col in situ; prevention, abatement and control of coal mine
subsidence; and payment of administrative expenses and all
other necessary expenses incurred to accomplish the purpose of
this article: Provided, That all expenditures from this fund shall
reflect the following priorities in the order stated:

(A) The protection of public health, safety, general wel-
fare and property from extreme danger of adverse effects of
past surface mining practices;

(B) The protection of public health, safety and general
welfare from adverse effects of past coal surface mining prac-
tices;

(C) The restoration of land and water resources and envir-
onment previously degraded by adverse effects of past coal sur-
face-mining practices, including measures for the conservation
and development of soil, water (excluding channelization),
woodland, fish and wildlife, recreation resources and agricul-
tural productivity;

(D) Research and demonstration projects relating to the
development of surface-mining reclamation and water quality
control program methods and techniques;

(E) The protection, repair, replacement, construction or
enhancement of public facilities such as utilities, roads, re-
creation and conservation facilities adversely affected by past
coil surface mining practices;

(F) The development of publicly owned land adversely
affected by past coal surface mining practices, including land
acquired as provided in this article for recreation and his-
toric purposes, conservation and reclamation purposes and
open space benefits.

(2) Lands and water eligible for reclamation or drainage
abatement expenditures under this article are those which were
mined for coal or which were affected by such mining, waste-banks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the third day of August, nineteen hundred seventy-seven, and for which there is no continuing reclamation responsibility: Provided, That one purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article or any act done by virtue of this article be construed as estopping the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(c) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary concurs, then the director may expend money from the fund for such construction.

§20-6C-5. Powers and duties of director; program plans and reclamation projects.

(a) The director shall submit to the secretary of the interior a state reclamation plan and annual projects to carry out the purposes of this article.

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed in the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform such work in conformance with the provisions of this article.

(c) On an annual basis, the director shall submit to the secretary of the interior an application for the support of the state program and implementation of specific reclamation
projects. Such annual requests shall include information as
may be requested by the secretary of the interior including:

(1) A general description of each proposed project;

(2) A priority evaluation of each proposed project;

(3) A statement of the estimated benefits in such terms
as number of acres restored, miles of stream improved, acres
of surface lands protected from subsidence, population pro-
tected from subsidence, air pollution and hazards of mine
and coal refuse disposal area fires;

(4) An estimate of the cost for each proposed project;

(5) In the case of proposed research and demonstration
projects, a description of the specific techniques to be evalu-
ated or objective to be attained;

(6) An identification of lands or interest therein to be
acquired and the estimated cost; and

(7) In each year after the first in which a plan is filed
under this article, an inventory of each project funded under
the previous year's grant, which inventory shall include
details of financial expenditures on such project together
with a brief description of the project, including project
location, landowner's name, acreage and type of reclamation
performed.

(d) The costs for each proposed project under this section
shall include actual construction costs, actual operation and
maintenance costs of permanent facilities, planning and en-
gineering costs, construction inspection costs and other neces-
sary administrative expenses.

§20-6C-6. Acquisition and reclamation of land adversely affected
by past coal surface-mining practices.

(a) If the director makes a finding of fact that:

(1) Land or water resources have been adversely affected
by past coal mining practices;

(2) The adverse effects are at a stage where, in the
public interest, action to restore, reclaim, abate, control or
prevent should be taken;
(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices are not known or readily available; or

(4) The owners will not give permission for the director, his agents, employees or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his agents, employees or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The director, his agents, employees or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The director may acquire any land by purchase, donation or condemnation, which is adversely affected by past
coal mining practices, if the director determines that acquisition of such land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices will serve recreation, historic, conservation, or reclamation purposes or provide open space benefits;

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(d) Title to all lands acquired pursuant to this section shall be in the name of the West Virginia department of natural resources. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal mining practices.

(e) The director is hereby authorized to transfer land obtained under subsection (c) of this section to the secretary. The director may purchase such land from the secretary after reclamation at the fair market value less the state's original acquisition price.

(f) The director may accept and local political subdivisions may transfer to the director land belonging to them to carry out the purposes set out in this article and in such event they shall have a preferential right to purchase said land after reclamation at the fair market value less the political subdivision's cost of acquisition, but at no time shall the director sell such land to a political subdivision at a price less than the cost of the acquisition and reclamation of said land: Provided, That if
any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the director in the terms and conditions of the sales agreement, then all rights, title and interest in such land shall revert to the West Virginia department of natural resources. Any moneys received from such sale shall be deposited in the abandoned land reclamation fund.

(g) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential or recreational development, the director may sell such land by public sale under a system of competitive bidding at not less than fair market value and pursuant to regulations promulgated to ensure that such lands are put to proper use consistent with state and local land use plans.

(h) The director, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which shall afford local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in section 410 of Public Law 95-87, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. Such activities shall be accomplished under such terms and conditions as the director shall require, which may
include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such person, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he may make grants and commitments for grants, and may advance money under such terms and conditions as he may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.

§20-6C-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal mining practices on privately owned land, the director shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past surface-mining practices, if the moneys so expended result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past surface mining practices. No lien may be filed against the property of any person in accordance with this subsection, who owned the surface prior to the second day of May, one thousand nine hundred seventy-seven, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) The landowner may petition the director within sixty
days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal to the circuit court of the county in which the land is located.

(c) The statement filed pursuant to subsection (a) of this section, shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

§20-6C-8. Filling voids and sealing tunnels.

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation constitute a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The director is authorized to fill such voids, seal such abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, constitute a hazard to the public welfare and safety or degrade the environment.

(b) In those instances where coal mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding, if the disposal of those wastes meets the purposes of this article.

(c) The director may acquire by purchase, donation, easement or otherwise such interest in land as he determines necessary to carry out the provisions of this section.
§20-6C-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The director is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules and regulations, to implement and administer the provisions of this article.

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The director may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this article, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this article.

(d) The director has the authority to construct and operate a plant or any facilities for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: Provided, That this subsection shall not repeal or supersede any portion of the applicable federal or state water pollution control laws and no control or treatment under this section may be less than that required under any applicable federal or state water pollution control law. The construction of any such facilities may include major interceptors and other facilities appurtenant to the plant.

(e) All departments, boards, commissions and agencies of the state shall cooperate with the director by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of this article.

CHAPTER 22. MINES AND MINERALS.

Article
2. Coal Mines.
6. Certification of Underground and Surface Coal Miners.
6A. Board of Miner Training, Education and Certification.
ARTICLE 2. COAL MINES.

§22-2-63. No mine to be opened or reopened without prior approval of director of department of mines; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

(a) After the effective date of this section, no mine shall be opened or reopened unless prior approval has been obtained from the director of the department of mines, which approval shall not be unreasonably withheld. The operator shall pay for such approval a fee of ten dollars, which payment shall be tendered with the operator's application for such approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

(b) Within thirty days after the first day of January of each year, the operator of each mine holding a certificate evidencing approval of the director to open a mine shall apply for the extension of such certificate of approval for an additional year. Such approval, evidenced by a certificate of the director, shall be granted as a matter of right and without charge if, at the time such application is made, the operator is in compliance with the provisions of section seventy-two of this article and has paid or otherwise appealed all coal mine assessments imposed under article one, chapter twenty-two of this code. Applications for extension of such certificates of approval not submitted within the time required shall be processed as an application to open or reopen a mine and shall be accompanied by a fee of ten dollars.

(c) Certificates of approval issued pursuant to this section shall not be transferable.

(d) The provisions of this section shall be printed on the reverse side of every certificate issued hereunder.

(e) The district mine inspector shall be contacted for a pre-inspection of the area proposed for underground mining prior to the issuance of any new opening approval.
ARTICLE 6. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22-6-2. Definitions.

1 For purposes of this article, the term "surface miner" means a person employed at a "surface mine," as that term is defined in section three, article six, chapter twenty of this code, and in section two, article six-d of said chapter.

5 For purposes of this article, the term "underground miner" means an underground worker in a bituminous coal mine, except as hereinafter provided.

8 For the purposes of this article, the term "board of miner training, education and certification" means that board established in article six-a of this chapter.

ARTICLE 6A. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.


1 Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section one, article one of this chapter shall have when used in this article the meaning therein assigned to them. These words include but are not limited to the following: Department, director of the department of mines, mine inspector, operator, miner, shot firer and certified electrician.

8 "Board" means the board of miner training, education and certification established by section four of this article.

10 "Mine" means any mine, including a "surface mine," as that term is defined in section three, article six, chapter twenty of this code, and in section two, article six-d of said chapter; and a "mine" as that term is defined in section one, article one, chapter twenty-two of this code.
CHAPTER 88

(Com. Sub. for H. B. 1551—By Mr. Speaker, Mr. See, and Mr. Teets)

[Passed March 8, 1980; in effect upon the proclamation of the Governor finding that the approval of the West Virginia state program under Section 503 of the federal "Surface Mine Control and Reclamation Act of 1977" has been given by the Secretary of the U. S. Department of the Interior. 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 six-d, relating to surface-mining and reclamation of mineral other than coal; jurisdiction in department of natural resources; legislative purpose; apportionment of resources; legislative purpose; apportionment of responsibility; conflict of interest; penalty; definitions; division of reclamation; authority of division; duties and functions of surface-mining reclamation supervisors and inspectors; qualification and appointment; salary; enforcement, authority and duties of reclamation commission; surface-mine permits required; application, issuance and renewal of permits; permit fees and use of proceeds; preplans; drainage systems; alternative plans; limitations on surface mining; mandamus; blasting restriction formula; filing blasting preplan; penalties and notice; time limits on reclamation; authority of commission and director to promulgate rules and regulations; obligations of the operator; exceptions; cessation of operation by inspector; completion of planting; inspection and evaluation; performance bonds; exceptions from reclamation for highway construction; applicability of laws safeguarding life and property; monthly reports by operator; interdepartmental cooperation; notice of noncompliance; adjudications, determinations or findings of director and commission; appeals to board; hearing; findings and orders of board; notice; hearing; subpoenas; judicial review; appeal from order of board; offenses; criminal penalties; prosecutions; treble damages; injunctive relief; validity and construction of existing surface-mining permits; certification of surface miners; and certification of surface-mine foremen.

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 six-d, to read as follows:

ARTICLE 6D. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

§20-6D-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

§20-6D-2. Definitions.

§20-6D-3. Division of reclamation; duties and functions.

§20-6D-4. Surface-mining reclamation supervisors and inspectors, appointment and qualifications; salary.

§20-6D-5. Duties of surface-mining reclamation inspectors.

§20-6D-6. Reclamation commission and authority.

§20-6D-7. Permit required; applications; issuance and renewals; fees and use of proceeds.


§20-6D-9. Installation of drainage system.

§20-6D-10. Alternative plans; time.

§20-6D-11. Limitations; mandamus.

§20-6D-11a. Blasting restriction; formula; filing preplan; penalties; notice.

§20-6D-12. Time in which reclamation shall be done.


§20-6D-14. Cessation of operation by inspector.

§20-6D-15. Completion of planting; inspection and evaluation.

§20-6D-16. Performance bonds.

§20-6D-17. Exception as to highway construction projects from reclamation requirements.

§20-6D-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.


§20-6D-20. Rules and regulations.


§20-6D-22. Adjudications, findings, etc., to be by written order; contents; notice.

§20-6D-23. Appeals to board; hearing; record; findings and orders of board.


§20-6D-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.


§20-6D-27. Certification of surface miners.


§20-6D-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

1 Except as otherwise provided in section eighteen of this article, the department of natural resources is hereby vested with jurisdiction over all aspects of surface mining and with
jurisdiction and control over land, water and soil aspects pertaining to surface-mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby.

The Legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes soil erosion, pyritic shales and materials landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and slides, destroys the value of some lands for agricultural purposes and some lands for recreational purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, and destroys or impairs the health, safety, welfare and property rights of the citizens of West Virginia, where proper mining and reclamation is not practiced.

The Legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of surface mining primarily in topographical and geological conditions, and by reason thereof, it is necessary to provide the most effective, beneficial and equitable solution to the problems involved.

The Legislature further finds that authority should be vested in the director of the department of natural resources to administer and enforce the provisions of this article.

The director of the department of natural resources and the director of the department of mines shall cooperate with respect to departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article. The director of natural resources may avail himself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. He may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining.

No public officer or employee in the department of natural
resources, the department of mines, or the office of attorney
general, having any responsibility or duty either directly or
of a supervisory nature with respect to the administration
or enforcement of this article shall (1) engage in surface
mining as a sole proprietor or as a partner or (2) be an officer,
director, stockholder, owner or part owner of any corporation
or other business entity engaged in surface mining or (3) be
employed as an attorney, agent or in any other capacity by
any person, partnership, firm, association, trust or corporation
engaged in surface mining. Any violation of this paragraph
by any such public officer or employee shall constitute grounds
for his removal from office or dismissal from his employ-
ment, as the case may be.

§20-6D-2. Definitions.

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

(a) “Adequate treatment” shall mean treatment of water
by physical, chemical or other approved methods in a manner
that will cause the analyzed pH level of the treated water
to be 6.0 - 9.0 and analyzed content of iron of the treated
water to be seven milligrams per liter or less, or approved
treatment which will not lower the water quality standards
established for the river, stream or drainway into which such
water is released.

(b) “Breakthrough” shall mean the release of water which
has been trapped or impounded underground, or the release
of air into any underground cavity, pocket or area.

(c) “Director” shall mean the director of natural resources
or his authorized agents.

(d) “Disturbed land” or “land disturbed” shall mean (1)
the area from which the overburden has been removed in
surface-mining operation, (2) the area covered by the spoil,
and (3) any areas used in surface-mining operations which
by virtue of their use are susceptible to excessive erosion
including all lands disturbed by the construction or improve-
ment of haulageways, roads or trails.
(e) "Minerals" shall mean clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore: Provided, That the term minerals does not include coal.

(f) "Mulch" shall mean any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(g) "Operator" shall mean any individual, partnership, firm, association, trust or corporation who or which is granted or should obtain a permit to engage in any activity covered by this article.

(h) "Permit area" shall mean the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section eight of this article showing the exact location of end strip markers, permit markers and monuments.

(i) "Person" shall mean any individual, partnership, firm, association, trust or corporation.

(j) "Surface mine" shall mean all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways, roads or trails.

(k) "Surface mining" shall mean all activity for the recovery of minerals, and all plants and equipment used in processing said minerals: Provided, That the bonding and reclamation provisions of this article shall not apply to surface mining of limestone, sandstone and sand: Provided, however, That the surface mining of limestone, sandstone and sand shall be subject to separate rules and regulations to be promulgated by the commission.

(l) "Surface of a regraded bench" shall mean the top portion or part of any regraded area.

§20-6D-3. Division of reclamation; duties and functions.

Except as otherwise provided in this article, the division of reclamation, created in article six of this chapter, shall
administer all of the laws of this state relating to surface mining and subject to the approval of the director of natural resources shall exercise all of the powers and perform all of the duties by law vested in and imposed upon said director in relation to said operations. The jurisdiction, supervision and enforcement authority granted the division in this article shall be in addition to the jurisdiction, supervision and enforcement authority granted in this chapter. The division shall cooperate with other offices and divisions of the department of natural resources.

§20-6D-4. Surface-mining reclamation supervisors and inspectors, appointment and qualifications; salary.

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the director of natural resources:

Provided, That the provisions of this section shall not affect the status of persons employed on the effective date of this article as reclamation inspectors under the former provisions of chapter twenty, if such persons are qualified civil service employees.

Every surface-mining reclamation supervisor or inspector shall be paid not less than fifteen thousand dollars per year.

§20-6D-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said
inspector shall note and describe violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§20-6D-6. Reclamation commission and authority.

The reclamation commission created by article six of this chapter shall have authority to:

(a) Promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article;

(b) Make investigations or inspections necessary to ensure complete compliance with the provisions of this article;

(c) Conduct hearings under provisions of this article or rules and regulations adopted by the commission and for the purpose of any investigation or hearing, hereunder, the commission or any member thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension or revocation of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

(e) Order, through the director, a cease and desist order of any operation that is started without a permit as required by law;

(f) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public; and

(g) Review orders and decisions of the director.

§20-6D-7. Permit required; applications; issuance and renewals; fees and use of proceeds.

It shall hereafter be unlawful for any person to engage in
surface mining without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section eight hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), of the applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: Provided, That if such list be so large as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land, which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any,
with the director. There shall be attached to the application a true copy of an original policy of insurance issued by an insur-
ance company authorized to do business in this state cover-
ing all surface-mining operations of the applicant in this state
and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage,
including blasting damage, protection in an amount of not less than three hundred thousand dollars.

The director shall upon receipt of the application for a per-
mit cause to be published, as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-
nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the director's state-
ment that written protests to such application will be re-
ceived by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

The publication area of the notices required by this section shall be the county or counties in which the proposed permit area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accom-
panied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the director may issue the permit applied for if the applicant has complied with all of the provisions of this article. If the director finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the com-
mon control of, other than as an employee, a person who or which has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as re-
quired by the laws of this state, he shall not issue a permit to the applicant: Provided, That no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before July one, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited
shall have paid into the surface-mining reclamation fund the
full amount of the bond so forfeited, and any additional sum
of money determined by the director to be adequate to re-
claim the land covered by such forfeited bond: *Provided,* 
*however,* That in no event shall such additional sum be less
than sixty dollars per acre.

The permit shall be valid for one year from its date of
issue. Upon verified application, containing such information
as the director may reasonably require, accompanied by such
fees and bond as are required by this article, and a true copy
of the policy of insurance as aforesaid, the director shall from
year to year renew the permit, if the operation is in com-
pliance with the provisions of this article.

The registration fee for all permits for surface mining, shall
be five hundred dollars. The annual renewal fee for permits
for surface mining shall be one hundred dollars payable on the
anniversary date of said permit upon renewal.

The permit of any operator who fails to pay any fees pro-
vided for in this article shall be revoked.

All registration and renewal fees for surface mining shall
be collected by the director and shall be deposited with the
treasurer of the state of West Virginia to the credit of the oper-
ating permit fees fund and shall be used, upon requisition of
the director, for the administration of this article.


Under the provisions of this article, and rules and regu-
lations adopted by the commission, the operator shall prepare
a complete reclamation and mining plan for the area of land
to be disturbed. Said reclamation and mining plan shall
include a proposed method of operation, prepared by a regis-
tered professional engineer or a person approved by the
director, for grading, backfilling, soil preparation, mining
and planting and such other proposals as may be necessary
to develop the complete reclamation and mining plan con-
templated by this article. In developing this complete recla-
mation and mining plan all reasonable measures shall be
taken to eliminate damages to members of the public, their
real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable, and he may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission made after the hearing or without a hearing may appeal to the reclamation board of review.

The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor;

(b) Identify the area to correspond with the application;

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the director;
(e) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be disturbed, the crop line of the seam to be mined, if any, and the total number of acres involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared, the north point and the quadrangle sketch and exact location of the operation;

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director may furnish to the chief of the division of water resources a copy of all information required by this subdivision, as well as the names and locations of all streams, creeks or other bodies of public water within five hundred feet of the area to be disturbed;

(i) Show the presence of any acid-producing materials which when present in the overburden, may cause spoil with a pH factor below 3.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with the application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the director.

The operator shall also indicate the manner in which all permanent overburden disposal sites will be stabilized.

The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the informa-
tion required by the surface-mining laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the department of natural resources shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources four copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

§20-6D-9. Installation of drainage system.

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drain-
age system including any necessary settling ponds in accordance
with the rules and regulations as established by the commis-

§20-6D-10. Alternative plans; time.

An operator may propose alternative plans not calling for
backfilling where a water impoundment is desired, if such re-

Such plans shall be submitted to the director, and if such plans
are approved by the director and complied with within such
time limits as may be determined by him as being reasonable
for carrying out such plans, the backfilling requirements of
this article may be modified.

By regulations of the commission, time limits shall be es-
established requiring backfilling, grading and planting to be
kept current. All backfilling and grading shall be completed
before equipment necessary for such backfilling and grading is
moved from the operation.

If the operator or other person desires to conduct deep
mining upon the premises or use a deep-mine opening for
haulageways or other lawful purposes, the operator may desig-
nate locations to be used for such purposes at which places
it will not be necessary to backfill as herein provided for until
such deep mining or other use is completed, during which
time the bond on file for that portion of the operation shall
not be released. Such locations shall be described and design-
nated on the map required by the provisions of section eight of
this article.

Where applicable, suitable soil material shall be used to
cover the surface of the regraded and backfilled area of oper-
ation in an amount sufficient to support vegetation.

When the backfilling and grading have been completed and
approved by the director, the director shall release that por-
tion of the bond which was filed and designated to cover the
backfilling and grading requirements of this article, the remain-
ing portion of the bond in an amount equal to two hundred
fifty dollars per acre, but not less than a total amount of five
thousand dollars being retained by the treasurer until such
time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulage-way to the area. Upon abandonment of any haulageway, the haulageway shall be seeded and every effort made to prevent its erosion by means of culverts, waterbars or other devices required by the director. In proper season, all fill and cut slopes of the operation and haulageways shall be seeded and planted in a manner as prescribed by the director, as soil tests indicate soil suitability and in accordance with accepted agricultural and reforestation practices.

In any such area where surface mining is being conducted, mulch shall be required on all disturbed areas where the remaining slope exceeds twenty degrees from horizontal as shown on the preplan map filed with the director as required by the provisions of section eight of this article.

After the operation has been backfilled, graded and approved by the director, the operator shall prepare or cause to be prepared a final planting plan for the planting of trees, shrubs, vines, grasses or legumes upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime, fertilizer, mulch, and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules and regulations of the commission.

The planting called for by the final planting plan shall be carried out in a manner so as to establish a satisfactory cover of trees, shrubs, grasses, legumes or vines upon the disturbed area covered by the planting plan within a reasonable period of time. Such planting shall be done by the operator or such operator may contract in writing with the soil conservation district for the district in which the operation covered by such permit is located or with a private contractor approved by the director to have such planting done by such district or private contractor. The director shall not release the operator's bond until all haulageways, roads and trails within the permit
area have been abandoned according to the provisions of this
article and the rules and regulations promulgated thereunder or
such operator or any other person has secured a permit to deep
mine such area as required by chapter twenty-two of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended.

The purpose of this section is to require restoration of land
disturbed by surface mining to a desirable purpose and use.
The director may, in the exercise of his sound discretion when
not in conflict with such purpose, modify such requirements
to bring about a more desirable land use, including, but not
limited to, industrial sites, sanitary landfills, recreational areas
and building sites: Provided, That the person or agency mak-
ing such modifications will execute contracts, post bond or
otherwise ensure full compliance with the provisions of this
section in the event such modified program is not carried to
completion within a reasonable length of time.

§20-6D-11. Limitations; mandamus.

The Legislature finds that there are certain areas in the
state of West Virginia which are impossible to reclaim either
by natural growth or by technological activity and that if sur-
face mining is conducted in these certain areas such opera-
tions may naturally cause stream pollution, landslides, the
accumulation of stagnant water, flooding, the destruction of
land for agricultural purposes, the destruction of aesthetic
values, the destruction of recreational areas and future use
of the area and surrounding areas, thereby destroying or im-
pairing the health and property rights of others, and in general
creating hazards dangerous to life and property so as to con-
stitute an imminent and inordinate peril to the welfare of the
state, and that such areas shall not be mined by the surface-
mining process.

Therefore, authority is hereby vested in the director to de-
lete certain areas from all surface-mining operations.

No application for a permit shall be approved by the direc-
tor if there is found on the basis of the information set forth
in the application or from information available to the director
and made available to the applicant that the requirements of
this article or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the state of West Virginia with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

If the director finds that the operation will constitute hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he shall delete such areas from the permit application before it can be approved.

The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one hundred foot restriction aforementioned shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this state.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he may order immediate cessation of such operations and he shall take such other action or make such changes in the permit as he may deem necessary to avoid said described conditions.
60 The failure of the director to discharge the mandatory
duty imposed on him by this section shall be subject to a writ
of mandamus, in any court of competent jurisdiction by any
private citizen affected thereby.

§20-6D-11a. Blasting restriction; formula; filing preplan; penalties;
notice.

1 Where blasting of overburden or mineral is necessary, such
blasting shall be done in accordance with established prin-
ciples for preventing vibration damage to residences, buildings
and communities. Such blasting shall be considered in com-
pliance with provisions of this article if the following measures
are followed:

7 (1) The weight in pounds of explosive charge detonated
at any one time shall conform with the following scaled
distance formula: \( W = \frac{D^2}{50} \) (to the second power). Where
W equals weight in pounds of explosives detonated at any
one instant time, then D equals distance in feet from nearest
point of blast to nearest residence, building, or structure,
other than operation facilities of the mined: Provided, That
explosive charges shall be considered to be detonated at one
time if their detonation occurs within eight milliseconds or
less of each other.

17 (2) Where blast sizes would exceed the limits under
subdivision (1) of this section, blasts shall be detonated by
the use of delay detonators (either electric or nonelectric)
to provide detonation times separated by nine milliseconds
or more for each section of the blast complying with the
scaled distance of the formula.

23 (3) A plan of each operation’s methods for compliance
with this section (blast delay design) for typical blasts
which shall be adhered to in all blasting at each operation,
shall be submitted to the department of natural resources
with the application for a permit. It shall be accepted if
it meets the scaled distance formula established in subdivision
(1) of this section.

30 (4) Records of each blast shall be kept in a log to be
maintained for at least three years, which will show for each
blast other than secondary (boulder breaking) blasts the following information:

(a) Date and time of blast,
(b) Number of holes,
(c) Typical explosive weight per delay period,
(d) Total explosives in blast at any one time,
(e) Number of delays used,
(f) Weather conditions, and
(g) Signature of operator employee in charge of the blast.

(5) Where inspection by the department of natural resources establishes that the scaled distance formula and the approved preplan are not being adhered to, the following penalties shall be imposed:

(a) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;
(b) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than one thousand dollars nor more than five thousand dollars;
(c) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinafore set forth within a reasonable time established by the director, the permit shall be revoked.

All such assessments as set forth in this section shall be assessed by the director, collected by him and deposited with the treasurer of the state of West Virginia, to the credit of the operating permit fees fund.

The director shall promulgate rules and regulations which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area.

§20-6D-12. Time in which reclamation shall be done.

It shall be the duty of an operator to commence the
reclamation of the area of land disturbed by his operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operations as defined by rules and regulations of the commission and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current.


In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:

(1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

(2) Bury under adequate fill, all materials determined by the director to be acid-producing materials, toxic material or materials constituting a fire hazard.

(3) Seal off any breakthrough of acid water caused by the operator: Provided, That any breakthrough caused by the operator during the course of his operations shall be sealed immediately and reported immediately to the director. If the breakthrough is one that allows air to enter a mine, the seal shall either prevent any air from entering the mine by way of the breakthrough, or prevent any air from entering the breakthrough while allowing the water to flow from the breakthrough. If the breakthrough is one that allows acid water to escape, the seal shall prevent the acid water from flowing. Seals shall be constructed of stone, brick, block, earth or similar impervious materials which are acid resistant. Any cement or concrete employed in the construction of these seals shall also be of an acid resistant, impervious type.

(4) Impound, drain or treat all runoff water so as to reduce
soil erosion, damage to agricultural lands and pollution of streams and other waters.

In the case of storm water accumulations or any breakthrough of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of such water into the natural drainway or stream. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a breakthrough of water, where it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway or stream.

Storm water or water which escapes, including that which escapes after construction of the seals, and is polluted as defined in this code, or as defined in the rules and regulations promulgated under this code, shall be subject to the requirements of article five-a of this chapter.

(5) Remove or bury all metal, lumber, equipment and other refuse resulting from the operation. No operator shall throw, dump or pile; or permit the throwing, dumping, piling or otherwise placing of any overburden, stones, rocks, coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing listed materials in such a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two hundred foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated crop line or proposed mineral seam down slope to the estimated toe of the outer spoil. All reasonable measures shall be taken so as not to overload the fill bench during the first cut. No overburden material in
excess of the first cut shall be placed over the fill bench. With
the exception of haulageways and auger-mining operations,
trees and brush shall be removed from the upper one half of
all fill sections prior to excavation, and no trees or brush re-
moved from the cut section shall be placed therein or thereon.

No fill bench shall be produced on slopes of more than
sixty-five percent, except for construction of haulageways,
and such haulageways shall not exceed thirty-five feet in width,
with very scattered forty-five foot passing areas permitted.

Lateral drainage ditches connecting to natural or con-
structed waterways shall be constructed to control water run-
off and prevent erosion whenever required by the director.
There shall be no depressions that will accumulate water ex-
cept those the director may specify and approve. The depth
and width of natural drainage ditches and any other diver-
sion ditches may vary depending on the length and degree
of slope.

With the exception of limestone, sandstone and sand,
complete backfilling shall be required, not to exceed the ap-
proximate original contour of the land. Such backfilling shall
eliminate highwalls and spoil peaks. Whenever directed by
the director, the operator shall construct, in the final grading,
such diversion ditches or terraces as will control the water
runoff. Additional restoration work may be required by the
director, according to rules and regulations adopted by the
commission.

§20-6D-14. Cessation of operation by inspector.

Notwithstanding any other provisions of this article, a
surface-mining reclamation inspector shall have the authority
to order the immediate cessation of any operation where
(1) any of the requirements of this article or the rules and
regulations promulgated pursuant thereto or the orders of
the director or the commission have not been complied with
or (2) the public welfare or safety calls for the immediate
cessation of the operation. Such cessation of operation shall
continue until corrective steps have been started by the
operator to the satisfaction of the surface-mining reclamation
inspector. Any operator who believes he is aggrieved by the
actions of the surface-mining reclamation inspector may im-
mediately appeal to the director, setting forth reasons why
the operation should not be halted. The director shall deter-
mine immediately when and if the operation may continue.

§20-6D-15. Completion of planting; inspection and evaluation.

When the planting of an area has been completed, the
operator shall file or cause to be filed a planting report with
the director on a form to be prescribed and furnished by the
director, providing the following information: (1) Identifica-
tion of the operation; (2) the type of planting or seeding,
including mixtures and amounts; (3) the date of planting or
seeding; (4) the area of land planted; and (5) such other
relevant information as the director may require. All plant-
ing reports shall be certified by the operator, or by the party
with whom the operator contracted for such planting, as
aforesaid.

§20-6D-16. Performance bonds.

Each operator who shall make application for a permit
under section seven of this article shall, at the time such
permit is requested, furnish bond, on a form to be prescribed
and furnished by the director, payable to the state of West
Virginia and conditioned that the operator shall faithfully
perform all of the requirements of this article. The amount
of the bond shall be not less than six hundred dollars for
each acre or fraction thereof of the land to be disturbed:
Provided, That the director shall have the discretion to deter-
mine the amount per acre of the bond that shall be required
before a permit is issued, such amount to be based upon
the estimated reclamation costs per acre, not to exceed a
maximum of one thousand dollars per acre or fraction thereof.
The minimum amount of bond furnished shall be ten thousand
dollars. Such bond shall be executed by the operator and
a corporate surety licensed to do business in the state of
West Virginia: Provided, however, That in lieu of corporate
surety, the operator may elect to deposit with the director
cash, or collateral securities or certificates as follows: Bonds
of the United States or its possessions, of the federal land
banks, or of the home owners’ loan corporation; full faith
and credit general obligation bonds of the state of West
Virginia, or other states, and of any county, district or
municipality of the state of West Virginia or other states; or
certificates of deposit in a bank in this state, which certifi-
cates shall be in favor of the commission. The cash deposit
or market value of such securities or certificates shall be
equal to or greater than the sum of the bond. The director
shall, upon receipt of any such deposit of cash, securities or
certificates, immediately place the same with the treasurer
of the state of West Virginia whose duty it shall be to
receive and hold the same in the name of the state in trust
for the purpose for which such deposit is made. The oper­
ton making the deposit shall be entitled from time to time
to receive from the state treasurer, upon the written order
of the director, the whole or any portion of any cash, secur-
ities or certificates so deposited, upon depositing with
him in lieu thereof, cash or other securities or certificates of
the classes herein specified having value equal to or greater
than the sum of the bond.

It shall be unlawful for the owner or owners of surface
rights or the owner or owners of mineral rights to interfere
with the operator in the discharge of his obligation to the
state for the reclamation of lands disturbed by him. If the
owner or owners of the surface rights or the owner or owners
of the mineral rights desire another operator or other opera­
tors to conduct mining operations on lands disturbed by
the operator furnishing bond hereunder, it shall be the duty
of said owner or owners to require the other operator or
operators to secure the necessary mining permit and furnish
suitable bond as herein provided. The director may then
release an equivalent amount of the bond of the operator
originally furnishing bond on the disturbed area.

The director shall not release that portion of any bond
filed by any operator which is designated to assure faithful
performance of, and compliance with, the backfilling and
regrading requirements of the reclamation plan until all acid-
bearing or acid-producing spoil within the permit area has
received adequate treatment as specified in section ten of
this article.
§20-6D-17. Exception as to highway construction projects from reclamation requirements.

  Any provision of this article to the contrary notwithstanding, a person or operator shall not be subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal of borrow and fill material for grading in federal and state highway construction projects: Provided, That the provisions of the highway construction contract require the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity.

§20-6D-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.

  All provisions of the mining laws of this state intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The director of the department of mines shall promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of said code, to protect the safety of those employed in and around surface mines. The enforcement of all laws, and rules and regulations relating to the safety of those employed in and around surface mines is hereby vested in the department of mines and shall be enforced according to the provisions of chapter twenty-two of this code.


  The operator of every surface mine shall, on or before the end of each calendar month, file with the director of mines a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§20-6D-20. Rules and regulations.

  The commission shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of said code, for the effective administration of this article.

1 If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the director and the commission have not been complied with within the time limits set by the director or the commission or by this article, the director shall cause a notice of noncompliance to be served upon the operator, which notice shall order the operation to cease, or where found necessary, the director shall order the suspension of a permit. A copy of such notice or order shall be handed to the operator in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this article or the rules and regulations of the commission or orders of the director and the commission. If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds with respect thereto forfeited.

2 When any bond is forfeited pursuant to the provisions of this article, the director shall give notice to the attorney general who shall collect the forfeiture without delay.

§20-6D-22. Adjudications, findings, etc., to be by written order; contents; notice.

1 Every adjudication, determination or finding by the commission or director affecting the rights, duties or privileges of any person subject to this article shall be made by written order and shall contain a written finding by the commission or director of the facts upon which the adjudication, determination or finding is based. Notice of the making of such order shall be given to the person whose rights, duties or privileges
are affected thereby by mailing a true copy thereof to such person by certified mail.

§20-6D-23. Appeals to board; hearing; record; findings and orders of board.

Any person claiming to be aggrieved or adversely affected by any rule and regulation or order of the reclamation commission or order of the director or by their or his failure to enter an order may appeal to the reclamation board of review for an order vacating or modifying such rule and regulation or order, or for such order as the commission or director should have entered.

The person so appealing to the board shall be known as the appellant and the commission and/or director shall be known as the appellee or appellees. The appellant and appellee or appellees shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the rule and regulation, order or omission complained of and the grounds upon which the appeal is based. Where the appellant claims to be aggrieved or adversely affected by an order, such appeal shall be filed with the board within thirty days after the date upon which the appellant received notice by certified mail of the making of the order complained of. Where the appellant claims to be aggrieved or adversely affected by any rule and regulation or omission, such appeal may be filed with the board at any time. A notice of the filing of such appeal shall be filed with the commission and director within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the commission or director shall prepare and certify to the board a complete record of the proceedings of the reclamation commission or director out of which the appeal arises, including all documents and correspondence relating to the matter. The expense of preparing the record shall be taxed as a part of the costs of the appeal.

Upon the filing of such appeal, the board shall fix the time and place at which the hearing on the appeal will be held, which hearing shall be held within twenty days after the notice
of appeal is filed, and shall give the appellant and the commis-

sion and director at least ten days' written notice thereof by
certified mail. The board may postpone or continue any hear-
ing upon its own motion or upon application of the appellant
or of the commission or director.

The filing of an appeal provided for in this section shall not
stay execution of the order appealed from.

The board shall hear the appeal de novo, and any party to
the appeal may submit evidence.

For the purpose of conducting a hearing on an appeal, the
board may require the attendance of witnesses and the produc-
tion of books, records and papers, and it may, and at the re-
quest of any party it shall, issue subpoenas for witnesses or
subpoenas duces tecum to compel the production of any books,
records or papers, directed to the sheriff of the county where
such witnesses, books, records or papers are found, which sub-
poenas and subpoenas duces tecum shall be served and re-
turned in the same manner as subpoenas and subpoenas duces
tecum in civil litigation are served and returned. The fees and
allowances for mileage of sheriffs and witnesses shall be the
same as those permitted in civil litigation in trial courts. Such
fees and mileage expenses incurred at the request of the ap-
pellant shall be paid in advance by the appellant, and the re-
mainder of such fees and expenses shall be paid out of funds
appropriated for the expenses of the division of reclamation.

In case of disobedience or neglect of any subpoena or sub-
poena duces tecum served on any person, or the refusal of any
witness to testify to any matter regarding which he may be law-
fully interrogated, the circuit court of the county in which such
disobedience, neglect or refusal occurs, or any judge thereof in
vacation, on application of the board or any member thereof,
shall compel obedience by attachment proceedings for con-
tempt as in the case of disobedience of the requirements of a
subpoena or subpoena duces tecum issued from such court or
a refusal to testify therein. Witnesses at such hearing shall
testify under oath, and any member of the board may adminis-
ter oaths or affirmations to persons who so testify.

At the request of any party to the appeal, a stenographic
record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter at the expense of the party making the request therefor. Such record shall include all of the testimony and other evidence and the rulings on the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the boards finds that the rule and regulation or order appealed from was lawful and reasonable, it shall make a written order affirming the rule and regulation or order appealed from; if the board finds that such rule and regulation or order was unreasonable or unlawful; it shall make a written order vacating or modifying the rule and regulation or order appealed from; and if the board finds that the commission or director has unreasonably or unlawfully failed to enter an order, it shall enter such order as it finds the commission or director should have made. Every order made by the board shall contain a written finding by the board of facts upon which the order is based. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by certified mail.

The order of the board shall be final unless vacated upon judicial review thereof.


Any party adversely affected by an order of the reclamation board of review, other than an order affirming, modifying, or vacating a rule and regulation of the commission, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha County or the circuit court of the county in which the surface-mining operation to which the order relates is or was conducted or is or was proposed to be conducted. Any party adversely affected by an order of the reclamation board of review, which order affirms, modifies or vacates a rule and regulation of the commission,
may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha County or the circuit court of the county in which the surface-mining operation to which the rule and regulation in question relates is or was conducted or is or was proposed to be conducted. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee or appellees. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an appeal on questions of law, questions of fact or questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of the proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which was submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the case or set
out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued.

The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any order of the reclamation board of review which is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or which is determined by the court to involve a clearly unwarranted exercise of discretion. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally.

§20-6D-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.

(a) Any person who shall conduct any surface-mining operation, or any part thereof, without a permit or without having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit, or who shall falsely represent any material fact in an application for a permit or in an application for the renewal of a permit, or who willfully violates any provision of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation constitutes a separate offense. It shall be the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation
fund an amount sufficient to reclaim the area with respect
to which such conviction relates. The director shall institute
any suit or other legal action necessary for the effective
administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties
provided by law, any operator who directly causes damage
to the property of others as a result of surface mining shall
be liable to them, in an amount not in excess of three times
the provable amount of such damage, if and only if such
damage occurs before or within one year after such operator
has completed all reclamation work with respect to the land
on which such surface mining was carried out and all bonds
of such operator with respect to such reclamation work are
released. Such damages shall be recoverable in an action at
law in any court of competent jurisdiction. The director
shall require, in addition to any other bonds and insurance
required by other provisions of this article, that any person
engaged in the business of surface mining shall file with the
director a certificate of insurance, or other security in an
amount of not less than ten thousand dollars, to cover possible
damage to property for which a recovery may be sought under
the provisions of this subsection.

(c) Upon application by the director, the attorney general,
or the prosecuting attorney of the county in which the major
portion of the permit area is located, any court of competent
jurisdiction may by injunction compel compliance with and
enjoin violations of the provisions of this article. The court
or the judge thereof in vacation may issue a preliminary
injunction in any case pending a decision on the merits of
any application filed.

An application for an injunction under the provisions of
this section may be filed and injunctive relief granted
notwithstanding that all of the administrative remedies pro-
vided for in this article have not been pursued or invoked
against the person or persons against whom such relief is
sought and notwithstanding that the person or persons against
whom such relief is sought have not been prosecuted or
convicted under the provisions of this article.
The judgment of the circuit court upon any application filed under the provisions of this article shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court.


Any valid surface-mining permit existing on the effective date of this article shall remain in full force and effect until such permit expires under its terms or is otherwise terminated under the provisions of this article. The provisions of this section shall not be construed to require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of this article.

§20-6D-27. Certification of surface miners.

After the first day of July, one thousand nine hundred seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles six and six-a, chapter twenty-two of this code.


(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, chapter twenty-two of this code as a mine foreman. Each applicant for certification 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 demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under said article six-a.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman 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, chapter twenty-two of this code. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, 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.

(c) The director shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

CHAPTER 89

(Com. Sub. for S. B. 188—By Mr. Susman)

[Passed March 1, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-a, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to right of miner to refuse to operate unsafe equipment;
procedures; discrimination; the promulgation of rules and regulations with respect thereto; and the time limits therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. COAL MINES.

§ 22-2-70a. Right of miner to refuse to operate unsafe equipment; procedures; discrimination.

1 No miner shall be required to operate unsafe equipment.
2 On or before the first day of January, one thousand nine hundred eighty-one, 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.

CHAPTER 90

(P.S. 187—By Mr. Susman)

[Passed February 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-b, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the deadline in the promulgation of rules and regulations governing long wall and short wall mining.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. COAL MINES.

§22-2-70b. Long wall and short wall mining.

(a) The Legislature finds that new methods of extracting 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 eighty-one, 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 determines 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 application 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 information 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.
AN ACT to amend and reenact section seventy-c, article two, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to promulgation of rules and regulations, by the board of coal mine health and safety, for the construction of shafts, slopes, surface facilities and attendant safety hazards at mine sites; and time limits therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. COAL MINES.

§22-2-70c. Construction of shafts, slopes, surface facilities and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules and regulations; time limits therefor.

1 The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in the construction of shafts, slopes, surface facilities, and the safety hazards, attendant therewith, and shall promulgate rules and regulations governing the construction of shafts and slopes; and shall promulgate by the first day of January, one thousand nine hundred eighty-one, rules and regulations governing the construction of surface facilities.

11 The board of coal mine health and safety shall continuously update such rules and regulations governing the construction of shafts, slopes and surface facilities, which rules and regulations shall have as their paramount concern, the health and safety of the persons involved in
such operations, and such rules and 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.

CHAPTER 92

(Com. Sub. for S. B. 102—By Mr. Harman and Mr. Susman)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and four, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That sections three and four, article two-a, 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 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

§22-2A-4. Board powers and duties.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

(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 least once each month, or more often as may be necessary, at the call of the director or upon the request of any three members of the board. The director shall prepare an agenda for each board meeting giving priority to the promulgation of rules and regulations as may be required from time to time by this chapter, and as may be required to improve coal
mine health and safety. Members of the board may suggest to the director items for inclusion on the board's agenda. Upon a majority vote of the quorum present at any board meeting the item or items suggested shall be placed on the agenda for consideration. A majority of the board must approve the items to be acted upon for that agenda. The director shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the director: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice or additional agenda.

(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 re-
quired 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. The board of coal mine health and safety shall devote its time toward promulgating rules and regulations in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

(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: Provided, however, That any rule or regulation properly promulgated by the board pursuant to the terms and conditions of this chapter shall create a rebuttable presumption that said rule or regulation does not reduce the protection afforded miners below that provided by this chapter.

(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, promulgate 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 subdivision (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 requesting 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.
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 promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

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.

to carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and shall be entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all such reports, receive any additional information, and may, on its own initiative, ascertain the cause or causes of such coal mining fatality or fatalities. Within one hundred twenty days of such review of each such fatality, the board shall promulgate such rules and regulations as are necessary to prevent the recurrence of such fatality, unless a majority of the quorum present determines that no rules and regulations shall assist in the prevention of the specific type of fatality. Likewise, the board shall annually, not later than the first day of July, review the major causes of coal mining
injuries during the previous calendar year, reviewing the
causes in detail, and shall promulgate such rules and regu-
lations as may be necessary to prevent the recurrence of
such injuries.

Further, the board shall, on or before the tenth day of
January of each year, submit a report to the governor,
president of the Senate and speaker of the House, which
report shall include, but not be limited to:

(1) The number of fatalities during the previous
calendar year, the apparent reason for each fatality as
determined by the department of mines and the action,
if any, taken by the board to prevent such fatality;

(2) Any rules and regulations promulgated by the
board during the past year;

(3) What rules and regulations the board intends to
promulgate during the current calendar year;

(4) Any problem the board is having in its effort
to promulgate rules and regulations to enhance health
and safety in the mining industry;

(5) Recommendations, if any, for the enactment, re-
peal or amendment of any statute which would cause the
enhancement of health and safety in the mining industry;

(6) Any other information the board deems appro-
priate;

(7) In addition to the report by the board, as herein
contained, each individual member of said board shall
have the right to submit a separate report, setting forth
any views contrary to the report of the board, and the
separate report, if any, shall be appended to the report
of the board and be considered a part thereof.

CHAPTER 93

(5. & 189—By Mr. Susman)

[Passed February 29, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two-a,
chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to compensation and expenses of members of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That section seven, article two-a, 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 2A. BOARD OF COAL MINE HEALTH AND SAFETY.


1 Each member of the board, except the director of the department of mines, shall receive seventy-five dollars per diem while actually engaged in the performance of the duties of the board. Each such member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid, by a third party, the members shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines.

CHAPTER 94

(§. B. 469—By Mr. Benson and Mr. Steptoe)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicles subject to registration and certificates of title; exemptions; implements of husbandry and farm implements towed by licensed vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, 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-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

1 Every motor vehicle, trailer, semitrailer, and pole trailer when driven or moved upon a highway shall be subject to the registration and certificate of title provisions of this chapter except:

5 (1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, lienholders, or nonresidents or under a temporary registration permit issued by the department as hereinafter authorized;

10 (2) Any implement of husbandry upon which is securely attached a machine for spraying fruit trees and plants of the owner or lessee or for any other implement of husbandry which is used exclusively for agricultural or horticultural purposes on lands owned or leased by the owner thereof and which is not operated on or over any public highway of this state for any other purpose other than for the purpose of operating it across a highway or along a highway other than an expressway as designated by the state road commissioner from one point of the owner's land to another part thereof, irrespective of whether or not the tracts adjoin: Provided, That the distance between the points shall not exceed fifteen miles, or for the purpose of taking it or other fixtures thereto attached, to and from a repair shop for repairs. The foregoing exemption from registration and license requirements shall also apply to any vehicle hereinbefore described or to any farm trailer owned by the owner or lessee of the farm on which such trailer is used, when such trailer is used by the owner thereof for the purpose of moving farm produce and livestock from such farm along a public highway for a distance not to exceed ten miles to a storage house or packing plant, when such use is a seasonal operation.
The exemptions contained in this section shall also apply to farm machinery and tractors: Provided, That such machinery and tractors may use the highways in going from one tract of land to another tract of land regardless of whether such land be owned by the same or different persons.

Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates and fees therefor shall not be permitted to use the highways as above provided between sunset and sunrise.

Any vehicle exempted hereunder from the requirements of annual registration certificate and license plates shall be permitted to use the highways as herein provided whether such exempt vehicle is self-propelled, towed by another exempt vehicle or towed by another vehicle for which registration is required.

Any vehicle used as an implement of husbandry exempt hereunder must have the words “farm use” affixed to both sides of the implement in ten inch letters;

(3) Any vehicle which is propelled exclusively by electric power obtained from overhead trolley wires though not operated upon rails;

(4) Any vehicle of a type subject to registration owned by the government of the United States;

(5) Any wrecked or disabled vehicle which is being towed by a licensed wrecker or dealer on the public highways of this state.

CHAPTER 95

(H. B. 785—By Mr. Givens and Mr. Brenda)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section eight, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exemptions from
payment of motor vehicle registration fees; and exempting not more than one Class A or Class G vehicle owned by a former prisoner of war, or a recipient of the congressional medal of honor, and not used for commercial purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

1. The following specified vehicles shall be exempt from the payment of any registration fees:

2. (1) Any vehicle owned or operated by the United States government, the state of West Virginia or any of their political subdivisions. The proper representative of the United States government, the state of West Virginia, or any of their political subdivisions shall make an application for registration for the vehicle and the registration plate or plates issued for the vehicle shall be displayed as provided in this chapter;

3. (2) Any fire vehicle owned or operated by a volunteer fire department organized for the protection of community property;

4. (3) Any ambulance or any other emergency rescue vehicle owned or operated by a nonprofit, charitable organization, and used exclusively for charitable purposes;

5. (4) Any vehicle owned by a disabled veteran as defined by the provisions of Public Law 663 of the 79th Congress of the United States, or Public Law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States; except for vehicles used for hire which are owned by disabled veterans;

6. (5) Not more than one vehicle owned by a veteran with a hundred percent total and permanent service-connected disability as certified by the director of the Department of Veterans’ Affairs of West Virginia and not used for commercial purposes;
(6) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a former prisoner of war and not used for commercial purposes. For purposes of this subdivision, the term "prisoner of war" means any member of the armed forces of the United States, including the United States coast guard and national guard, who was held by any hostile force with which the United States was actually engaged in armed conflict during any period of the incarceration; or any person, military or civilian, assigned to duty on the U.S.S. Pueblo who was captured by the military forces of North Korea on the twenty-third of January, one thousand nine hundred sixty-eight, and thereafter held prisoner; except any person who, at any time, voluntarily, knowingly and without duress, gave aid to or collaborated with or in any manner served any such hostile force; and

(7) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a recipient of the congressional medal of honor and not used for commercial purposes.

CHAPTER 96

(Com. Sub. for H. B. 976—By Mr. Springston and Mr. Goodwin)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That section six, article thirteen, 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 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for disabled; qualification; application; violation.

(a) Any owner of a Class A motor vehicle subject to registration under the provisions of article three, chapter seventeen-a of this code, who is a physically handicapped person with limited mobility, or whose spouse or other immediate family member is a physically handicapped person with limited mobility and resides with him, may apply for a special registration plate by submitting to the commissioner:

(1) An application therefor on a form prescribed and furnished by the commissioner;

(2) A certificate issued by a person licensed to practice medicine in this state stating that the applicant or the applicant's spouse or a member of the applicant's immediate family residing with him is a physically handicapped person with limited mobility as defined in this section.

Upon receipt of the application, the physician's certificate and the registration fee, if he finds that the applicant qualifies for the special registration plate provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed and appropriately designated special registration plate. The special plate shall be used in place of a regular license plate.

As used in this section, a physically handicapped person with limited mobility is any person who suffers from a permanent physical condition making it unduly difficult and burdensome for such person to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate provided for in this subsection (a), and any person who falsely certifies that a person is physically handicapped with limited mobility in order that an applicant
may be issued the special plate, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any other penalty he may otherwise incur, shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

(b) Any physically disabled person, and any person whose spouse or other immediate family member is a physically disabled person and resides with him, may apply for a vehicle decal for a Class A vehicle by submitting to the commissioner:

(1) An application therefor on a form prescribed and furnished by the commissioner;

(2) A certificate issued by a person licensed to practice medicine in this state stating that the applicant or the applicant's spouse or a member of the applicant's immediate family residing with him is a physically disabled person, as defined in this section, and stating the expected duration of the disability; and

(3) A fee of one dollar.

Upon receipt of the application, the physician's certificate and the registration fee, if he finds that the applicant qualifies for the vehicle decal provided for in this subsection, the commissioner shall issue to such applicant an appropriately designed decal. The decal shall be displayed on the motor vehicle in the manner prescribed by the commissioner and shall be valid for such period of time as the certifying physician has determined that the disability will continue, which period of time, reflecting the date of expiration, shall be conspicuously shown on the face of the decal.

As used in this section "physically disabled person" means any person who has sustained a temporary disability rendering it unduly difficult and burdensome for him to walk.

Any person who falsely or fraudulently obtains or seeks to obtain the vehicle decal provided for in this subsection, and any person who falsely certifies that a person is physically disabled
in order that an applicant may be issued the vehicle decal, is
guilty of a misdemeanor, and, upon conviction thereof, in addi-
tion to any other penalty he may otherwise incur, shall be fined
not less than fifty nor more than one hundred dollars, or im-
prisoned in the county jail not more than thirty days, or both
fined and imprisoned.

(c) Free stopping, standing or parking places marked “re-
erved for disabled persons” shall be designated in close prox-
imity to all state, county and municipal buildings and other
public facilities. Such places shall be reserved solely for phy-
sically disabled and handicapped persons during the hours that
such buildings are open for business.

Any person whose vehicle properly displays a valid special
registration plate or decal may park the vehicle for unlimited
periods of time in parking zones unrestricted as to length of
parking time permitted: Provided, That this privilege does not
mean that the vehicle may park in any zone where stopping,
standing or parking is prohibited or which creates parking zones
for special types of vehicles or which prohibits parking during
heavy traffic periods during specified rush hours or where park-
ing would clearly present a traffic hazard. To the extent any
provision of any ordinance of any political subdivision of this
state is contrary to the provisions of this section, the provisions
of this section shall take precedence and shall apply.

The privileges provided for in this subsection shall apply
only during those times when the vehicle is being used for the
transportation of a physically handicapped or disabled person.
Any person who knowingly exercises, or attempts to exercise,
such privileges at a time when the vehicle is not being used for
the transportation of a physically handicapped or disabled per-
son is guilty of a misdemeanor, and, upon conviction thereof,
in addition to any other penalty he may otherwise incur, shall
be fined not less than ten nor more than fifty dollars, or im-
prisoned in the county jail for not more than thirty days, or
both fined and imprisoned.

(d) The commissioner shall adopt and promulgate rules and
regulations in accordance with the provisions of chapter twenty-
nine-a of this code to effectuate the provisions of this section.
AN ACT to amend and reenact section four, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing buses in mass transportation to be a length of up to forty feet.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

1. (a) A vehicle including any load thereon shall not exceed a height of twelve feet six inches, except as provided in section eleven-b of this article, and except that vehicles used as automobile transports including any load thereon shall not exceed a height of thirteen feet six inches, but the owners of such automobile transports shall be responsible to the state road commissioner for any damage to bridges or other road structures and to municipalities and utility companies for any damage to wires, traffic devices or other structures, and to any person suffering property damage when any such damage is proximately caused by the height of such vehicle or vehicles and load being in excess of twelve feet six inches.

2. (b) A motor vehicle including any load thereon shall not exceed a length of thirty-five feet extreme overall dimension, inclusive of front and rear bumpers, except that any bus, truck or trackless trolley coach equipped with three axles, any school bus with two axles or any vehicle used to transport passengers by an urban mass transportation authority created pursuant to article twenty-seven, chapter eight of the code shall
not exceed an overall length, inclusive of front and rear bumpers, of forty feet.

(c) A combination of vehicles coupled together shall not consist of more than two units and no such combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty feet, except as provided in section eleven-b of this article, and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article: Provided, That the limitation that a combination of vehicles coupled together shall not consist of more than two units shall not apply to a combination of vehicles coupled together by a saddle mount device used to transport motor vehicles in a drive-away service when no more than two saddle mounts are used: Provided, however, That equipment used in said combination meets the requirements of the safety regulations of the interstate commerce commission.

CHAPTER 98

(Com. Sub. for H. B. 935—By Mrs. Spears)

[Passed March 7, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two, relating to ridesharing arrangements; definition of the term “ridesharing arrangement”; providing that common carrier and workmen’s compensation laws do not apply thereto, exceptions; requiring certain liability insurance coverage upon vehicles used in such arrangements; limitation on employer liability; exempting such vehicles from certain county or municipal taxes or licenses; exemptions from overtime and minimum wage laws with respect thereto; and exempting such vehicles from certain equipment, licensing and registration requirements.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RIDESHARING.

§17C-22-1. Ridesharing arrangement defined.

"Ridesharing arrangement" means the transportation of
2 persons in a motor vehicle where such transportation is in-
3 cidental to another purpose of the driver and is not for
4 profit, or is by nonprofit community organizations and non-
5 profit corporations for senior citizens or handicapped persons.
6 The term shall include, but not be limited to, ridesharing
7 arrangements known as carpools, vanpools and buspools.

§17C-22-2. Common carrier laws do not apply to ridesharing; re-
quiring liability insurance.

The following laws and regulations of this state shall not
2 apply to any ridesharing arrangement using a motor vehicle
3 with a seating capacity for not more than fifteen persons, in-
4 cluding the driver:
5
(a) Chapter twenty-four-a of this code pertaining to the
6 regulation of common carriers of any kind or description by
7 the public service commission;

(b) Laws and regulations containing insurance require-
9 ments that are specifically applicable to common carriers or
10 commercial vehicles: Provided, That with respect to any
11 private or individually owned motor vehicle designed for a
normal passenger capacity, including the driver thereof, of
no more than six persons, prior to, and continuing during the
term of such use, the use of any such motor vehicle for any
ridesharing arrangement under the provisions of this article,
such motor vehicle shall be insured for liability arising out
of the ownership, operation, maintenance or use thereof
in the amount of twenty thousand dollars because of bodily
injury to or death of one person in any one accident, and,
subject to said limit for one person, in the amount of forty
thousand dollars because of bodily injury to or death of
two or more persons in any one accident, and in the amount of
ten thousand dollars because of injury to or destruction of
property of others in any one accident, and in the case of any
other motor vehicle to be used for any ridesharing arrange-
ment under the provisions of this article, all such motor vehicles
prior to such use, and continuing during the term of such use,
shall be insured for liability arising out of the ownership,
operation, maintenance or use thereof in the amount of one
hundred thousand dollars because of bodily injury to or death
of one person in any one accident, and, subject to said limit
for one person, in the amount of three hundred thousand dol-
lars because of bodily injury to or death of two or more
persons in any one accident, and in the amount of twenty five
thousand dollars because of injury to or destruction of property
of others in any one accident and insured for medical pay
coverage of not less than ten thousand dollars.

(c) Laws imposing a greater standard of care on common
carriers or commercial vehicles than that imposed on other
drivers or owners of motor vehicles;

(d) Laws and regulations with equipment requirements and
special accident reporting requirements that are specifically
applicable to common carriers or commercial vehicles; and

(e) Laws imposing a tax on fuel purchased in another state
by a common carrier or road use taxes on commercial buses.

§17C-22-3. Workmen’s compensation law does not apply to ride-
sharing; exceptions thereto.

Chapter twenty-three of this code providing compensation
for workers injured during the course of their employment
shall not apply to a person injured while participating in a ridesharing arrangement between his or her place of residence and place of employment or termini near such places: Provided, That if the employer owns, leases or contracts for the motor vehicle used in such arrangement, chapter twenty-three shall apply.

§17C-22-4. Liability of employer.

(a) An employer shall not be liable for injuries to passengers and other persons resulting from the operation or use of a motor vehicle, not owned, leased or contracted for by the employer, in a ridesharing arrangement.

(b) An employer shall not be liable for injuries to passengers and other persons because he provides information, incentives or otherwise encourages his employees to participate in ridesharing arrangements.

§17C-22-5. County or municipal licenses and taxes.

No county or municipal corporation may impose a tax on, or require a license for, a ridesharing arrangement using a motor vehicle with a seating capacity for not more than fifteen persons, including the driver.

§17C-22-6. Overtime compensation and minimum wage law.

The mere fact that an employee participates in any kind of ridesharing arrangement shall not result in the application of chapter twenty-one of this code, requiring payment of a minimum wage, overtime pay or otherwise regulating the hours a person may work.

§17C-22-7. Certain ridesharing vehicles are not commercial vehicles or buses; exemption from registration; driver not chauffeur.

(a) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen persons, including the driver, shall not be a "bus" for purposes of equipment requirements or rules of the road.

(b) A motor vehicle used in a ridesharing arrangement that has a seating capacity for not more than fifteen
7 persons, including the driver, shall not be a “bus” or other
8 motor vehicle operated as a common carrier or contract
9 carrier under the provisions of section one, article ten, chapter
10 seventeen-a of this code relating to registration.
11 (c) The driver of a passenger car, motor vehicle that
12 has a seating capacity for not more than fifteen persons,
13 including the driver, used in a ridesharing arrangement is not
14 a “chauffeur” nor is he transporting persons for compensation
15 under the driver licensing provisions of this code.

CHAPTER 99
(H. B. 1026—By Mr. Tompkins)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article fourteen, chap­
ter eight of the code of West Virginia, one thousand nine hun­
dred thirty-one, as amended; and to amend and reenact section
twenty-five, article fifteen of said chapter, all relating to the
removal, discharge, suspension or reduction in rank or pay of
members of police and fire departments; appeals; attorney fees;
reduction in number of members.

Be it enacted by the Legislature of West Virginia:

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

Article
14. Law and Order; Police Force or Departments; Powers, Authority and
Duties of Law-enforcement Officials and Policemen; Police Matrons;
Special School Zone and Parking Lot or Parking Building Police
Officers; Civil Service for Certain Police Departments.
15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid
Fire Departments.
§8-14-20. Removal, discharge, suspension or reduction in rank or pay; appeal; reduction in number of members.

(a) No member of any paid police department subject to the civil service provisions of this article shall be removed, discharged, suspended or reduced in rank or pay except for just cause, which shall not be religious or political, except as hereinbefore provided in section nineteen of this article; and no such member shall be removed, discharged, suspended or reduced except as provided by the civil service provisions of this article, and in no event until he shall have been furnished with a written statement of the reasons for such action. In every case of such removal, discharge, suspension or reduction, a copy of the statement of reasons therefor and of the written answer thereto, if the member sought to be removed, discharged, suspended or reduced desires to file such written answer, shall be furnished to the policemen's civil service commission and entered upon its records. If the member sought to be removed, discharged, suspended or reduced shall demand it, the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer," to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. The member, if reinstated or exonerated, shall, if represented by legal counsel, be awarded an attorney fee of no more than two hundred fifty
dollars and such fee shall be determined by the commission and paid by the governing body. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer, the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the city or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court's decision, as in other civil cases. Such member or removing officer shall also have the right, where appropriate, to seek in lieu of an appeal, a writ of mandamus. The member, if reinstated or exonerated by the circuit court, shall, if represented by legal counsel, be awarded an attorney fee not to exceed five hundred dollars, and if reinstated or exonerated by the supreme court of appeals, shall be awarded an attorney fee not to exceed five hundred dollars, and such fees shall be paid by the governing body: Provided, That the aggregate amount of attorney fees awarded by the commission, the circuit court, and the supreme court of appeals, shall not exceed one thousand dollars for any member litigant.

(c) The removing officer and the member sought to be removed, discharged, suspended or reduced shall at all times,
both before the commission and upon appeal, be given the
right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall
be deemed necessary by any Class I or Class II city to re-
duce the number of paid members of its paid police depart-
ment, said city shall follow the procedure set forth in this
subsection (d). The reduction in members of the said paid
police department of said city shall be effected by suspending
the last man or men, including probationers, who have been
appointed to said paid police department. Such removal shall
be accomplished by suspending the number desired in the
inverse order of their appointment: Provided, That in the
event the said paid police department shall again be increased
in numbers to the strength existing prior to such reduction
of members the said members suspended under the terms of
this subsection shall be reinstated in the inverse order of
their suspension before any new appointment to said paid
police department shall be made.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPART-
MENTS; CIVIL SERVICE FOR PAID FIRE DEPART-
MENTS.

§8-15-25. Removal, discharge, suspension or reduction in rank or
pay; appeal; reduction in number of members.

(a) No member of any paid fire department subject to the
civil service provisions of this article shall be removed, dis-
charged, suspended or reduced in rank or pay except for just
cause, which shall not be religious or political, except as here-
inbefore provided in section twenty-four of this article; and
no such member shall be removed, discharged, suspended or
reduced except as provided by the civil service provisions of
this article, and in no event until he shall have been furnished
with a written statement of the reasons for such action. In
every case of such removal, discharge, suspension or reduction,
a copy of the statement of reasons therefor and of the written
answer thereto, if the member sought to be removed, discharg-
ed, suspended or reduced desires to file such written answer,
shall be furnished to the firemen's civil service commission
and entered upon its records. If the member sought to be
removed, discharged, suspended or reduced shall demand it,
the commission shall grant him a public hearing, which hearing shall be held within a period of ten days from the filing of the charges in writing or the written answer thereto, whichever shall last occur. At such hearing the burden shall be upon the removing, discharging, suspending or reducing officer, hereinafter in this section referred to as "removing officer" to show just cause for his action, and in the event the removing officer fails to show just cause for his action before the commission, then the member removed, discharged, suspended or reduced shall be reinstated with full pay, forthwith and without any additional order, for the entire period during which he may have been prevented from performing his usual employment, and no charges shall be officially recorded against his record. The member, if reinstated or exonerated, shall, if represented by legal counsel, be awarded an attorney fee of no more than two hundred fifty dollars and such fee shall be determined by the commission and paid by the governing body. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission.

(b) In the event that the commission shall sustain the action of the removing officer the member removed, discharged, suspended or reduced shall have an immediate right of appeal to the circuit court of the county wherein the municipality or the major portion of the territory thereof is located. In the event that the commission shall reinstate the member removed, discharged, suspended or reduced, the removing officer shall have an immediate right of appeal to said circuit court. Any appeal must be taken within ninety days from the date of entry by the commission of its final order; upon an appeal being taken and docketed with the clerk of the circuit court of said county, the circuit court shall proceed to hear the appeal upon the original record made before the commission and no additional proof shall be permitted to be introduced. The circuit court's decision shall be final, but the member or removing officer, as the case may be, against whom the decision of the circuit court is rendered shall have the right to petition the supreme court of appeals for a review of the circuit court's decision, as in other civil cases. Such member or removing
officer shall also have the right, where appropriate, to seek
in lieu of an appeal, a writ of mandamus. The member, if
reinstated or exonerated by the circuit court, shall, if repre-
sentated by legal counsel, be awarded an attorney fee not to ex-
ceed five hundred dollars, and if reinstated or exonerated by
the supreme court of appeals, shall be awarded an attorney fee
not to exceed five hundred dollars, and such fees shall be paid
by the governing body: Provided, That the aggregate amount
of attorney fees awarded by the commission, the circuit court,
and the supreme court of appeals shall not exceed one thou-
sand dollars for any member litigant.

(c) The removing officer and the member sought to be
removed, discharged, suspended or reduced shall at all times,
both before the commission and upon appeal, be given the
right to employ counsel to represent them.

(d) If for reasons of economy or other reasons it shall
be deemed necessary by any such municipality to reduce the
number of paid members of its paid fire department, said
municipality shall follow the procedure set forth in this
subsection (d). The reduction in members of the said paid
fire department of said municipality shall be effected by
suspending the last man or men, including probationers, who
have been appointed to said paid fire department. Such
removal shall be accomplished by suspending the number de-
sired in the inverse order of their appointment: Provided,
That in the event the said paid fire department shall again
be increased in numbers to the strength existing prior to such
reduction of members the said members suspended under the
terms of this subsection shall be reinstated in the inverse order
of their suspension before any new appointment to said paid
fire department shall be made.

CHAPTER 100
(S. B. 256—By Mr. Brotherton, Mr. President, and Mr. Galperin)

[Passed March 5, 1980; in effect July 1, 1980. Approved by the Governor.]
Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for municipalities to increase the contributions and payroll deduction, if necessary, in fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one, to maintain full retirement benefits for such fiscal year to specified maximums, to supplement municipal firemen's and policemen's pension funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

PART III. POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on members of departments; return of assessments.

§8-22-16. Pension and relief funds for policemen and firemen; creation of boards of trustees; definitions; continuance of funds.

1 In every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund, and for a firemen's pension and relief fund, for the purposes hereinafter enumerated, and, thereupon, there shall be
created boards of trustees which shall administer and
distribute the moneys authorized to be raised by this
section and the following sections of this article. For
the purposes of this section and sections seventeen
through twenty-eight of this article, the term "paid police
department" or "paid fire department" shall be taken
to mean only a municipal police department or municipal
fire department, as the case may be, maintained and
paid for out of public funds and whose employees are
paid on a full-time basis out of public funds. The term
shall not be taken to mean any such department whose
employees are paid nominal salaries or wages or are
only paid for services actually rendered on an hourly
basis.

Unless and until other provision is made by subsequent
legislative action, any policemen's pension and relief
fund and any firemen's pension and relief fund estab-
lished in accordance with the provisions of former article
six of this chapter or this article twenty-two shall be or
remain mandatory and shall be governed by the provi-
sions of sections sixteen through twenty-eight of this
article twenty-two (with like effect, in the case of a
Class III city or Class IV town or village, as if such Class
III city or Class IV town or village were a Class I or
Class II city), and shall not be affected by the transition
from one class of municipal corporation to a lower class
as specified in section three, article one of this chapter:
Provided, That any Class III or Class IV town or village
that hereafter becomes a Class I or Class II city shall
not be required to establish such pension and relief fund
if said town or village is a participant in an existing pen-
sion plan regarding paid firemen and/or policemen.

§8-22-19. Levy to maintain fund; gifts, etc.; assessments on
members of departments; return of assessments.

In every municipality in which there is a policemen's
pension and relief fund or a firemen's pension and relief
fund, or both, the same shall be maintained as follows:
The governing body of the municipality shall levy an-
ually and in the manner provided by law for other
municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting (a) the amount of the contributions received during such year from the members of the respective paid police department or paid fire department, and (b) in the case of the policemen's pension and relief fund, the arrest fee of one dollar as provided for in section twenty of this article, provide funds equal to the sum of (1) the full amount of estimated expenditures of the boards of trustees of the respective funds, and (2) an additional amount equal to ten percent of such estimated expenditures, said ten percent amount to be taken, accumulated and invested, if possible, as surplus reserve: Provided, That in no event shall such levy for each of the respective boards of trustees be less than one cent nor more than eight cents on each one hundred dollars of all real and personal property as listed for taxation in such municipality: Provided, however, That in the event that the funds derived above are not sufficient to meet the annual expenditures and the surplus reserve funds for fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one do not contain a sufficient balance to maintain full retirement benefits for the fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one, the municipality shall for only the fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one levy an amount not to exceed an additional two cents on each one hundred dollars of all real and personal property listed for taxation in such municipality: Provided further, That in the event that a municipality is required to levy an amount for the fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one in excess of eight cents on each one hundred dollars of all real and personal property as provided above, the municipality shall assess and collect for only the fiscal year one thousand nine hundred eighty—one thousand nine hundred eighty-one from each member an additional amount of one percent of the actual salary or compensation for each one cent that the municipality has levied in excess
of the eight cents which shall become a required part
of the pension and relief fund to which the member
belongs.

The levies authorized under the provisions of this sec-
tion, or any part of them, may by the governing body
be laid in addition to all other municipal levies, and to
that extent, beyond the limit of levy imposed by the
charter of such municipality; and such levies shall super-
sede and if necessary exclude levies for other purposes
if such priority or exclusion is necessary under limita-
tions upon taxes or tax levies imposed by law.

Such public corporations are authorized to take by
gift, grant, devise or bequest, any money or real or
personal property, upon such terms as to the investment
and expenditures thereof as may be fixed by the grantor
or determined by said trustees.

In addition to all other sums provided for pensions in
this section, it shall be the duty of every municipality in
which any such fund or funds have been or shall be
established to assess and collect from each member of
the paid police department or paid fire department or
both each month, the sum of six percent of the actual
salary or compensation of such member; and the amount
so collected shall become a regular part of the policemen's
pension and relief fund, if collected from a policeman,
and of the firemen's pension and relief fund, if collected
from a fireman.

Any member of a paid police or fire department who
is removed or discharged or who before retirement on
any retirement pension or disability pension severs his
connection with said department, provided he has served
two full years or more, whether or not consecutive, shall,
upon request, be refunded all pension and relief fund
deductions made from his salary or compensation, but
without interest. In the event such refund is made and
such member subsequently reenters the department no
credit shall be allowed him for any former service,
unless any such member of a paid police or fire depart-
ment repays to the pension and relief fund all sums re-
funded to him within one year from the date he reenters the department with interest at the rate of six percent per annum: Provided, That any member who, on or before June three, one thousand nine hundred fifty-five, reentered the paid police or fire department shall be allowed credit for any former service in the same department reentered if he, within one year from said June three, one thousand nine hundred fifty-five, repaid all sums withdrawn or refunded to him with interest at the rate of six percent per annum, but in no case shall interest be charged for more than three years. Any probationary member of a paid police or fire department who is not given an absolute appointment at the end of his probationary period shall, upon request, be refunded all pension and relief fund deductions made from his salary or compensation, but without interest.

CHAPTER 101
(Com. Sub. for S. B. 425—By Mr. Hanlon)

[Passed March 4, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifty-b; and to amend chapter twenty-seven of said code by adding thereto a new article, designated article seventeen, relating to planning and zoning for group residential facilities; definitions; permitted use; license from director of health; application; regulation; revocation of licenses.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fifty-b; and that chapter twenty-seven of said code be
amended by adding thereto a new article, designated article seventeen, to read as follows:

Chapter

8. Municipal Law, Municipalities and Counties; Intergovernmental Relations.

27. Mentally Ill Persons.

CHAPTER 8. MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.

ARTICLE 24. PLANNING AND ZONING.

§8-24-50b. Permitted use for group residential facility.

1 A group residential facility as defined in article seventeen, chapter twenty-seven, shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts except those limited to single-family or duplex-family residences. No county commission, governing board of a municipality, or planning commission shall require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance for location of such facility in any zone or district except those limited to single-family or duplex-family residences.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

§27-17-2. Permitted use of group residential facilities; restrictions.

§27-17-3. License from director of health; application; regulations; revocation.

§27-17-4. Exclusion by private agreement void.

§27-17-1. Definitions.

1 "Developmental disability" means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living, or economic self-efficiency; and (4) reflects the person's need
for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

"Group residential facility" means a facility which: (1) Provides residential services and supervision for individuals who are developmentally disabled; (2) is occupied as a residence by not more than eight individuals described in subparagraph (1) and not more than three supervisors; (3) is licensed by the department of health; and, (4) complies with the state fire code and regulations of the state fire commission for residential facilities.

§27-17-2. Permitted use of group residential facilities; restrictions.

A group residential facility shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts except those limited to single-family or duplex-family residences. No county commission, governing board of a municipality, or planning commission shall require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance for location of such facility in any zone or district except those limited to single-family or duplex-family residences: Provided, That no more than one such facility may be located on the same block face in any municipality, or within twelve hundred feet, measured from front door to front door, in any area not within a municipality.

§27-17-3. License from director of health; application; regulations; revocation.

No group residential facility shall be established, maintained or operated unless a license therefor shall be first obtained from the director of health. The application for such license shall contain such data and facts as the director may require. The director may promulgate reasonable regulations for the conduct of such facilities, shall have the authority to investigate and inspect any such
8 facility, and may revoke the license of any such facility
9 for good cause after notice and hearing.

§27-17-4. Exclusion by private agreement void.
1 Any restriction, reservation, condition, exception, or
2 covenant in any subdivision plan, deed, or other instru-
3 ment of or pertaining to the transfer, sale, lease, or use of
4 property which would permit residential use of property
5 but prohibit the use of such property as a group residen-
6 tial facility shall, to the extent of such prohibition, be void
7 as against the public policy of this state and shall be given
8 no legal or equitable force or effect.

CHAPTER 102
(H. B. 983—By Mr. Springston)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections forty-three, forty-four-b
and forty-six, article two, chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
relating to Class E, Class EE, Class F, Class G, Class H, Class
L and Class LL licenses, and to the bear damage stamp; pro-
viding for issuance of the licenses and the stamp to residents
and nonresidents, and the fees therefor; and providing for use
of the licenses and stamp.

Be it enacted by the Legislature of West Virginia:

That sections forty-three, forty-four-b and forty-six, article two,
chapter twenty of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, be amended and reenacted, all to
read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for non-
residents and residents.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund;
purposes, etc.
§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license; Class LL nonresident statewide bow and arrow bear hunting license.

§20-4-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents and residents.

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 and bear: Provided, That the prohibition on hunting bear under this license does not apply to a Class E license issued prior to and expiring upon the thirty-first day of December, one thousand nine hundred eighty. 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. Until the first day of January, one thousand nine hundred eighty-one, the fee therefor shall be forty dollars. On and after the first day of January, one thousand nine hundred eighty-one, the fee therefor shall be fifty dollars.

2. A Class EE license shall be a nonresident bear hunting license and shall entitle the licensee to hunt bear in all counties of the state on and after the first day of January, one thousand nine hundred eighty-one. 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 one thousand dollars.

3. 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.

4. A Class G license shall be a 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 resident or nonresident who is temporarily residing in any state park or forest as tenant or lessee of the state. The fee therefor shall be six dollars for the head of the family, plus one dollar 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.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

Any hunter licensed to hunt bear in this state shall in addition to a hunting license of either Class A, or AB, in the case of a resident, or C, E, EE, L, LL or M, in the case of a nonresident, have a bear damage stamp which shall be issued by the department of natural resources and which shall be sold at places where hunting and fishing licenses are sold. The fee for a bear damage stamp shall be four dollars and all proceeds from the sale of such stamps shall be paid into the bear damage fund which shall be maintained by the department of natural resources for the purposes of paying claims of property owners for damages to real and personal property caused by acts of bear and to cover the expense of hunting, capturing and removing offending bear to remote areas.

§20-2-46. Class L nonresident statewide bow and arrow hunting and fishing license; Class LL nonresident statewide bow and arrow bear hunting license.

A Class L license shall be a nonresident bow and arrow hunting and fishing license and shall entitle the licensee to employ a long bow and arrow in taking game, fish and frogs
in all counties of the state: Provided, That no person may
hunt bear under a Class L license after the thirty-first day
of December, one thousand nine hundred eighty. It shall
be issued only to citizens of the United States who are not
residents of this state. The fee therefor shall be fifteen
dollars.

A Class LL license shall be a nonresident bow and arrow
bear hunting license and shall entitle the licensee to employ
a long bow in hunting bear in all counties of the state on
and after the first day of January, one thousand nine hundred
eighty-one. It shall be issued only to citizens of the United
States who are nonresidents of this state. The fee therefor
shall be one thousand dollars.

CHAPTER 103
(H. B. 1134—By Mr. Blackwell and Mr. Brenda)

[Passed March 7, 1980; in effect January 1, 1981. 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-e,
relating to a Class Q hunting license permitting disabled resi­
dents of the state to hunt from a motor vehicle; authority of
the director; and fee for such license.

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 add­
ing thereto a new section, designated section forty-six-e, to read as
follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special resident hunting license for disabled;
fee; authority of director.

A Class Q license shall be a special statewide hunting license
and shall entitle the licensee to hunt all legal species of game
during the designated hunting seasons.

Such license shall be issued only to residents of this
state who are permanently disabled in the lower extremities.
The director shall require written proof from a licensed phy-
sician attesting to the disability of an applicant before issuing
such license and shall establish such rules and regulations as
he deems necessary to administer the qualifications and
licensing of applicants.

A Class Q license shall entitle the holder thereof to hunt
from a motor vehicle and, notwithstanding the provisions of
subsection (10), section five of this article, to possess a
loaded firearm in a motor vehicle, but only under the follow-
ing circumstances:

(a) The motor vehicle is stationary;
(b) The engine of the motor vehicle is not operating;
(c) The licensee is the only occupant of the vehicle;
(d) The vehicle is not parked on the right-of-way of any
public road or highway; and
(e) The licensee observes all other pertinent laws and
regulations.

The fee for a Class Q license shall be the same as that
for a Class A resident statewide hunting and trapping license.

CHAPTER 104
(H. B. 1150—By Mrs. Neal and Mr. Shiflet)

[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter twenty of the
code of West Virginia, one thousand nine hundred thirty-one,
as amended, by adding thereto a new section, designated section
fourteen, relating to authorizing the director of the department
of natural resources to acquire seventy-five miles of right-of-
way along the abandoned Chessie System Railroad between Caldwell and Cass; authorizing the division of parks and recreation to use such right-of-way for the development, construction, operation and maintenance of certain barriers, bicycle and hiking trails, camping and certain other facilities; and prohibiting certain motorized vehicles on such right-of-way and providing exceptions thereto and penalties; and, permitting the director of the department of natural resources hunting zones or areas.

Be it enacted by the Legislature of West Virginia:

That article four, 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 fourteen, to read as follows:

ARTICLE 4. PARKS AND RECREATION.

§20-4-14. Acquisition of former railroad subdivision for establishment of Greenbrier river trail; development, protection, operation and maintenance of trail.

(a) The director may acquire from the West Virginia railroad maintenance authority approximately seventy-five miles of right-of-way along the former Greenbrier subdivision of the Chessie Railroad System between Caldwell in Greenbrier County and Cass in Pocahontas County to be developed as the "Greenbrier River Trail." The acquired property shall be used for:

(1) The construction and maintenance of barriers for the protection of the trail from motorized vehicular traffic and for the protection of adjacent public and private property;

(2) The development, construction, operation and maintenance of bicycle and hiking trails, horseback trails, primitive camping facilities and other compatible recreational facilities to be so designated by the director.

(b) Except for vehicles authorized by the director for use in the construction or maintenance of the trail and its facilities, or for the fighting of forest fires or other recreational management purposes, or any other emergency, or in the exercise of vested rights of ingress, egress and regress, no person may
20 operate a motorized vehicle within the restricted area of the
21 trail. Any person who violates the provisions of this sub-
22 section is guilty of a misdemeanor, and, upon conviction there-
23 of, shall be punished in accordance with the provisions of
24 section nine, article seven of this chapter.
25
26 (c) The director may promulgate rules and regulations
27 establishing areas or zones where hunting may be prohibited or
28 restricted.

CHAPTER 105
(S. B. 87—By Mr. Gainer and Mr. Huffman)

[Passed March 7, 1980; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact section four, article one-c, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing West Virginia's membership in the interstate commission on the Potomac River basin.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§29-1C-4. Effective date; findings; termination date.

1 This article shall become effective upon the adoption
2 of substantially similar amendments to the interstate
3 compact by each of the signatory states to the compact,
4 and upon the approval of the amendments to the compact
5 by the Congress of the United States.
6
7 After having conducted a performance and fiscal audit
8 through its joint committee on government operations,
9 pursuant to section nine, article ten, chapter four of this
code, the Legislature hereby finds and declares that West Virginia should remain a member of the interstate compact. Accordingly, notwithstanding the provisions of sections four and six, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred eighty-six.

CHAPTER 106
(Com. Sub. for H. B. 1207—By Mr. Caudle and Mrs. Lano)
[Passed March 8, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three-c, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section three, all relating to providing immunity from civil liability for any peer review organization and for persons providing information or services to such organizations; and providing for the confidentiality of the proceedings and records of such organizations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-2. Immunity from liability.
§30-3C-3. Confidentiality of review organization's records.

§30-3C-2. Immunity from liability.

(a) Notwithstanding any other provision of law, no person providing information to any review organization shall be
held, by reason of having provided such information, to be civilly liable under any law, unless:

(1) Such information is unrelated to the performance of the duties and functions of such review organization, or (2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.

(b) A review organization or any member, agent or employee thereof who, in the absence of malice and gross negligence, acts upon or furnishes counsel, services or information to a review organization shall be immune from liability for loss or injury to the person whose activities are being reviewed.

§30-3C-3. Confidentiality of review organization’s records.

The proceedings and records of a review organization shall be confidential and privileged and shall not be subject to subpoena or discovery proceedings or be admitted as evidence in any civil action arising out of the matters which are subject to evaluation and review by such organization and no person who was in attendance at a meeting of such organization shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings of such organization or as to any findings, recommendations, evaluations, opinions or other actions of such organization or any members thereof: Provided, That information, documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil action merely because they were presented during proceedings of such organization, nor should any person who testifies before such organization or who is a member of such organization be prevented from testifying as to matters within his knowledge, but the witness shall not be asked about his testimony before such an organization or opinions formed by him as a result of said organization hearings: Provided, however, That an individual may execute a valid waiver authorizing the release of the contents of his file pertaining to his own acts or omissions, and such waiver shall remove the confidentiality and privilege of said contents otherwise provided by this section: Provided further, That upon
26 further review by any other review organization, upon judicial
27 review of any finding or determination of a review organiza-
28 tion or in any civil action filed by an individual whose activi-
29 ties have been reviewed, any testimony, documents, proceed-
30 ings, records and other evidence adduced before any such
31 review organization shall be available to such further review
32 organization, the court and the individual whose activities
33 have been reviewed. The court shall enter such protective
34 orders as may be appropriate to provide for the confidentiality
35 of the records provided the court by a review organization and
36 all papers and records relating to the proceedings had before
37 the reviewing court.

CHAPTER 107

(S. B. 148—By Mr. Galperin and Mr. Hamilton)

[Passed February 26, 1980; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirteen-a, chapter thirty of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, by adding thereto a new section, design-
nated section seventeen, relating to establishing the "West
Virginia Coordinate Systems"; dividing the state into two
zones for the implementation of such systems; establish-
ing certain requirements with respect to the recordation
of documents purporting to utilize such systems; clarifying
that purchasers and mortgagees need not rely upon
descriptions utilizing said systems; and providing for the
recordation of certain documents not utilizing said system.

Be it enacted by the Legislature of West Virginia:

That article thirteen-a, chapter thirty of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
be amended by adding thereto a new section, designated sec-
section seventeen, to read as follows:
ARTICLE 13A. LAND SURVEYORS.

§30-13A-17. "West Virginia Coordinate Systems"; definition, plane coordinates, limitations of use.

(a) The systems of plane coordinates which have been established by the national ocean survey/national geodetic survey (formerly the United States Coast Geodetic Survey) or its successors for defining and stating the geographic position or locations of points on the surface of the earth within the state of West Virginia are hereafter to be known and designated as the "West Virginia Coordinate System of 1927" and the "West Virginia Coordinate System of 1983."

For the purpose of the use of this system the state is divided into a "North Zone" and a "South Zone."

The area now included in the following counties shall constitute the North Zone: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood.

The area now included in the following counties shall constitute the South Zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Upshur, Wayne, Webster and Wyoming.

(b) As established for use in the North Zone, the West Virginia Coordinate System of 1927 or the West Virginia Coordinate System of 1983 shall be named; and in any land description in which it is used it shall be designated, the "West Virginia Coordinate System of 1927 North Zone" or "West Virginia Coordinate System of 1983 North Zone."

As established for use in the South Zone, the West Virginia Coordinate System of 1927 or the West Virginia Coordinate System of 1983 shall be named; and in any land description in which it is used it shall be designated,
36 the "West Virginia Coordinate System of 1927 South
37 Zone" or "West Virginia Coordinate System of 1983
38 South Zone."
39 (c) The plane coordinate values for a point on the
40 earth's surface, used to express the geographic position
41 or location of such point in the appropriate zone of
42 this system, shall consist of two distances, expressed in
43 U. S. survey feet and decimals of a foot when using the
44 West Virginia Coordinate System of 1927, and expressed
45 in meters and decimals when using the West Virginia
46 Coordinate System of 1983. One of these distances, to
47 be known as the "x-coordinate," shall give the posi-
48 tion in an east-and-west direction; the other, to be
49 known as the "y-coordinate," shall give the position in
50 a north-and-south direction.
51 These coordinates shall be made to depend upon and
52 conform to plane rectangular coordinate values for the
53 monumented points of the North American Horizontal
54 Geodetic Control Network as published by the National
55 Ocean Survey/National Geodetic Survey (formerly the
56 United States Coast and Geodetic Survey), or its suc-
57 cessors, and whose plane coordinates have been com-
58 puted on the system defined by this section. Any such
59 station may be used for establishing a survey connec-
60 tion to either West Virginia coordinate system.
61 (d) For purposes of describing the location of any
62 survey station or land boundary corner in the state of
63 West Virginia, it shall be considered a complete, legal,
64 and satisfactory description of such location to give the
65 position of said survey station or land boundary corner
66 on the system of plane coordinates defined in this sec-
67 tion.
68 Nothing contained in this section shall require a pur-
69 chaser or mortgagee of real property to rely wholly on
70 a land description, any part of which depends exclusive-
71 ly upon either West Virginia coordinate system.
72 (e) When any tract of land to be defined by a single
73 description extends from one into the other of the above
74 coordinate zones, the position of all points on its
boundaries may be referred to either of the two zones. The zone which is being used specifically shall be named in the description.

(f) (1) For purposes of more precisely defining the West Virginia Coordinate System of 1927, the following definition by the United States Coast and Geodetic Survey (now National Ocean Survey/National Geodetic Survey) is adopted:

The “West Virginia Coordinate System of 1927 North Zone” is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: $x = 2,000,000$ feet and $y = 0$ feet.

The “West Virginia Coordinate System of 1927 South Zone” is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: $x = 2,000,000$ feet and $y = 0$ feet.

(2) For purposes of more precisely defining the West Virginia Coordinate System of 1983, the following definition by the National Ocean Survey/National Geodetic Survey is adopted:

The “West Virginia Coordinate System of 1983 North Zone” is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the inter-
section of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: \( x = 600,000 \) meters and \( y = 0 \) meters.

The "West Virginia Coordinate System of 1983 South Zone" is a Lambert conformal conic projection of the North American Datum of 1983, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: \( x = 600,000 \) meters and \( y = 0 \) meters.

(g) No coordinates based on the West Virginia coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public records or deed records unless such point is within one kilometer of a public or private monumented horizontal control station established in conformity with the standards of accuracy and specifications for first or second-order geodetic surveying as prepared and published by the Federal Geodetic Control Committee (FGCC) of the United States department of commerce. Standards and specifications of the FGCC or its successor in force on date of said survey shall apply. The publishing of the existing control stations, or the acceptance with intent to publish the newly established control stations, by the National Ocean Survey/National Geodetic Survey will constitute evidence of adherence to the FGCC specifications. The above limitations may be modified by a duly authorized state agency to meet local conditions.

(h) The use of the term "West Virginia Coordinate System of 1927 North or South Zone" or "West Virginia Coordinate System of 1983 North or South Zone" on any map, report of survey or other document shall be limited to coordinates based on the West Virginia coordinate system as defined in this section.
(i) Nothing in this section shall prevent the recor-
dation in any public record of any deed, map, plat, sur-
vey, description or of any other document or writing of
whatsoever nature which would otherwise constitute a
recordable instrument or document even though the same
is not based upon or done in conformity with the West
Virginia coordinate system established by this section,
nor shall such nonconformity with such system invalidate
any deed, map, plat, survey, description or other docu-
ment which is otherwise proper.

CHAPTER 108

(5. B. 192—By Mr. Kusic and Mr. Galperin)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-
three, chapter thirty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to extending the time for exemptions of certain applicants
from licensing requirements for radiologic technologists
in the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. RADIOLOGIC TECHNOLOGISTS.

§30-23-6. Qualifications of applicants; exceptions; applica-
tions; fee.

1 (a) To be eligible for a license to practice radiologic
2 technology the applicant must:
3 (1) Be of good moral character;
4 (2) Have completed four years of high school edu-
5 cation or its equivalent;
(3) Have successfully completed a minimum twenty-four-month course in radiologic study in a school of radiologic technology approved by the board;

(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of radiologic technology, skills and techniques; and

(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-year period immediately prior to the seventh day of July, one thousand nine hundred seventy-seven, 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 by the first day of July, one thousand nine hundred eighty, 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 seventh day of July, one thousand nine hundred seventy-seven, 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 by the first day of July, one thousand nine hundred eighty 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.
seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting employees and individuals with a pecuniary interest in schools of barbering and beauty culture from appointment to the board of barbers and beauticians; increasing the salaries of the board members; giving the board the power to promulgate concurrent rules and regulations; requiring promulgation of rules in certain areas; providing for resolution of conflicts in rules; providing for revocation of license for violation of regulations; increasing examination fees; abolishing licensing for junior barbers or beauticians and removing all references thereto; increasing fees for licenses; mandating that rules and regulations be promulgated to establish a joint barber-beautician license; increasing license renewal fees and late penalties; increasing license fees for schools of barbering and beauty culture and instructors; providing minimum qualifications for instructors; and making violation of board’s regulations grounds for refusal to license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 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.


§30-27-7. Shop to be managed by licensed barbers and beauticians; restrictions as to other businesses; signs; 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 fees; administrative procedures.

§30-27-10. Requirements to operate shops and schools; sanitary rules and regulations.

§30-27-11. Grounds for cancellation or refusal to issue or renew license.

§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 board of barbers and beauticians heretofore established is continued 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 promulgate rules and regulations pertaining to the licensure and qualifications of barbers, beauticians and manicurists, and curricula and standards of instruction for schools of barbering and beauty culture. The board shall aid and assist in the enforcement of all rules and regulations in accordance with section one, article fourteen, chapter sixteen of this code. 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 chapter. Of the four professional members, one shall be an employing barber, one an employee barber, one an employing beautician and one an employee beautician. Each professional member of the board shall have been engaged within this state in the practice of barbering or beauty culture, as the case may be, for a period of five years prior to his appointment, and no more than two of the four professional members may belong to the same political party. No member of the board shall own or have a pecuniary interest in a barber or beautician school licensed by or doing business within this state or shall be employed by such an institution.

(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 compensation a per diem of fifty dollars for each day of attendance at board sessions, but such compensation for each member shall not exceed the sum of two thousand dollars in any calendar year. Each member shall be reimbursed for actual and necessary expenses incurred in the performance of their duties, upon presentation of an itemized sworn statement thereof.

(e) The board shall examine all applicants for licensure 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 or the board of barbers and beauticians.

(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.

(g) The board shall have the power to promulgate rules and regulations generally regarding the practice and conduct of barbering and beauty culture, including, but not limited to, the procedures, criteria and curricula for examination and qualifications of applicants for licensure, and for the licensing of instructional personnel for schools of barbering and beauty culture.

The power of the board to promulgate such rules and regulations shall be concurrent with that of the board of health as authorized in article fourteen, chapter sixteen of this code: Provided, That in the case of conflicting provisions regarding requirements for health and sanitation, the rule or regulation of the board of health shall be deemed to apply. The board of health and the board of barbers and beauticians shall for a reasonable fee make available upon request to any licensee a copy of such rules and regulations.
§30-27-2. Revocation of license for violation.

For violation of any regulation authorized by the terms of this article or 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-five 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 presents a certificate of health from a licensed physician and is otherwise qualified as required by this section, the board shall license the applicant as a duly qualified barber or beautician. Any applicant for license as a manicurist may be licensed as a duly qualified manicurist after he has passed the examination. The board shall charge twenty-five dollars for the issuance of a license.

The state board of barbers and beauticians shall promulgate rules and regulations to establish a joint barber-beautician 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 fifty 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 twenty-five dollars. For any renewal which is more than thirty days late, a penalty of five dollars shall be added to the regular renewal fee, and an additional five dollar penalty for each successive thirty-day period said renewal fee is late. 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.


Every person practicing barbering, beauty culture or manicuring and every student shall display his license or renewal thereof in a conspicuous place in the shop where-in 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 beauticians; restrictions as to other businesses; signs; advertising of prices prohibited.

1 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.

2 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 beauty 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 beauty 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, however, 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 fees; administrative procedures.

1 No person, firm or corporation, whether public or private, 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 evidence that (a) the applicant is professionally competent and financially responsible, (b) adequate physical facilities will be available for the school, and (c) persons teaching or instructing therein are licensed by the board as fully 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 initial license fee for each school of barbering and for each school of beauty culture shall be five hundred dollars and the annual renewal fee shall be two hundred fifty dollars, 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 barbers and beauticians shall promulgate reasonable rules and regulations prescribing the standards and requirements to be met by applicants for licensure of 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. Minimum qualifications to become applicants as student instructors shall include one year's experience as a licensed full-time practicing barber or beautician and two hundred fifty hours of advanced instruction beyond the normal licensure requirements. Each licensed instructor in barbering and beauty culture shall pay an initial registration fee of fifty dollars, and shall renew his certificate annually and pay a renewal fee of fifty 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 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 or student 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 giving 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 and student shall 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), section one, article fourteen, 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 or refusal to issue or renew license.

1 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 cul-
ture in this state by false pretenses, fraudulent mis-
representation, or bribery by the use of money or other
considerations; (3) gross incompetency; (4) the con-
tinued practice of barbering or beauty culture by a per-
son 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 rules and regu-
lations prescribed by the board of health; (9) violation
of any of the rules and regulations prescribed by the
board of barbers and beauticians.

CHAPTER 110
(Com. Sub. for H. B. 904—By Mrs. Spears and Mrs. Neal)

(Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.)

AN ACT to amend and reenact sections seventeen, eighteen and
thirty-one-a, article ten, chapter five of the code of West Vir-
ginia, one thousand nine hundred thirty-one, as amended; and to
further amend said article ten, by adding thereto a new section,
designated section twenty-two-b, all relating to the public em-
ployees retirement act; permitting retired members of the
department of public safety or retired municipal policemen or
firemen thereafter becoming members of the state public em-
ployees retirement system to receive service credit therein for
time subsequently employed, if no duplication of a service credit
year granted by the prior retirement system, and requiring pay-
ment of employer and employee contribution for certain periods; providing for reentry of a former member of the public employees retirement system after the elapse of more than five years subsequent to prior employment therein and qualifications and eligibility therefor; providing a supplemental benefit for certain annuitants receiving less than a specified annual annuity, contingent on legislative budgetary action, specifying factors for eligibility and computation thereof; extending the time period for election of participation in public employees retirement system to defined eligible participating public employers through retroactive contributions for acquirement of service credit years for current employees for such prior periods; and new election of participation to expire after specified period.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-17. Retirement system membership.

§5-10-18. Termination of membership.

§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-31a. Retroactive contributions to the retirement system.

§5-10-17. Retirement system membership.

The membership of the retirement system shall consist of the following persons:

(a) All employees, as defined in section two of this article, who are in the employ of a political subdivision the day preceding the date it becomes a participating public employer and who continue in the employ of the said participating public employer on and after the said date shall become members of the retirement system; and all persons who become employees of a participating public employer on or after the said date shall thereupon become members of the
system; except as provided in subdivisions (b) and (c) of this section.

(b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers' retirement system, the judges' retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia Department of Employment Security, by the commissioner of such department, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided, That such exclusions of membership shall not apply to any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the department of the public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the department of public safety: Provided further, That service credit shall be given to any such retired member of the retirement system of the department of public safety and any such retired member of any municipal retirement system for either, or both, policemen or firemen for all the time such member actually performed service for a participating public employer, whether before or after the eleventh day of June, one thousand nine hundred seventy-six, to the extent such service credit does not duplicate a service credit already given to such member by the retirement system of the department of public safety or the municipal retirement system, whichever applies: Provided further, That such service credit relates to periods employed subsequent to retirement from one of the aforementioned retirement systems: And provided further, That an employer and employee contribution be made
as required by the retirement board for any period subsequent to the first day of July, one thousand nine hundred sixty-one.

(c) Any member of the state Legislature, the clerk of the House of Delegates, the clerk of the state Senate or any member of the legislative body of any other political subdivision shall become a member of the retirement system provided he notifies the retirement system in writing of his intention to be a member of the system and files a membership enrollment form as the board of trustees shall prescribe, and each person, upon filing his written notice to participate in the retirement system, shall by said act authorize the clerk of the House of Delegates or the clerk of the state Senate or such person as the legislative body of any other political subdivision shall designate to deduct such member’s contribution, as provided in subsection (b), section twenty-nine of this article, and after said deductions have been made from said member’s compensation, such deductions shall be forwarded to the retirement system.

(d) Should any question arise regarding the membership status of any employee, the board of trustees has the final power to decide the question.

§5-10-18. Termination of membership.

When a member of the retirement system retires or dies, he ceases to be a member. When a member leaves the employ of a participating public employer for any other reason, he ceases to be a member and forfeits service credited to him at that time. If he becomes reemployed by a participating public employer he shall be reinstated as a member of the retirement system and his credited service last forfeited by him shall be restored to his credit: Provided, That if five or more years have passed since he last left the employ of a participating public employer, he must have had at least five years of past credited service, of which at least three years are contributing service, and be reemployed for a period of one year or longer to have such service restored: Provided, however, That he returns to the members' deposit fund the amount, if any, he withdrew therefrom, together with regular interest thereon from the date of withdrawal to the date of repayment.
§5-10-22b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of less than six thousand dollars annually on the effective date of this section shall receive, upon application, a supplemental benefit, prospectively, under this section in any fiscal year for which the Legislature provides by line item appropriation for the payment of such benefit: Provided, That the effective date of retirement for such annuitant was prior to the first day of July, one thousand nine hundred seventy-six, and he had ten years or more of credited service at the time of such retirement. Any annuitant retired pursuant to the disability provisions of this article shall be considered to have had ten years or more credited service at the time of such retirement.

Each such annuitant shall receive as his supplemental benefit an increased annual amount which is the product of the sum of fifteen dollars multiplied by his years of credited service: Provided, That the total annuity of any annuitant affected by the provisions of this section, together with any of the other provisions of this article or any other article or chapter of this code, shall not exceed six thousand dollars annually.

For the purpose of calculating the supplemental benefit provided in this section, fractional parts of a service credit year are to be disregarded unless in excess of one half of a credited service year, in which event the same shall constitute a full year of service credit.

§5-10-31a. Retroactive contributions to the retirement system.

Those public employers who are participating in the West Virginia public employees retirement system and elected to participate after the first day of July, one thousand nine hundred sixty-one, and those employers who are eligible but who have not elected to participate, may elect to cover their employees retroactively for the period of their prior employment by such employer to the first day of July, one thousand nine hundred sixty-one, under the following terms and rules and regulations to be promulgated by the board of trustees of the retirement system:

(a) The participating employer, in order to provide the
benefits set forth herein, shall pay an additional contribution to the retirement system as shall be the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employer had the employee who is to receive retroactive credit been covered during the period of the retroactive service credit. This contribution may be made by the employer either in one lump sum or, at the election of the employer, by level term payments over a period not in excess of fifteen years or by both lump sum payments and level term payments, as determined by the employer and the board of trustees under rules and regulations promulgated by the board;

(b) The additional service credit shall be applicable to employees working for the participating employer on the effective date of the change of date of participation;

(c) There shall be no increase in benefits and annuities paid to former members of the system who were retired prior to the effective date of this section;

(d) Employees entitled to retroactive service credit under the provisions of this section shall make such additional contribution to the retirement system equal to the actuarial equivalent of the amount which would have been contributed, together with earnings thereon, by the employee had the employee been covered during the period of the retroactive service credit;

(e) Each employer and employee shall be required to pay into the retirement system in the manner hereinafter provided the amount necessary for the additional service credit provided by this section, based upon an actuarial study of each employer that elects to participate in the retirement system under this section and as determined by the board of trustees;

(f) The actuarial basis for determining the additional contributions shall be that currently in effect for the valuation of the retirement system on the effective date of the employer's election;

(g) Any new participating employer and any participating employer which is currently a participant and who began
participating after the first day of July, one thousand nine hundred sixty-one, who desires additional service credit must elect to provide such service credit within one year following the effective date of this section;

(h) Any participating employer requesting additional service credit as provided by this section shall provide such employee data as may be requested from the board of trustees of the retirement system for the determination of the employer's contributions; and

(i) The consulting actuary's fees for computing the additional contribution rates under this section shall be paid directly by the participating employer to the consulting actuary selected by the board of trustees of the retirement system.

CHAPTER 111

(Com. Sub. for H. B. 1266—By Mr. Speaker, Mr. See)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing salaries of members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§15-2-5. Salaries; exclusion from wage and hour law; bond; leave time for members called to duty in guard or reserves.

Members of the department shall receive annual salaries pursuant to appropriation by the Legislature, payable at least monthly as follows:
Any lieutenant colonel shall receive an annual salary of twenty-three thousand seven hundred eighty-four dollars; any major shall receive an annual salary of twenty-one thousand five hundred twenty-eight dollars; any captain shall receive an annual salary of nineteen thousand seven hundred eighty-eight dollars; any lieutenant shall receive an annual salary of eighteen thousand five hundred eighty-eight dollars; any master sergeant or first sergeant shall receive an annual salary of seventeen thousand four hundred thirty-six dollars; any sergeant shall receive an annual salary of sixteen thousand five hundred eighty-four dollars; any corporal shall receive an annual salary of fifteen thousand six hundred ninety-six dollars; any trooper first class shall receive an annual salary of fourteen thousand seven hundred eighty-four dollars; and any newly enlisted trooper shall receive a salary of one thousand sixty-seven dollars monthly during the period of his basic training, and upon the satisfactory completion of such training and assignment to active duty each such trooper shall receive, during the remainder of his first year's service a salary of one thousand one hundred fifty-three dollars monthly. During the second year of his service in the department each trooper shall receive an annual salary of fourteen thousand one hundred forty-eight dollars; during the third year of his service each such trooper shall receive an annual salary of fourteen thousand three hundred seventy-six dollars; and during the fourth and fifth year of such trooper's service and for each year thereafter he shall receive an annual salary of fourteen thousand five hundred sixty-eight 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 increases are provided for length of service, members of the department in service at the time this article becomes effective
shall be given credit for prior service and shall be paid such
salaries as the same length of service will entitle them to re-
ceive under the provisions hereof.

The Legislature finds and declares that there is litigation
pending in circuit court of Kanawha County on the question
whether members of the department of public safety are
covered by the provisions of the state wage and hour law,
article five-c, chapter twenty-one of this code. The Legislature
further finds and declares that because of the unique duties of
members of the department, it is not appropriate to apply said
wage and hour provisions to them. Accordingly, members
of the department of public safety are hereby excluded from
the provisions of said wage and hour law. The express ex-
clusion hereby enacted shall not be construed as any indica-
tion that such members were or were not heretofore covered
by said wage and hour law.

In lieu of any overtime pay they might otherwise have re-
ceived under the wage and hour law, and in addition to their
salaries and increases for length of service, members who have
completed basic training may receive supplemental pay as
hereinafter provided.

The superintendent shall, within thirty days after the effec-
tive date hereof, promulgate a rule or regulation to establish the
number of hours per month which shall constitute the standard
work month for the members of the department. Such rule
or regulation shall further establish, on a graduated hourly
basis, the criteria for receipt of a portion or all of such
supplemental payment when hours are worked in excess of said
standard work month. Such rule or regulation shall be pro-
mulgated pursuant to the provisions of chapter twenty-nine-a
of the code. The superintendent shall certify monthly to the
department's payroll officer the names of those members who
have worked in excess of the standard work month and the
amount of their entitlement to supplemental payment.

The supplemental payment shall be in an amount equal to
one and one-half percent of the annual salary of a trooper
during his second year of service, not to exceed one hundred
seventy-five dollars monthly. The superintendent and civilian
employees of the department shall not be eligible for any such supplemental payments.

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, conditioned 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 calendar 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 accumulated as a member of the department.

CHAPTER 112
(H. B. 1389—By Mr. Holmes)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-seven, twenty-nine and thirty-three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum retirement, disability and survivors benefits for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-seven, twenty-nine and thirty-three, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
§15-2-27. Retirement; awards and benefits.

(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) 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);

(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 department (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:

Any member of said department who has been or shall become physically or mentally permanently disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of members of said department and incurred pursuant to or while such member was or shall be engaged in the performance of his duties as a member of said department shall, if, in the opinion of the retirement board, he is by reason of such cause unable to perform adequately the duties required of him as a member of said department, be retired from active service by the retirement board and thereafter such member shall be entitled to receive annually and there shall be paid to such member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of such member or until such disability shall sooner terminate, one or the other of two amounts, whichever is greater:

(1) 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 department; or

(2) The sum of four thousand two hundred dollars.

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.

§15-2-33. 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 four thousand two hundred 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.

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CHAPTER 113

(Com. Sub. for H. B. 1505—By Mr. Burdette)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amend-
ed, by adding thereto a new section, designated section one-a, relating to mandating the public service commission to adopt a supplemental rule for reorganization; submission of certain reports relating to such reorganization and other matters; filing such rule and reports with Legislature and the time and procedure therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1a. Supplemental rule for reorganization; certain reports to be made to the Legislature; filing of such rule and reports and the procedure therefor.

1 (a) The public service commission shall submit to the Legislature a supplemental rule for reorganization to supplement General Order No. 195, Rule for Reorganization, previously submitted to the Legislature on the first day of the regular session one thousand nine hundred eighty. Such supplemental rule shall specifically address and incorporate to the fullest extent possible each matter disapproved in a concurrent resolution of the Legislature adopted at its regular session in the year one thousand nine hundred eighty approving in part and disapproving in part the said General Order No. 195, Rule for Reorganization.

(b) The commission shall before the second day of January, one thousand nine hundred eighty-one, adopt such supplemental rule by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than the thirty-first day of December, one thousand nine hundred eighty-one. Certified copies of such order and rule shall be filed on the first day of the regular session of the Legislature, one thousand nine hundred eighty-one, by the chairman of the commission with the clerk of each house of the Legislature, the governor and
the secretary of state. The chairman of the commission shall
also file with the office of the secretary of state the receipt of
the clerk of each house and of the governor, which receipt
shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule,
the clerk of each house of the Legislature shall report the same
to their respective houses and the presiding officer thereof
shall refer the same to appropriate standing committee or com-
mittees.

Within the limits of funds appropriated therefor, the rule
of the public service commission adopted pursuant to this sec-
section shall be effective upon the date specified in the order of
the commission promulgating it unless an alternative plan be
adopted by general law or unless the rule is disapproved by a
concurrent resolution of the Legislature adopted prior to ad-
journment sine die of the regular session of the Legislature to
be held in the year one thousand nine hundred eighty-one:
Provided, That if such rule is approved in part and disapproved
in part by a concurrent resolution of the Legislature adopted
prior to such adjournment, such rule shall be effective to the
extent and only to the extent that the same is approved by
such concurrent resolution.

The rule promulgated and made effective pursuant to this
section shall be effective notwithstanding any other provision
of this code for the promulgation of rules or regulations.

(c) In addition to filing the supplemental rule for reorgani-
zation as provided for in subsection (a) of this section, the
chairman of the public service commission shall also file, ac-
cording to procedure provided in subsection (b) of this section,
those additional reports set forth in the concurrent resolution
referred to in subsection (a) of this section.

(d) The public service commission may include in such sup-
plemental rule an itemization of which members of the staff
of the public service commission required for the consumer
advocate division shall be exempted from the salary schedules
or any plan adopted by the civil service commission and
identify such staff members by job classification or designation,
AN ACT to amend and reenact section five, article two, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of convenience and necessity for common carriers by motor vehicles; giving the public service commission the duty to prescribe rules for conducting certificate hearings; placing the burden of proof on the applicant; requiring public service commission permission to transfer a certificate including after the death of the person holding the certificate; authorizing the commission to suspend, revoke or amend a certificate; and authorizing the reaffirmation of said certificates issued since the tenth day of March, one thousand nine hundred seventy-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.


(a) Required; application; hearing; granting.—It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity. Upon the filing of an application for such certificate, the commission shall set a time and place for a hearing on the application: Provided, That the commission may, after giving
proper notice and if no protest is received, waive formal
hearing on the application. Notice shall be by publication
which shall state that a formal hearing may be waived in the
absence of a protest to such application. The notice shall be
published as a Class I legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code
and the publication area for such publication shall be the
proposed area of operation. The notice shall be published
at least ten days prior to the date of the hearing. After the
hearing or waiver by the commission of the hearing, if the
commission finds from the evidence that the public con-
venience and necessity require the proposed service or any
part thereof, it shall issue the certificate as prayed for, or
issue it for the partial exercise only of the privilege sought,
and may attach to the exercise of the right granted by such
certificate such terms and conditions as in its judgment the
public convenience and necessity may require, and if the
commission shall be of the opinion that the service rendered
by any common carrier holding a certificate of convenience
and necessity over any route or routes in this state is in any
respect inadequate or insufficient to meet the public needs,
such certificate holder shall be given reasonable time and
opportunity to remedy such inadequacy or insufficiency before
any certificate shall be granted to an applicant proposing to
operate over such route or routes as a common carrier. Be-
fore granting a certificate to a common carrier by motor vehicle
the commission shall take into consideration existing trans-
portation facilities in the territory for which a certificate is
sought, and in case it finds from the evidence that the service
furnished by existing transportation facilities is reasonably
efficient and adequate, the commission shall not grant such
certificate.

(b) Rules and regulations; taking evidence at hearings;
burden of proof.—The commission shall prescribe such
rules and regulations as it may deem proper for the
enforcement of the provisions of this section and in
establishing that public convenience and necessity do exist
the burden of proof shall be upon the applicant. The com-
misson may designate any of its employees to take evidence
at the hearing of any application for a certificate and submit
findings of fact as a part of a report or reports to be made to
the commission.

(c) Certificate not franchise, etc.; assignment or transfer.—
No certificate issued in accordance with the terms of this
chapter shall be construed to be either a franchise or
irrevocable or to confer any proprietary or property rights
in the use of the public highways. No certificate issued under
this chapter shall be assigned or otherwise transferred without
the approval of the commission. Upon the death of a person
holding a certificate, his personal representative or representa-
tives may operate under such certificate while the same
remains in force and effect and, with the consent of the com-
mission, may transfer such certificate.

(d) Suspension, revocation or amendment.—The com-
mission may at any time, for good cause, suspend and, upon
not less than fifteen days’ notice to the grantee of any certifi-
cate and an opportunity to be heard, revoke or amend any
certificate.

(e) The commission shall have the authority, after hearing,
to ratify, approve and affirm those orders issued pursuant to
this section since the tenth day of March, nineteen hundred
seventy-nine. For the purposes of this subsection the com-
mission may give notice by a Class I legal advertisement of
such hearing in any newspaper or newspapers of general
circulation in this state, and such other newspapers as the
commission may designate.

CHAPTER 115

(Com. Sub. for H. B. 986—By Mr. Stephens and Mr. Shaffer)

[Passed March 8, 1980; 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
thereunto a new article, designated article twenty-seven, relating
to prohibiting the storage and disposal of radioactive waste
material within the state; defining certain terms; providing ex­
ceptions for radioactive waste material produced within the
state as a result of medical, educational, research or industrial
activities; providing exceptions for transportation of radioactive
waste material out of or through the state; providing for the
authority of the director of health; and providing penalties
for violations.

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-seven, to read as follows:

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE
MATERIALS.

§16-27-1. Definitions.

§16-27-2. Storage or disposal of radioactive waste material within the state
prohibited; exceptions.

§16-27-3. Authority of director of health.

§16-27-4. Penalties.

§16-27-1. Definitions.

As used in this article:

(1) "Byproduct material" means (i) any radioactive ma­
terial (except special nuclear material) yielded in or made
radioactive by exposure to the radiation incident to the pro­
cess of producing or utilizing special nuclear material, and
(ii) the tailings or wastes produced by the extraction or con­
centration of uranium or thorium from any ore processed
primarily for its source material content;

(2) "Dispose" or "disposal" means the discharge, deposit,
injection, dumping, spilling, leaking or placing of a substance
into or on any land, water or air;

(3) "Radioactive waste material" means any discarded
radioactive material in the form of, or resulting from the use
of, any byproduct material, source material or special nuclear
material;

(4) "Source material" means (i) uranium or thorium, or
any combination thereof, in any physical or chemical form; or
(ii) ores which contain by weight one-twentieth of one percent (0.05%) or more of (a) uranium, (b) thorium or (c) any combination thereof. Source material does not include special nuclear material;

(5) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235; or (ii) any material artificially enriched by any of the foregoing but does not include source material;

(6) "Store" or "storage" means the containment of a substance, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal or transportation; and

(7) "Transport" or "transportation" means any movement of a substance and any loading, unloading or storage incidental thereto.

The governor shall have the authority to add, by executive order, to the listing of materials constituting "source material" or "special nuclear material" by including such additional like material as may be determined by the federal Nuclear Regulatory Commission to constitute "source material" or "special nuclear material."

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

No person shall store or dispose of any radioactive waste material within the state: Provided, That the provisions of this section shall not be deemed to prohibit (1) the storage or disposal of such material produced within the state as a result of medical, educational, research or industrial activities and so stored or disposed of in compliance with all applicable state and federal laws, or (2) the transportation of such material out of or through the state when done in compliance with all applicable state and federal laws: Provided, however, That such waste from industrial activities shall not include, for the purpose of this article, such material produced from the operation of any nuclear power generation facility, nuclear processing facility, or nuclear reprocessing facility.
§16-27-3. Authority of director of health.

The director of health shall initiate investigations into any use of radioactive material or disposal of radioactive waste material that might be in violation of the provisions of this article. The director of health shall also be empowered to file complaints for alleged violations of this article and shall assist local law-enforcement officers and prosecuting attorneys in the investigation and prosecution of all violations of this article.

§16-27-4. Penalties.

Any person who violates the provisions of section two of this article is guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than twenty-five thousand dollars for each day of such violation, or imprisoned in the penitentiary not less than one nor more than five years, or both fined and imprisoned. If the conviction is for a violation committed after a first conviction of such person under this subsection, the person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than fifty thousand dollars for each day of such violation, or shall be imprisoned not less than two nor more than ten years, or both fined and imprisoned.

CHAPTER 116

(S. B. 236—By Mr. Brotherton, Mr. President, Mr. Galperin, Mr. Nelson, Mr. Rollins and Miss Herndon)

[Passed March 5, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, nine and fourteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing and qualifying of real estate brokers and salespersons; defining “associate broker”; requiring attorneys-at-law to take an ex-
amination in order to qualify for a broker's license; exempting attorneys-at-law who presently hold a broker's license from taking an examination; providing that an applicant must be a high school graduate; requiring applicants to meet certain instructional requirements; exempting certain applicants who hold a valid license from the instructional requirements; exempting coal, oil or gas transactions from effects of article; requiring the commission to approve instructional courses and provide correspondence courses and to publish a list of such approved courses; and providing a fee schedule.

Be it enacted by the Legislature of West Virginia:

That sections two, four, nine and fourteen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESMEN.

§47-12-2. Definitions and exceptions.
§47-12-4. Qualifications for licenses.
§47-12-9. License fees; annual registration; fees for additional offices, charge for change of location and for duplicate or transfer of licenses.
§47-12-14. Real estate courses for licensees; assisting studies, surveys, etc.

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the meaning of this article includes all persons, partnerships, associations and corporations, foreign and domestic, who for a fee, commission or other valuable consideration or who with the intention or expectation of receiving or collecting the same, lists, sells, purchases, exchanges, rents, manages, leases or auctions any real estate or the improvements thereon, including options, or who negotiates or attempts to negotiate any such activity; or who advertises or holds himself, itself or themselves out as engaged in such activities; or who directs or assists in the procuring of a purchaser or prospect calculated or intended to result in a real estate transaction. The term "real estate broker" shall also include any person, partnership, association or corporation em-
employed by or on behalf of the owner or owners of lots, or other parcels of real estate, at a stated salary or upon a fee, commission or otherwise to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell, manage, exchange, lease, offer, attempt or agree to negotiate the sale, exchange or lease of any such lot or parcel of real estate.

(b) The term "real estate" as used in this article includes leaseholds as well as any and every interest or estate in land, whether corporeal or incorporeal, freehold or nonfreehold, and whether said property is situated in this state or elsewhere.

(c) The term "associate broker" means any person who for compensation or other valuable consideration is employed by a broker to perform all the functions authorized by a broker's license only for and on behalf of such employing broker including, but not limited to, authority to supervise other salesmen employed by a broker and manage an office on behalf of a broker.

(d) The term "real estate salesman" means and includes any person employed or engaged by or on behalf of a licensed real estate broker to do or deal in any activity as included in this section, for compensation or otherwise.

(e) One act in consideration of or with the expectation or intention of or upon the promise of receiving compensation by fee, commission or otherwise, in the performance of any act or activity contained in this section, constitutes such persons, partnerships, association or corporation, a real estate broker and make him, them or it subject to the provisions and requirements of this article.

(f) The term "real estate broker" or "real estate salesman" shall not include any person, partnership, association or corporation, who, as a bona fide owner or lessor, performs any aforesaid act:

(1) With reference to property owned or leased by him or to the regular employees thereof, where such
acts are performed in the regular course of or as an incident to the management of, such property and the investment therein;

(2) Nor shall this article be construed to include attorneys-at-law, except that attorneys-at-law shall be required to submit to the written examination required under section seven of this article in order to qualify for a broker's license: Provided, That an attorney-at-law who is licensed as a real estate broker prior to the effective date of this section is exempt from the written examination required under section seven of this article;

(3) Nor any person holding in good faith a duly executed power of attorney from the owner authorizing the final consummation and execution for the sale, purchase, lease or exchange of real estate;

(4) Nor to the acts of any person while acting as a receiver, trustee, administrator, executor, guardian, or under the order of any court or while acting under authority of a deed of trust or will;

(5) Nor shall this article apply to public officers while performing their duties as such;

(6) Nor shall this article apply to the acquisition or disposition of coal, oil or gas leasehold or coal, oil or gas interests.

§47-12-4. Qualifications for licenses.

(1) Licenses shall be granted only to persons who are trustworthy, of good character and competent to transact the business of a real estate broker or real estate salesman in such manner as to safeguard the interests of the public. Every applicant for a license as a real estate broker shall be of the age of eighteen years or over, a citizen of the United States and shall have served a bona fide apprenticeship as a licensed real estate salesman for two years or shall produce to the real estate commission satisfactory evidence of real estate experience. No broker's license shall be issued to a partnership, association or corporation unless each member or officer
thereof who will actively engage in the real estate busi-

ness be licensed as a real estate salesman or associate
broker, when and after said broker shall have been grant-
ed a broker's license.

(2) A broker's or salesperson's license may be issued
to any person who is either a high school graduate or
the holder of a certificate of high school equivalency.

(3) Applicants for a broker's license shall show evi-
dence satisfactory to the commission that they have com-
pleted at least one hundred eighty clock-hours (twelve
credit hours) of formal instruction in a real estate course
or courses approved by the commission. Such courses
must cover real estate principles, real estate law, real
estate appraising, and real estate finance and such other
topics approved by the commission. The applicant shall
satisfactorily pass an examination or examinations cover-
ing the material taught in each such course.

(4) Applicants for a salesperson's license shall show
evidence satisfactory to the commission that they have
completed at least ninety clock-hours (six credit hours)
of formal instruction in a real estate course or courses
approved by the commission. Such courses must cover
real estate principles, real estate law, real estate apprais-
ing, and real estate finance, and such other topics ap-
proved by the commission. The applicant shall satis-
factorily pass an examination covering the material
taught in each such course.

(5) Subsections (3) and (4) of this section do not apply
to any applicant who holds a valid broker's or sales-
person's license issued prior to the first day of July, one
thousand nine hundred eighty. Each such applicant
shall complete at least ninety clock-hours (six credit
hours) of instruction as specified in subsection (3) of
this section if he has not completed the broker's exami-
nation required under section seven of this article by the
first day of July, one thousand nine hundred eighty-two.

(6) The commission, pursuant to this section, shall
publish a list of real estate courses which are approved
and shall update such list yearly. Additionally, the commission shall, on request of any person, evaluate a specific course or courses which are not on the approved list and approve or disapprove such course or courses promptly and in writing.

§47-12-9. License fees; annual registration; fees for additional offices, charge for change of location and for duplicate or transfer of licenses.

To pay for the maintenance and operation of the office of the commission and the enforcement of this article, the commission shall charge the following fees:

(a) Examination fee—twenty-five dollars, with no additional fee for second examination.
(b) Investigation fee—ten dollars.
(c) Broker’s license—fifty dollars.
(d) Salesperson’s license—twenty-five dollars.
(e) Broker’s renewal fee—fifty dollars, payable by the thirtieth day of June of each year.
(f) Salesperson’s renewal fee—twenty-five dollars, payable by the thirtieth day of June of each year.
(g) Branch office fee—fifty dollars.
(h) Renewal of branch office license—five dollars.
(i) Transfer of salesperson’s license—ten dollars.
(j) Duplicate license or certification—five dollars.
(k) Change of name—five dollars.
(l) Change of office—ten dollars.

Willful failure to pay any of the fees required under this article is just cause for revocation of or refusal to issue or renew a license: Provided, That no such action may be taken because a check is returned unpaid.

§47-12-14. Real estate courses for licensees; assisting studies, surveys, etc.

(a) The commission is authorized to conduct, or hold or to assist in conducting or holding real estate courses or institutes. The commission may incur and pay the
necessary expenses in connection therewith. Such
courses or institutes are open to any licensee without
charge or fee.

(b) The commission is hereby authorized to assist
libraries, real estate institutes and foundations with
financial aid or otherwise, in providing texts, sponsoring
studies, surveys and programs for the benefit of real
courses for applicants for brokers’ and salespersons’
licenses sufficient to meet the educational requirements
contained in subsections (3) and (4), section four of this
article as an alternative means of meeting said educa-
tional requirements.

CHAPTER 117
(Com. Sub. for S. B. 59—By Mr. Moreland)

[Passed February 27, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-b, article six,
chapter forty-seven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend said article six by adding thereto a new section,
designated section five-c, relating to money and interest;
including forbearances of money in fixing maximum
interest rate on certain loans secured by mortgages or
deeds of trust upon real property; eliminating the require-
ment that the real property covered by such mortgages
or deeds of trust be located in this state; and interest on
the forbearance of money.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. MONEY AND INTEREST.

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

§47-6-5c. Interest on forbearance of money.

§47-6-5b. Legislative findings; fixing maximum interest rate on certain loans and forbearances of money secured by mortgages or deeds of trust upon real property; authorizing commissioner of banking to fix maximum interest rate on such loans and forbearances of money; prohibiting penalty upon prepayment and escalation of interest clause; quarterly reports required.

(a) The Legislature hereby finds and declares that:

(1) Changes in permissible interest rates on non-precomputed loans or forbearances of money require specialized knowledge of the needs for credit for the construction and purchase of adequate housing and of buildings and improvements for the establishment and expansion of businesses and agricultural enterprises and of the availability of such credit at reasonable rates while affording a competitive return to persons extending such credit;

(2) Maximum interest rates on nonprecomputed loans or forbearances of money to be secured by mortgages or deeds of trust on real property should be prescribed from time to time to reflect changed economic conditions, current interest rates throughout the United States and the availability of credit in order to promote the making of such loans or forbearances of money; and

(3) The prescribing of such maximum interest rates can be accomplished effectively and flexibly by the West Virginia commissioner of banking.

(b) In view of the foregoing findings, it is the purpose
of this section to authorize the West Virginia commissioner of banking to prescribe from time to time the maximum interest rates on nonprecomputed loans or forbearances of money made pursuant to this section to be secured by mortgages or deeds of trust on real property, subject to the provisions, conditions and limitations hereinafter set forth and to authorize lenders to charge up to the maximum interest rates so fixed.

(c) The West Virginia commissioner of banking is hereby authorized and directed to prescribe each month by order a maximum rate of interest for the next succeeding month for any nonprecomputed loan or forbearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, which maximum rate of interest shall not exceed the monthly index of long-term United States government bond yields for the preceding calendar month, plus an additional one and one-half percent per year rounded off to the nearest quarter of one percent per year and such maximum rate shall be valid for the term of the loan contract. For the purpose of this section, the monthly index of long-term United States government bond yields means the monthly unweighted average of the daily unweighted average of the closing bid yield quotations in the over-the-counter market for all outstanding United States treasury bond issues, based on available statistics, which mature in twenty years or more from the date the index is calculated, but shall not include such bonds as are redeemable at par for payment of federal estate taxes. In fixing said maximum rates of interest, the commissioner of banking shall take into consideration prevailing economic conditions including said monthly index of long-term United States government bond yields for the preceding calendar month, yields on conventional home and multifamily housing mortgage and deed of trust loans throughout the United States and on corporate interest-bearing securities of high quality, and the availability of credit at reasonable rates which will afford a competitive return to persons extending such credit.
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(d) On or before the twentieth day of each month the West Virginia banking commissioner shall ascertain the monthly index of long-term United States government bond yields for the preceding calendar month and shall then prescribe by order in accordance with subsection (c) of this section the maximum rate of interest for the next succeeding month for any nonprecomputed loan or forbearance of money made pursuant to this section to be secured by a mortgage or deed of trust upon real property, and shall cause such maximum rate of interest to be issued to the public, such maximum rate of interest to be effective on the first day of the next succeeding month.

(e) Notwithstanding any other provisions of this section, the commissioner of banking shall on or before the effective date of this section prescribe by order the maximum rate of interest for any nonprecomputed loan or forbearance of money pursuant to this section to be secured by a mortgage or deed of trust upon real property for the month in which this section becomes effective and shall at the earliest possible date prescribe the maximum rate of interest for any such loan or forbearance of money for the next succeeding month, and shall issue such maximum rates of interest to the public; and the state commissioner of banking shall thereafter determine and issue the maximum rate of interest for any such loan or forbearance of money in conformity with the other provisions of this section.

(f) As an alternative to the interest rate authorized by any other provision of this code, where a nonprecomputed loan or forbearance of money is secured by a mortgage or deed of trust upon real property, the parties may, after the effective date of this section, contract in writing for the payment of interest for such loan or forbearance of money at a rate, including points expressed as a percentage of the loan or forbearance divided by the number of years of the loan or forbearance contract, not to exceed the then effective maximum rate prescribed by the state banking commissioner pursuant to the provisions of this section and such rate
shall be valid for the term of such contract: Provided,
That the points charged shall not exceed one percent
of the original bona fide principal amount of the loan
or forbearance of money, except that in the case of a
construction loan, the points charged shall not exceed
two percent of the original bona fide principal amount
of the loan: Provided, however, That the parties may
contract in writing for the payment of interest for such
loan or forbearance of money at the rate specified in
this subsection (f) only if such contract in writing also
specifies that there shall be no penalty whatever for
prepayment of the loan or forbearance of money in
whole or in part by cash, a new loan, forbearance
of money or otherwise, and such contract provision
prohibiting any such penalty shall govern and control
notwithstanding any other provision of this code to the
contrary, whether such other provision was enacted be-
fore or after the enactment of this section: Provided
further, That no such contract shall contain an escalat-
ion of interest clause which would allow an increase
in the rate of interest being charged.

(g) For the purpose of subsection (f) of this section,
the term "points" is defined as the amount of money,
or other consideration, received by the lender or for-
bearer from whatever source, as a consideration for
making the loan or forbearance of money and not other-
wise expressly permitted by statute.

(h) A commitment to make a nonprecomputed loan
or forbearance of money pursuant to this section to be
secured by a mortgage or deed of trust upon real property
which provides for consummation within some future
time may be consummated pursuant to the provisions,
including interest rate, of such commitment notwith-
standing the fact that the maximum rate of interest at
the time the mortgage or deed of trust is entered into
is less than the commitment rate of interest: Provided,
That the commitment rate of interest does not exceed
the maximum interest rate in effect on the date the
commitment was issued: Provided, however, That the
commitment when agreed to by the borrower con-
stitutes a legally binding obligation on the part of the lender or forbearer to make such a loan or forbearance of money within a specified time period in the future at a rate of interest not exceeding the maximum rate of interest effective as of the date of commitment, and the commitment does not include any condition for increase of the interest rate at the time of the consummation of the loan or forbearance of money even though the maximum rate of interest is then higher.

(i) Nothing contained in this section shall prohibit the parties to any loan transaction or forbearance from contracting for a rate of interest authorized by any other provision of this code.

(j) The commissioner of banking shall promulgate rules and regulations requiring all banking institutions, savings and loan associations and other financial institutions making loans in this state of the type specified in this section to file with him quarterly reports as to the number and amount of such loans made during the preceding quarter, and such quarterly reports shall contain sufficient detail to ascertain whether the provisions of this section have promoted the making of such loans.

§47-6-5c. Interest on the forbearance of money.

1 Wherever any law authorizes any person to loan money at a certain rate of interest it shall also be lawful for such person to charge a like rate of interest for the forbearance of money.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-2. Fees to be charged by secretary of state.

1 Except as may be otherwise provided in article one, chapter thirty-one of this code, the secretary of state shall charge for services rendered in his office the following fees to be paid by the person to whom the service is rendered at the time it is done:

2 For each certificate of incorporation or copy thereof, including restatements of any such certificates issued on new agreements, and/or consolidations or all certificates of merger or consolidation or certificates authorizing a foreign corporation to do business within this state $10.00

3 For each certified copy of certificate of incorporation, not to exceed ten pages 10.00

4 If such copy contains in excess of ten pages, for each additional page .20

5 For filing and recording a trademark 5.00

6 For each certificate of change of name, of increase or decrease of authorized capital stock, of change of principal office, or of amendment to certificate of incorporation 5.00

7 For recording a power of attorney and certificate thereof 3.00

8 For any other certificate, whether required by law or made at the request of any person 5.00

9 The foregoing fees shall include the tax on the great seal or the less seal impressed on any such document, as well as the filing, recording and indexing of the same.

10 For endorsing and filing reports of corporations, and all other papers, which shall include the indexing of the same, for each report or paper filed 1.00
For any search, not less than 1.00
For searches of more than one hour, for each hour or fraction thereof consumed in making such search 5.00
The cost of the search shall be in addition to the cost of any certificate issued pursuant thereto or based thereon.
For entering statement of satisfaction of conditional sale contract 1.00
For filing each financing, continuation or termination statement or other statement or writing permitted to be filed under chapter forty-six of the code 2.00
For recording any paper for which no specific fee is prescribed 1.00
Or at the rate, for each one hundred words recorded, of .20
For issuing commission to a notary public, or to a commissioner of deeds, which shall include the tax on the state seal thereon and other charges 5.00
For a testimonial 1.50
For a copy of any paper, if one sheet 1.00
For each sheet of copy after the first .75
For issuing a commission to a commissioner in any other state 5.00
For any other work or service not herein enumerated, such fee as may be elsewhere prescribed.

CHAPTER 119
(S. B. 101—By Mr. Nelson)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]
West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the educational qualifications of the director of the West Virginia resource recovery—solid waste disposal authority; removing the requirement that the public service commission give prior approval for charges for rentals and certain services; and permitting the private hauler member of the board of the West Virginia resource recovery—solid waste disposal authority to have a financial interest in an authority project if there is full disclosure and the private hauler does not vote on any measure which would affect him.

Be it enacted by the Legislature of West Virginia:

That sections four, six and twenty-one, article twenty-six, 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 26. WEST VIRGINIA RESOURCE RECOVERY—SOLID WASTE DISPOSAL AUTHORITY.

§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.

§16-26-6. Powers, duties and responsibilities of authority generally.

§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

§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.

1 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.

8 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 appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification 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 employee of the United States or this state. Appointed board members may be re-appointed 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 member is appointed as secretary-treasurer, he shall give bond in the sum of twenty-five thousand dollars in addition to the bond required in the preceding paragraph.

The director of the department of health shall not receive any compensation for serving as a board member. 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 expenses incurred by board members 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 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 members.

The board shall appoint a director of the authority. The director shall have successfully completed one full year of graduate school and, in addition, shall have two years of work experience in solid waste management.

§16-26-6. Powers, duties and responsibilities of authority generally.

1 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 enforce 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 governmental 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 accordance 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 govern-
mental agencies one or more solid waste disposal pro-
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, ease-
ments and interest 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 is-
sued pursuant to the provisions of article one, chapter
sixteen of this code and owned by any person or govern-
mental agency. This article does not authorize the
authority to take or disturb property or facilities belong-
ing 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, re-
location or duplication of such property or facilities else-
where at the sole cost of the authority.

(11) Make and enter into all contracts and agree-
ments 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 agree-
ment, other than compensation for personal services, in-
volves an expenditure of more than two thousand dol-
lars, the authority shall make a written contract with
the lowest responsible bidder after public notice pub-
lished 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 pur-
poses 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 projects 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, 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.

§16-26-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

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. This section does not apply to contracts or purchases of
property, real or personal, between the authority and any governmental agency.

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. 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.

This section does not apply in instances where a member of the board who is a contract solid waste hauler either seeks or has a financial interest, 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: Provided, That that member shall fully disclose orally and in writing to the board the nature and extent of any interest, prior to any vote by the board which involves his interest, withdraw from any deliberation or discussion by the board of matters involving his interest, and refrain from voting on any matter which directly or indirectly affects him.

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.

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 is 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.
AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to authorizing state board of insurance to provide professional or other liability insurance coverage for all county board of education employees and members and for all employees and officers of the state department of corrections; specifying minimum amount of coverage; and requiring insurer to waive defense of governmental immunity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-5a Liability insurance for county board of education employees and members and for employees and officers of the state department of corrections.

In accordance with the provisions of this article, the state board of insurance shall have authority to provide appropriate professional or other liability insurance for all county board members, service personnel, auxiliary personnel and school board members and for all employees and officers of the state department of corrections. If provided, said insurance shall cover any claim, demand, action, suit or judgment by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service or auxiliary personnel employee, school board member, or employee or officer of the department of corrections was acting in the
discharge of his duties, within the scope of his office, position or employment, under the direction of the board of education or commissioner of corrections or in an official capacity as a school board member or as commissioner of corrections. If provided, such insurance coverage shall be in an amount to be determined by the state board of insurance, but in no event less than one million dollars for each occurrence.

The insurance policy shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

No policy or contract of liability insurance shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against a person covered by insurance furnished pursuant to this section, when there is in effect liability insurance coverage for such person in an amount equal to or greater than the amount sued for, the attorney for such person, the attorney for such insurance company, or any other attorney who may appear on behalf of such person or insurance company shall not set up the defense of governmental immunity in any such action.

CHAPTER 121
(H. B. 954—Miss Shuman and Mr. Greer)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making those agencies subject to termination on July one, one thousand nine hundred
eighty, once again subject to termination, after proper review, on July one, one thousand nine hundred eighty-six; changing the termination date of certain agencies; and adding new agencies to be terminated.

Be it enacted by the Legislature of the West Virginia:

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

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs shall be terminated on the date indicated but no governmental entity or program shall be terminated under this article unless a performance audit has been conducted of such entity or program, except as authorized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine hundred eighty-one: Commission on uniform state laws; judicial council of West Virginia; geological and economic survey commission; motor vehicle license certificate appeal board; child welfare licensing board; department of labor.

13 (2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; Ohio River valley water sanitation commission; commission on postmortem examination; state commission on manpower, training and technology; southern regional education board; department of corrections.

19 (3) On the first day of July, one thousand nine hundred eighty-three: Office of the workmen's compensation commissioner.

22 (4) On the first day of July, one thousand nine hundred eighty-four: The following divisions of the programs of the department of agriculture: Soil conservation committee, rural resource division, meat inspection; and the following divisions of programs of the department of natural resources: Water
resources, U. S. geological survey, rabies control, work incentive program; West Virginia alcoholic beverage control licensing advisory board; driver's licensing advisory board; oil and gas inspectors' examining board.

(5) On the first day of July, one thousand nine hundred eighty-five: Department of welfare.

(6) On the first day of July, one thousand nine hundred eighty-six: Division of archives and history; state board of insurance; interstate commission on the Potomac River basin.

CHAPTER 122

(S. B. 497—By Miss Herndon)

[Passed March 8, 1980: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to taxation of motor vehicle carriers; requiring taxation of two point transportation within this state in a continuation of interstate commerce on its net income.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

§11-12A-2. Imposition of annual tax on gross income of certain carriers.

1 Every motor vehicle carrier operating on the public highways of this state and every railroad car carrier,
railroad carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft, for the transportation of passengers or freight, doing business in the state shall pay to the state an annual tax for each calendar year. This tax shall be equal to the gross income from all business beginning and ending within the state multiplied by the respective rates as follows: Motor vehicle carriers, railroad car carrier, railroad carrier, express companies, pipeline companies, airline companies, any person operating a steamboat or other watercraft and telegraph companies, three and three-tenths percent, and telephone companies, three and seventy-four one-hundredths percent: Provided, That any motor vehicle carrier which is an urban or suburban bus line shall be taxed at the rate of one and sixty-five one-hundredths percent of such gross income and any motor vehicle carrier which is a taxi or cab company or a company which hauls waste, refuse or garbage shall be taxed at the rate of two and five-tenths percent of such gross income: Provided, however, That a motor vehicle carrier which transports goods within the state of West Virginia and which received those goods as a connecting carrier in an uninterrupted continuation of interstate transportation done under the authority of a certificate of convenience and necessity issued by the interstate commerce commission, shall be taxed pursuant to subdivision (a) of section three of this article. This provision shall apply only to the transportation of goods carried within the state without a container change or warehousing.

§11-12A-3. Imposition of annual tax on net income of certain carriers.

In addition to the tax imposed in the preceding section, every motor vehicle carrier operating on the public highways of the state and every railroad carrier, railroad car carrier, express company, pipeline company, telephone and telegraph company, airline company and any person operating a steamboat or other watercraft for the transportation of passengers or freight, doing business in this state shall pay an annual tax for each calendar year
on the net income earned within the state equal to three and seventy-four one-hundredths percent of such net income for telephone companies and six and six-tenths percent of such net income for all other carriers included in this section: Provided, That any motor vehicle carrier which is an urban or suburban bus line or a taxi or cab company or a company which hauls waste, refuse or garbage, five percent of such net income. Net income shall be determined as follows:

(a) The net income of motor vehicle carriers earned within the state including two point business in a continuation of interstate commerce without a container change or warehousing shall be determined by ascertaining a sum bearing the proportion to the total net income of the motor vehicle carrier that its business done in West Virginia measured in motor vehicle miles of motor vehicle carrier operation, bears to all business done;

(b) The net income of railroad carriers earned within the state shall be determined by ascertaining a sum bearing the proportion to total net income of the carriers that its business done in West Virginia, measured in ton-miles, bears to all business done, measured in like fashion;

(c) The net income of railroad car carriers and express companies earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the carriers or company that its business done in West Virginia, measured in car-miles of car operation, bears to all business done, measured in like fashion: Provided, however, That nothing in this article shall be construed as applying to railroad freight car carriers not owned by railroad carriers or their subsidiaries;

(d) The net income of pipeline companies earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the company that its business done in West Virginia, measured in barrel-miles in the case of oil and liquid coal or slurry and of thousand cubic feet-miles in the
(e) The net income of airline companies and any person operating a steamboat or other watercraft for the transportation of passengers or freight earned within the state shall be determined by ascertaining a sum bearing the proportion to the total net income of the corporation that its business done in West Virginia, measured in passenger-miles in the case of airline companies and ton-miles in the case of any person operating a steamboat or other watercraft, bears to all business done, measured in like fashion;

(f) The net income of telephone and telegraph companies shall be determined by ascertaining a sum bearing the proportion to the total net income of the companies that its business done in West Virginia, measured in wire-miles, bears to all business done, measured in like fashion;

(g) In computing the tax imposed by this section, the total net income of a taxpayer who shall have been taxed under the preceding section shall be reduced by an amount bearing the proportion to such total net income that the gross income of the taxpayer which is the measure of the tax under the preceding section bears to its total gross income from all business done wherever conducted. No county, city, town, village or other political subdivision of the state shall levy a license, net income or any other kind of tax on the business taxed under this article.

CHAPTER 123

(H. B. 847—By Mr. Mathis)

[Passed March 8, 1980; in effect April 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact sections two-a and two-l, article thirteen, chapter eleven of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to the business and occupation tax; specifying the classified status of persons exercising the privilege of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products within the state; specifying and clarifying the measure of tax and values attributable to the exercise of such privilege by producers of coal under the coal classification; and requiring that counties with a population in excess of two hundred thousand expend at least fifty percent of county coal revenues within the coal producing areas of the county.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

§11-13-2l. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

§11-13-2a. Severance, extraction and production of coal and other natural resource products.

1 Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource products, the amount of such tax to be equal to the value of the articles produced as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided, multiplied by the respective rates and in the classifications as follows:
(1) Coal, three and five-tenths percent. The value of coal mined and produced in this state in the exercise of the production privilege, taxable at the rates herein and in section two-l in conjunction with section two of this article, shall include in addition to the value of the mined product those values arising from the ordinary processing and preparing of such coal for sale or commercial use, where such processing and preparing are done by the producer of the coal. Ordinary processing and preparing of coal activities by the producer thereof are considered an integral part of the production privilege and include crushing, washing, cleaning, drying, sorting, sizing, blending, loading for shipment and the like applied in the ordinary mining of such products to make the same salable and commercially usable. The values taxable herein and attributable to such ordinary processing and preparing of coal activities will not be again taxable under the provisions of section two-b of this article to the producer of such coal. The processing associated with the production of all other natural resources referred to in this section and more sophisticated processing and preparing of coal activities shall be subject to the other applicable provisions of this article.

(2) Limestone or sandstone, quarried or mined, two and two-tenths percent.

(3) Oil, four and thirty-four one-hundredths percent.

(4) Natural gas, in excess of the value of five thousand dollars, eight and sixty-three one-hundredths percent.

(5) Blast furnace slag, four and thirty-four one-hundredths percent.

(6) Sand, gravel or other mineral product not quarried or mined, four and thirty-four one-hundredths percent.

(7) Timber, two and two-tenths percent.

(8) Other natural resource products, two and eighty-six one-hundredths percent.

The measure of this tax is the value of the entire production in this state, regardless of the place of sale or the fact that the delivery may be made to points outside the state.
For the purposes of the production of oil classification, and the production of natural gas classification, as set forth in this section, multiple coowners of oil or natural gas, in place, lessees thereof, or others being vested with title and ownership to part or all of the oil and gas, as personal property, immediately after severance, extraction, reduction to possession and production, except royalty recipients, in kind, shall be deemed to be a "group or combination acting as a unit" and one "person," as defined in section one of this article, if not otherwise defined therein, whenever engaged in the business of producing oil or natural gas through common use, by joint or separately executed contracts, of the same independent contractor driller or operator's services; and notwithstanding provisions of private contracts for separate deposit of gross receipts in separate members' accounts or for members of such group or combination to take in kind any proportionate part of such natural resources.

Lessees, sublessees or other denominated lessees are considered to be producers of all of the oil or natural gas produced, regardless of any payment, in kind, to lessors, sublessors or other denominated lessors of a part of such natural resources as rents or royalties. Recipients of royalties or rents, in kind, in cash or otherwise are taxable on their gross income pursuant to the provisions of section two-i of this article.

§11-13-21. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports, rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.)

(a) Upon every person exercising the privilege of engaging or continuing within this state in the business of severing,
extracting, reducing to possession and producing for sale, profit or commercial use any coal, the amount of such tax to be equal to the value of the coal produced as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent, and the tax imposed by section two of this article in conjunction with this subsection (a) shall be in addition to the tax imposed by said section two in conjunction with section two-a of this article, and the tax imposed by section two of this article in conjunction with this subsection (a) is hereinafter in this section referred to as "such additional tax." The measure of such additional tax is the value of the entire production in this state, regardless of the place of sale or the fact that the delivery may be made to points outside the state.

(b) Such additional tax is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution. Seventy-five percent of the net proceeds of such additional tax shall, after appropriation thereof by the Legislature, be distributed by the state treasurer to the various counties in this state in which the coal upon which such additional tax is imposed was located at the time it was severed from the ground, such counties being hereinafter in this section referred to as the "coal-producing counties," and the remaining twenty-five percent of the net proceeds of such additional tax shall be distributed, after appropriation, among all the counties and municipalities of this state without regard to coal having been produced therein.

(c) Such additional tax shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section two in conjunction with said section two-a of this article and all of the enforcement and other provisions of this article shall apply to such additional tax. In addition to the reports and other information required under the provisions of this article and the tonnage reports required to be filed under the provisions of section seventy-two, article two, chapter twenty-two of this code, the state tax commissioner is hereby granted plenary power and authority to promulgate reasonable rules and regulations requiring the furnishing by producers of such additional information as may
be necessary to compute the allocation required under the provisions of subsection (f) of this section. The state tax commissioner is also hereby granted plenary power and authority to promulgate such other reasonable rules and regulations as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of seventy-five percent of the net proceeds of such additional tax to such coal-producing counties, there is hereby created in the state treasurer's office a special fund to be known as the "county coal revenue fund," and in order to provide a procedure for the distribution of the remaining twenty-five percent of the net proceeds of such additional tax to all counties and municipalities of the state, without regard to coal having been produced therein, there is also hereby created in the state treasurer's office a special fund to be known as the "all counties and municipalities revenue fund."

Seventy-five percent of the net proceeds of such additional tax shall be deposited in the "county coal revenue fund" and twenty-five percent of such net proceeds shall be deposited in the "all counties and municipalities revenue fund," from time to time as such proceeds are received by the state tax commissioner. The moneys in such funds shall, after appropriation thereof by the Legislature, be distributed to the respective counties and municipalities entitled thereto in the manner set forth in subsection (e) of this section: Provided, That those moneys heretofore received and maintained in a separate account in the state treasurer's office, constituting twenty-five percent of the net proceeds of such additional tax received prior to the creation of the "all counties and municipalities revenue fund" shall be transferred to such fund and promptly distributed from such fund to all counties and municipalities of this state according to their respective entitlement.

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each
distribution date, the state treasurer shall determine the total
amount of moneys in each fund which will be available for
distribution to the respective counties and municipalities ent-
titled thereto on that distribution date. The amount to which
a coal-producing county is entitled from the “county coal
revenue fund” shall be determined in accordance with sub-
section (f) of this section, and the amount to which every
county and municipality shall be entitled from the “all coun-
ties and municipalities revenue fund” shall be determined in
accordance with subsection (g) of this section. After deter-
mining as set forth in subsection (f) and subsection (g) of this
section the amount each county and municipality is entitled
to receive from the respective fund or funds, a warrant of the
state auditor for the sum due to such county or municipality
shall issue and a check drawn thereon making payment of
such sum shall thereafter be distributed to such county or
municipality.

(f) The amount to which a coal-producing county is en-
titled from the “county coal revenue fund” shall be determined
by (i) dividing the total amount of moneys in such fund then
available for distribution by the total number of tons of coal
mined in this state during the preceding quarter, and (ii)
multiplying the quotient thus obtained by the number of tons
of coal removed from the ground in such county during the
preceding quarter.

(g) The amount to which each county and municipality
shall be entitled from the “all counties and municipalities
revenue fund” shall be determined in accordance with the
provisions of this subsection. For purposes of this subsection,
“population” shall mean the population as determined by the
most recent decennial census taken under the authority of the
United States.

The treasurer shall first apportion the total amount of
moneys available in the “all counties and municipalities reve-
ue fund” by multiplying the total amount in such fund by
the percentage which the population of each county bears
to the total population of the state. The amount thus appor-
tioned for each county shall be the county’s “base share.”
Each county's "base share" shall then be subdivided into two portions. One portion shall be determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion shall be determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share." The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal severance tax revenue fund" which shall be the depository for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such "coal severance tax revenue funds," in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand at least fifty percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal producing area or areas of the county, said coal producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That a line item budgeted amount from the current levy estimate for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: Provided further, That said coal severance tax revenue fund moneys shall not be budgeted
for personal services in an amount to exceed one fourth of
the total funds available in such fund.

(i) On or before July fifteenth, one thousand nine hundred
seventy-six, each county commission or governing body of
a municipality receiving such revenue funds for fiscal year
one thousand nine hundred seventy-six—one thousand nine
hundred seventy-seven, shall budget the intended use of such
funds on forms provided by the state tax commissioner. Such
budget shall be followed unless the state tax commissioner
approves a subsequent amendment. On or before June fif-
teenth, one thousand nine hundred seventy-seven and each
June fifteenth thereafter, each county commission or governing
body receiving such revenue shall submit to the state tax
commissioner on forms provided by the state tax commissioner
a special budget, detailing how such revenue is to be spent
during the subsequent fiscal year. Such budget shall be fol-
lowed in expending such revenue unless a subsequent budget
is approved by the state tax commissioner. All unexpended
balances remaining in said special fund at the close of a fiscal
year shall be reappropriated to the budget for the subsequent
fiscal year. Such reappropriation shall be entered as an amend-
ment to the new budget and submitted to the tax commissioner
on or before July fifteenth of the current budget year.

(j) On or before December fifteenth, one thousand nine
hundred seventy-six, and each December fifteenth thereafter,
the state tax commissioner shall deliver to the clerk of the
Senate and the clerk of the House of Delegates a consolidated
report of the special budgets, created by subsection (i) of this
section, for all county commissions and municipalities as of
July fifteenth of the current year.

(k) The state tax commissioner shall retain for the benefit
of the state from the additional tax collected the amount of
thirty-five thousand dollars annually as a fee for the adminis-
tration of such additional tax by the state tax commissioner
and the distribution of the net proceeds thereof by the state
treasurer.
AN ACT to amend and reenact section eleven, article fourteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia gasoline and special fuels excise tax act; increasing the refund period from four to six months for certain off-highway uses of gasoline and special fuels; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. GASOLINE AND SPECIAL FUELS EXCISE TAX.

§11-14-11. Refund of tax because of certain nonhighway uses; statute of limitations and effective date.

1 The tax imposed by this article shall be refunded to any person who shall buy in quantities of twenty-five gallons or more, at any one time, tax-paid gasoline or special fuel, when consumed for the following purposes:

1 (1) As a special fuel for internal combustion engines not operated upon highways of this state; or

7 (2) Gasoline consumed to operate tractors and gas engines or threshing machines for agricultural purposes, when such operation is not, in whole or in part, upon the highways of this state; or

11 (3) Gasoline used by any railway company, subject to regulation by the public service commission of West Virginia, for any purpose other than upon the highways of this state; or

15 (4) Gasoline consumed in the business of manufacturing
or producing natural resources or in mining or drilling there-
for, or in the transportation of natural resources solely by
means of unlicensed vehicles or vehicles licensed under the
motor vehicle laws of this state, either as a motor fuel or
for any other purpose and which gasoline is not in any part
used upon the highways of this state; or

(5) Gasoline consumed in motorboats or other watercraft
operated upon the navigable waters of this state.

Such tax shall be refunded upon presentation to the com-
missioner of an affidavit accompanied by the original or top
copy sales slips or invoices, or certified copies thereof, from
the distributor or producer or retail dealer, showing such
purchases, together with evidence of payment thereof, which
affidavit shall set forth the total amount of such gasoline or
special fuel purchased and consumed by such user, other than
upon any highways of this state, and how used; and the com-
missioner upon the receipt of such affidavit and such paid
sales slips or invoices shall cause to be refunded such tax
paid on gasoline or special fuel purchased and consumed as
aforesaid.

The right to receive any refund under the provisions of
this section shall not be assignable and any assignment thereof
shall be void and of no effect, nor shall any payment be made
to any person other than the original person entitled thereto
using gasoline or special fuel as hereinbefore in this section
set forth. The commissioner shall cause a refund to be made
under the authority of this section only when the claim for
such refund is filed with the commissioner, upon forms
prescribed by the commissioner, within six months from the
month of purchase or delivery of the gasoline or special
fuel, except that any application for refund made under
authority of subdivision (2) above shall be filed within twelve
months from the month of purchase or delivery of such gasoline
or special fuel. Any claim for a refund not timely filed shall
not be construed to be or constitute a moral obligation of the
state of West Virginia for payment. Such claim for refund shall
also be subject to the provisions of section fourteen, article
ten of this chapter.
Effective date.—The provisions of this section as hereby amended shall apply to all gasoline and special fuels purchased or delivered on or after the first day of July, one thousand nine hundred eighty, and the provisions of this section in effect prior to the said first day of July, shall apply to gasoline and special fuels purchased or delivered prior to the first day of July, one thousand nine hundred eighty.

CHAPTER 125

(H. B. 1224—By Mr. Tompkins and Mr. Polan)

[Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.]

AN ACT to amend and reenact section five, article nineteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the soft drinks tax; authorizing refund or credit to be made when the tax stamps or crowns or the soft drinks, powders or syrups upon which tax has been paid are destroyed by fire, lightning or flood or the soft drinks, powders or syrups upon which tax has been paid are exported from this state or are destroyed pursuant to a federal or state order; providing a statute of limitations on the filing of a claim for refund; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That section five, 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.

§11-19-5. Purchase of tax stamps or tax crowns; discounts and commissions; refunds and statute of limitations; effective date.

1 The commissioner is hereby authorized to promulgate rules and regulations governing the design, purchase, sale and distribution of tax stamps and tax crowns required by this
article. Manufacturers or distributors of crowns may be re-
quired to furnish bond to ensure faithful compliance with
such regulations. Any person desiring to purchase such
crowns shall obtain from the commissioner an authorization
to do so, which shall specify the number of crowns to be
purchased, and upon shipment thereof the manufacturer shall
transmit to the commissioner a copy of the invoice of such
shipment. The commissioner shall not authorize the purchase
of crowns by any person who is in default in the payment of
any tax required by this article.

The commissioner shall sell the stamps required by this
article, or may authorize any sheriff, or any bank or trust
company in this state, to sell such stamps as his deputy,
and may allow as a commission a fee of one half of one
percent of the face value of all stamps sold by such deputy.
In the sale of such stamps the commissioner shall allow the
following discounts: On a sale of less than twenty-five
dollars, no discount; on a sale of twenty-five dollars or over
and less than fifty dollars, a discount of five percent; and
on a sale of fifty dollars or more, a discount of ten percent.

In the case of stamps, the tax imposed by this article
shall be paid in advance at the time the stamps are purchased.
In the case of tax crowns, the tax shall be paid in advance
at the time the tax commissioner authorizes the purchase of
such tax crowns, unless the purchaser applies for and obtains
credit as provided in the following paragraph.

Whenever any person applies for an authorization to
purchase tax crowns, he may apply for an extension of credit
on the tax due with respect to such crowns, and if he files
a bond in the form prescribed by the commissioner, with
satisfactory corporate surety, in an amount not less than
twenty-five percent more than the tax due with respect to
the tax crowns to be purchased, the commissioner shall issue
the necessary authorization. Any person who obtains such
credit shall, on or before the fifteenth day of each month, file
with the commissioner on forms prescribed by him a return
stating the number of tax crowns used by such person during
the preceding month, and he shall at the same time pay to
the commissioner the tax due on the crowns so used.

The commissioner shall allow to each purchaser of tax
crowns, whether for cash or credit, a discount of twelve
and one half percent of the tax value of such crowns. Such
discount, and the discount allowed on the sale of tax stamps,
shall be in lieu of the allowance of any claim for refund by
reason of the breakage or destruction of containers stamped
or crowned as provided in this article, the spoilation of the
soft drinks or syrups, or the loss or destruction of tax
stamps or tax crowns. Provided, That when the tax stamps or
crowns or soft drinks, soft drink powders or soft drink syrups
upon which tax has been paid are destroyed by fire, lightning
or flood and when soft drinks, syrups or powders upon which
tax has been paid are exported from this state or are required
to be destroyed pursuant to federal or state order, the taxpayer
may file a claim for refund for an amount equal to the amount
of tax actually paid for such stamps or crowns. The commis-
sioner shall cause a refund to be made under this section only
when a claim for refund is filed within one hundred and eighty
days from the date the tax stamps or crowns were destroyed
or the soft drink product upon which tax was paid were de-
stroyed or exported from this state. Any claim for refund not
timely filed shall not be construed to be or to constitute a
moral obligation of this state for payment. Such claim for re-
fund shall also be subject to the provisions of section fourteen,
article ten of this chapter. At the election of the taxpayer, the
amount of any refund may be established as a credit. The
amount refunded or credited under this section shall not be
subject to the interest provisions of subsection (d), section
seventeen, article ten of this chapter.

Effective date.—The provisions of this section as hereby
amended shall apply to soft drinks tax stamps or crowns de-
stroyed on or after the first day of July, one thousand nine
hundred eighty, and to soft drinks, powders and syrups ex-
ported or destroyed on or after the first day of said July. The
provisions of this section in effect prior to the said first day
of July shall apply to tax stamps, crowns and soft drinks,
powders and syrups destroyed or exported prior to said date.
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.


1 Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty, 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 eighty, 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 eighty, shall be given effect.
AN ACT to amend and reenact section twelve, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Personal Income Tax and modifications which increase or reduce federal adjusted gross income thereunder in determination of the state adjusted gross income of resident individuals; providing a reduction modification which exempts retirement income received from any police or firemen's retirement system, including any survivorship annuities thereunder; providing a maximum exemption allowable to persons who attain the age of sixty-five during the taxable year of eight thousand dollars annually, with such exemption to be applicable to adjusted gross income from any source and with the surviving spouse of any such person being entitled to such exemption; providing a reduction modification granting a maximum exemption of eight thousand dollars annually to persons permanently and totally disabled, regardless of age, as certified by proper authority during the taxable year, with such exemption being applicable to adjusted gross income received from any source, and with the surviving spouse of such person being entitled to such exemption; providing a conforming adjustment in the reduction modification which exempts certain military pay and allowances income relating to active service in the armed forces by West Virginia residents by limiting such exemption to persons under the age of sixty-five; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

1 (a) General.—The West Virginia adjusted gross income
of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. —There shall be added to federal adjusted gross income:

(1) Interest income on obligations of any state other than this state, or of a political subdivision of any such other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Income taxes imposed by this state or any other taxing jurisdiction, to the extent deductible in determining federal adjusted gross income and not credited against federal income tax; and

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income.

(c) Modifications reducing federal adjusted gross income. —There shall be subtracted from federal adjusted gross income:

(1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States to the extent includible in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(3) Any gain from the sale or other disposition of property having a higher fair market value on the first day of January, one thousand nine hundred sixty-one, than the adjusted basis at said date for federal income tax purposes: Provided,
That the amount of this adjustment is limited to that portion of any such gain which does not exceed the difference between such fair market value and such adjusted basis: Provided, however, That if such gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to fifty per centum of such portion of the gain;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the public employees retirement system, the department of public safety death, disability and retirement fund, the state teachers retirement system, and all forms of military retirement, including regular armed forces, reserves and national guard, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(6) Retirement income received in the form of pensions and annuities after the thirty-first day of December, one thousand nine hundred seventy-nine, under any police or firemen's retirement system, including any survivorship annuities derived therefrom, to the extent includible in gross income for federal income tax purposes;

(7) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision, and
(ii) Where the total modification under subdivisions (1), (2), (5) and (6) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of modifications under such subdivisions;

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred seventy-nine, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includible in federal adjusted gross income for federal tax purposes: Provided, That

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision, and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person the total modification allowed under this subdivision for all gross income received by such person shall be limited to the difference between eight thousand dollars and the sum of such subdivisions; and

(9) Any pay or allowances received after the thirty-first day of December, one thousand nine hundred seventy-nine, by West Virginia residents who have not attained the age of sixty-five as compensation for active service in the armed forces of the United States: Provided, That such deduction shall be limited to an amount not to exceed four thousand dollars.

(d) Modification for West Virginia fiduciary adjustment.— There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners.—The amounts of modifications required to be made under this section by a partner, which relate to items of income, gain, loss or deduction of a partnership, shall be determined under section seventeen of this article.
Husband and wife.—If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

CHAPTER 128

(Ch. 128)

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.


(a) General.—Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States or to the Internal Revenue Code or to the federal income tax law shall mean the provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred
eighty, 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 eighty, and thereafter,
but no amendment to laws of the United States made on or
after the first day of January, one thousand nine hundred
eighty, shall be given effect.

(b) Certain terms defined.—For purposes of this article:

(1) The term “tax commissioner” means the tax com-
missioner 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 corpora-
tion 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 of this article: 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 of this article.

(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.

CHAPTER 129

(Com. Sub. for H. B. 788—By Mr. Christian and Mr. Greer)

[Passed February 6, 1980; in effect July 1, 1980. 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 thirty-six-b, relating to the enactment of the uniform condominium act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes;
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 thirty-six-b, to read as follows:

CHAPTER 36B. UNIFORM CONDOMINIUM ACT.

Article
2. Creation, Alterations and Termination of Condominiums.
4. Protection of Purchasers.

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-102. Applicability.
§36B-1-103. Definitions.
§36B-1-104. Variation by agreement.
§36B-1-105. Separate titles and taxation.
§36B-1-106. Applicability of local ordinances, regulations and building codes.
§36B-1-107. Eminent domain.
§36B-1-108. Supplemental general principles of law applicable.
§36B-1-109. Construction against implicit repeal.
§36B-1-110. Uniformity of application and construction.
§36B-1-111. Severability.
§36B-1-112. Unconscionable agreement or term of contract.
§36B-1-113. Obligation of good faith.
§36B-1-114. Remedies to be liberally administered.


1 This chapter shall be known and may be cited as the
2 “Uniform Condominium Act.”

§36B-1-102. Applicability.

1 (a) This chapter applies to all condominiums created
2 within this state after the effective date of this chapter.
3 Sections 1-105 (separate titles and taxation), 1-106 (ap-
4 plicability of local ordinances, regulations, and building codes),
5 1-107 (eminent domain), 2-103 (construction and validity of
6 declaration and bylaws), 2-104 (description of units),
7 3-102(a) (1) through (6) and (11) through (16) (powers
8 of unit owners’ association), 3-111 (tort and contract liability),
9 3-115 (lien for assessments), 3-116 (association records), 4-
10 107 (resales of units), and 4-113 (effect of violation on rights
11 of action; attorney’s fees), and section 1-103 (definitions)
12 to the extent necessary in construing any of those sections,
13 apply to all condominiums created in this state before the
14 effective date of this chapter; but those sections apply only
15 with respect to events and circumstances occurring after the
16 effective date of this chapter and do not invalidate existing
17 provisions of the declaration, bylaws, or plats or plans of those
18 condominiums.
(b) The provisions of chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three, do not apply to condominiums created after the effective date of this chapter and do not invalidate any amendment to the declaration, rules, bylaws, plats and plans and code of regulations of any condominium created before the effective date of this chapter if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(c) This chapter does not apply to condominiums or units located outside this state, but the public offering statement provisions (sections 4-102 through 4-105) apply to all dispositions thereof in this state unless exempt under section 4-101(b) (5).

(d) The provisions of this chapter shall apply to all condominiums to the extent such provisions conflict or are inconsistent with the provisions of chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three: Provided, That the provisions of this chapter shall not modify, limit, or nullify any rights, duties, or obligations created or existing under any declaration, by laws, or plats or plans, of condominiums created in this state before the effective date of this chapter.

§36B-1-103. Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) “Additional real estate” means real estate that may be added to a flexible condominium.

(2) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. A person “controls” a declarant if the person (i) is
a general partner, officer, director, or employee of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employee of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person.

(3) "Association" or "unit owners' association" means the unit owners' association organized under section 3-101.

(4) "Common elements" means all portions of a condominium other than the units.

(5) "Common expenses" means expenditures made or liabilities incurred by or on behalf of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 2-108.

(7) "Condominium" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

(8) "Conversion condominium" means a condominium containing any building that at any time before recording of the declaration was occupied wholly or partially by persons
other than purchasers and persons who occupy with the
consent of purchasers.

(9) "Convertible real estate" means a portion of a flexi-
ble condominium not within a building containing a unit,
within which additional units or limited common elements,
or both, may be created.

(10) "Declarant" means:

(i) if the condominium has been created, (A) any person
who has executed a declaration, or an amendment to a
declaration to add additional real estate, other than persons
holding interests in the real estate solely as security for an
obligation, persons whose interest in the real estate will not
be conveyed to unit owners, or, in the case of a leasehold
condominium, a lessor who possesses no special declarant
rights and who is not an affiliate of a declarant who possesses
special declarant rights, or (B) any person who succeeds under
section 3-104 to any special declarant rights, or

(ii) if the condominium has not yet been created, any
person who offers to dispose of or disposes of his interest in
a unit not previously disposed of.

(11) "Dispose" or "disposition" means a voluntary trans-
fer of any legal or equitable interest in a unit, other than
as security for an obligation.

(12) "Executive board" means the body, regardless of
name, designated in the declaration to act on behalf of the
association.

(13) "Flexible condominium" means a condominium con-
taining withdrawable or convertible real estate, a condo-
minium to which additional real estate may be added, or a
combination thereof.

(14) "Identifying number" means a symbol that identifies
only one unit in a condominium.

(15) "Leasehold condominium" means a condominium in
which all or a portion of the real estate is subject to a lease
the expiration or termination of which will terminate the
condominium or reduce its size.
(16) “Limited common element” means a portion of the common elements allocated by the declaration or by operation of section 2-102(2) or (4) for the exclusive use of one or more but fewer than all of the units.

(17) “Mortgage” means either a mortgage or a deed of trust.

(18) “Offering” means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this state, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

(19) “Person” means a natural person, corporation, partnership, association, trust, other entity, or any combination thereof.

(20) “Purchaser” means any person, other than a declarant, who by means of a voluntary transfer acquires a legal or equitable interest in a unit, other than (i) a leasehold interest (including renewal options) of less than five years, or (ii) as security for an obligation.

(21) “Real estate” means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. “Real estate” includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

(22) “Special declarant rights” means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration (section 2-110); to convert convertible real estate in a flexible condominium (section 2-111); to add additional real estate to a flexible condominium (section 2-111); to withdraw with-
drawable real estate from a flexible condominium (section 2-112); to convert a unit into two or more units, common elements, or into two or more units and common elements (section 2-115); to maintain sales offices, management offices, signs advertising the condominium, and models (section 2-117); to use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate (section 2-118); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (section 3-103(c)).

(23) "Unit" means a portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to section 2-105 (4).

(24) "Unit owner" means a declarant who owns a unit, a person to whom ownership of a unit has been conveyed, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation.

(25) "Withdrawable real estate" means real estate that may be withdrawn from a flexible condominium.

§36B-1-104. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of this chapter or the declaration.

§36B-1-105. Separate titles and taxation.

(a) Except as provided in subsection (b), each unit together with its common element interest constitutes for all purposes a separate parcel of real estate.

(b) If there is a unit owner other than a declarant, each unit together with its common element interest, but
excluding its common element interest in convertible or withdrawable real estate, shall be separately taxed and assessed, and each portion of any convertible or withdrawable real estate shall be separately taxed and assessed; otherwise, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

§36B-1-107. Eminent domain.

(a) If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for his unit and its common element interest, whether or not any common element interest is acquired. Upon acquisition, unless the decree otherwise provides, that unit’s entire common element interest, votes in the association, and common expense liability are automatically reallocated to the remaining units in proportion to the respective interests, votes, and liabilities of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. Upon acquisition, (1) that unit’s common element interest, votes in the associa-
tion, and common expense liability are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of common element interest, votes, and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective interests, votes, and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interests, votes, and liabilities.

(c) If part of the common elements is acquired by eminent domain, the award must be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) If the acquisition of common elements or the acquisition of certain units decreases the value of the remaining units by more than a de minimus amount, the award must include an amount to all remaining unit owners sufficient to compensate them for that decrease in value. For purposes of this subsection the entity authorized to exercise the right of eminent domain must give notice to all unit owners and holders of liens on units in the manner set forth in section three, article two, chapter fifty-four of this code, or by certified or registered mail, return receipt requested.

(e) The court decree shall be recorded in every county in which any portion of the condominium is located.

§36B-1-108. Supplemental general principles of law applicable.

The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, mis-
representation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter.

§36B-1-109. Construction against implicit repeal.

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§36B-1-111. Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

§36B-1-112. Unconscionable agreement or term of contract.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations;

(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests
by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(3) The effect and purpose of the contract or clause; and

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the real estate and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real estate measured by the price at which similar real estate was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§36B-1-113. Obligation of good faith.

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

§36B-1-114. Remedies to be liberally administered.

(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF CONDOMINIUMS.

§36B-2-102. Unit boundaries.
§36B-2-103. Construction and validity of declaration and bylaws.
§36B-2-104. Description of units.
§36B-2-105. Contents of declaration; all condominiums.
§36B-2-106. Same—Flexible condominiums.
§36B-2-107. Same—Leasehold condominiums.

1 (a) A condominium may be created pursuant to this chapter only by recording a declaration executed, in the same manner as a deed, by all persons whose interests in the real estate will be conveyed to unit owners and by every lessor of a lease the expiration or termination of which will terminate the condominium or reduce its size. The declaration shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the condominium and each declarant.

(b) A declaration or an amendment to a declaration adding units to a condominium, may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with the plans, as evidenced by a recorded certificate of completion executed by an independent engineer, surveyor, or architect.

(c) No interest in a unit may be conveyed until the unit is substantially completed, as evidenced by a recorded certificate of completion executed by an independent architect, surveyor, or engineer.

§36B-2-102. Unit boundaries.

1 Except as provided by the declaration:

2 (1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces
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thereof are a part of the unit, and all other portions of the
calls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing
wall, bearing column, or any other fixture lies partially
within and partially outside the designated boundaries of a
unit, any portion thereof serving only that unit is a
limited common element allocated solely to that unit, and
any portion thereof serving more than one unit or any
portion of the common elements is a part of the common
elements.

(3) Subject to the provisions of paragraph (2), all spaces,
interior partitions, and other fixtures and improvements
within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops,
porches, balconies, patios, and all exterior doors and windows
or other fixtures designed to serve a single unit, but located
outside the unit's boundaries, are limited common elements
allocated exclusively to that unit.

§36B-2-103. Construction and validity of declaration and bylaws.

(a) All provisions of the declaration and bylaws are sever-
able.

(b) The rule against perpetuities may not be applied
to defeat any provision of the declaration or this chapter, or
any instrument executed pursuant to the declaration or this
chapter.

(c) In the event of a conflict between the provisions of
the declaration and the bylaws, the declaration prevails ex-
cept to the extent the declaration is inconsistent with this
chapter.

(d) Title to a unit and its common element interest is
not rendered unmarketable or otherwise affected by any
provision of unrecorded bylaws, or by reason of an in-
substantial failure of the declaration to comply with this chap-
ter.

§36B-2-104. Description of units.

After the declaration is recorded, a description of a unit
which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and its common element interest even if the common element interest is not described or referred to therein.

§36B·2-105. Contents of declaration; all condominiums.

The declaration for a condominium must contain:

1. (1) the name of the condominium, which must include the word "condominium" or be followed by the words "a condominium";
2. (2) the name of every county in which any part of the condominium is situated;
3. (3) a legally sufficient description of the real estate included in the condominium;
4. (4) a description or delineation of the boundaries of each unit, including the unit's identifying number;
5. (5) a statement of the maximum number of units that may be created by the subdivision or conversion of units owned by the declarant pursuant to section 2-115(c);
6. (6) a description of any limited common elements, as provided in section 2-109;
7. (7) a description of any common elements not within the boundaries of any convertible real estate which may be allocated subsequently as limited common elements, together with a statement that they may be so allocated and a description of the method by which the allocations are to be made;
8. (8) an allocation to each unit of an undivided interest in the common elements, a portion of the votes in the association, and a percentage or fraction of the common expenses of the association (section 2-108);
9. (9) any restrictions on use, occupancy, and alienation of the units;
(10) the recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject; and
(11) any other matters the declarant deems appropriate.

§36B-2-106. Same—Flexible condominiums.

1 The declaration for a flexible condominium shall include, in addition to the matters specified in section 2-105:

2 (1) an explicit reservation of any options to create units, limited common elements, or both, within convertible real estate, or to add additional real estate to or withdraw withdrawable real estate from the condominium;

3 (2) a statement of the time limit, not exceeding seven years after the recording of the declaration, upon which any option reserved under paragraph (1) will lapse, together with a statement of any circumstances that will terminate the option before the expiration of the time limit;

4 (3) a statement of any limitations on any option reserved under paragraph (1), other than limitations created by or imposed pursuant to law, or else a statement that there are no such limitations;

5 (4) a statement of the extent to which the common element interest, relative voting strength in the association, and share of common expense liability of each unit in the condominium at the time the declaration is recorded may be increased or decreased by actions pursuant to any option reserved under paragraph (1), including the formulas to be used for those reallocations;

6 (5) legally sufficient descriptions of each portion of convertible, additional, and withdrawable real estate;

7 (6) if portions of any convertible, additional, or withdrawable real estate may be converted, added, or withdrawn at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added, or withdrawn or a statement that
no assurances are made in those regards, and (ii) a statement as to whether, if any portion of convertible, additional, or withdrawable real estate is converted, added, or withdrawn, all or any particular portion of that or any other real estate must be converted, added, or withdrawn;

(7) a statement of (i) the maximum number of units that may be created within any additional or convertible real estate, or within any portion of either, the boundaries of which are fixed pursuant to paragraph (6), (ii) how many of those units will be restricted exclusively to residential use, and (iii) the maximum number of units per acre that may be created within any portions the boundaries of which are not fixed pursuant to paragraph (6);

(8) if any of the units that may be built within any additional or convertible real estate are not to be restricted exclusively to residential use, a statement, with respect to each portion of the additional and convertible real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(9) a statement of the extent to which any buildings and units that may be erected upon each portion of the additional or convertible real estate will be compatible with the other buildings and units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size, or a statement that no assurances are made in those regards;

(10) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to units created within any convertible or additional real estate, or a statement of any differentiations that may be made as to those units;

(11) general descriptions of all other improvements and limited common elements that may be made or created upon or within each portion of the additional or convertible real estate, or a statement that no assurances are made in that regard;
(12) a statement of any limitations as to the locations of any buildings or other improvements that may be made within convertible or additional real estate, or a statement that no assurances are made in that regard;

(13) a statement that any limited common elements created within any convertible or additional real estate will be of the same general types and sizes as those within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(14) a statement that the proportion of limited common elements to units created within convertible or additional real estate will be approximately equal to the proportion existing within other parts of the condominium, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard; and

(15) a statement of the extent to which any assurances made in the declaration regarding additional or withdrawable real estate pursuant to paragraphs (6) through (14) apply in the event any additional real estate is not added to or any withdrawable land is withdrawn from the condominium, or a statement that those assurances do not apply if the real estate is not added to or is withdrawn from the condominium.

§36B-2-107. Same—Leasehold condominiums.

(a) Any lease the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded, and the declaration shall state:

(1) the recording data for the lease or a statement of where the complete lease may be inspected;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion
and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium is recorded, neither the lessor nor his successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a condominium, the common element interests, votes in the association, and common expense liabilities shall be reallocated in accordance with section 1-107(a) as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.


(a) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations.
(b) In a flexible condominium, the common element interest and common expense liability allocated to each unit must be equal, or proportionate to the relative size of each unit, unless the declaration as originally recorded:

1. requires that any units created in additional or convertible real estate be substantially identical to the other units in the condominium and provides that common element interests and common expense liabilities will be allocated to those units in accordance with the formulas used for the initial allocations; or

2. identifies all other types of units that may be created in additional or convertible real estate in terms of architectural style, quality of construction, principal materials to be used, and ranges of sizes, and states the formulas upon which any reallocations of common element interests and common expense liabilities will be made, or states the common element interest and common expense liability to be allocated to each unit that may be created.

(c) The number of votes allocated to each unit must be equal, proportionate to that unit's common expense liability, or proportionate to that unit's common element interest. If the declaration allocates an equal number of votes in the association to each unit, each unit that may be subdivided or converted by the declarant into two or more units, common elements, or both (section 2-115), must be allocated a number of votes in the association proportionate to the relative size of that unit compared to the aggregate size of all units, and the remaining votes in the association must be allocated equally to the other units. The declaration may provide that different allocations of votes shall be made to the units on particular matters specified in the declaration.

(d) Except in the case of eminent domain (section 1-107), expansion or conversion of a flexible condominium (section 2-111), withdrawal of withdrawable real estate (section 2-112), relocation of boundaries between adjoining units (section 2-114), or subdivision of units (section 2-115), the common element interest, votes, and common expense liability allo-
cated to any unit may not be altered without unanimous consent of all unit owners. The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which it is allocated is void.

(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between the common element interest, votes, or common expense liability allocated to a unit and the result derived from application of the formulas, the allocated common element interest, vote, or common expense liability prevails.


(a) Except for the limited common elements described in section 2-102(2) and (4), the declaration shall specify to which unit or units each limited common element is allocated. That allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made, or by an amendment to the declaration executed by those unit owners. The persons executing the assignment or amendment to the declaration shall provide a copy thereof to the association.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 2-105(7). The declaration may provide that the allocation shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.

§36B-2-110. Plats and plans.

(a) Plats and plans are a part of the declaration. Separate plats and plans are not required by this chapter if all the
information required by this section is contained in either
a plat or plan. Each plat and plan must be clear and legible
and contain a certification that the plat or plan accurately
depicts all existing conditions and contains all information
required by this section.

(b) Each plat must show:

(1) the name, location, and dimensions of the condom-

inion;

(2) the location and dimensions of all existing improve-

ments;

(3) the intended location and dimensions of any con-
templated improvement to be constructed anywhere within
the condominium labeled either "MUST BE BUILT" or
"NEED NOT BE BUILT," but need not show contemplated
improvements within the boundaries of convertible real estate;

(4) the location and dimensions of any convertible real
estate, labeled as such;

(5) the location and dimensions of any withdrawable real
estate, labeled as such;

(6) the extent of any encroachments by or upon any por-
tion of the condominium;

(7) to the extent feasible, the location and dimensions
of all easements serving or burdening any portion of the
condominium;

(8) the location and dimensions of any vertical unit
boundaries not shown or projected on plans recorded pursuant
to subsection (c) and that unit's identifying number;

(9) the location with reference to established datum of
any horizontal unit boundaries not shown or projected on
plans recorded pursuant to subsection (c) and that unit's
identifying number;

(10) the locations and dimensions of any real estate in
which the unit owners will own only an estate for years,
labeled as "leasehold real estate";
(11) the distance between noncontiguous parcels of real estate comprising the condominium;

(12) the location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in sections 2-102(2) and (4);

(13) all other matters customarily shown on land surveys.

(c) Plans of every building that contains or comprises all or part of any unit and is located or must be built within any portion of the condominium, other than within the boundaries of any convertible real estate, must show:

(1) the location and dimensions of the vertical boundaries of each unit, to the extent those boundaries lie within or coincide with the boundaries of the building in which the unit is located, and that unit's identifying number;

(2) any horizontal unit boundaries, with reference to established datum, not shown on plats recorded pursuant to subsection (b), and that unit's identifying number; and

(3) any units that may be converted by the declarant to create additional units or common elements (section 2-115(c)), identified appropriately.

(d) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.

(e) Upon converting convertible real estate or adding additional real estate (section 2-115), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of the remaining portion.

(f) If a declarant converts any unit into two or more
units, limited common elements, or both (section 2-115), he shall record new plans showing the location and dimensions of any new units and limited common elements thus created as well as the location and dimensions of any portion of that space not being converted.

(g) Instead of recording new plats and plans as required by subsections (e) and (f), the declarant may record new certifications of plats and plans previously recorded if those plats and plans show all improvements required by subsections (e) and (f).

(h) Any certification of a plat or plan required by this section or section 2-101(b) must be made by an independent surveyor, architect, or engineer.

§36B-2-111. Conversion and expansion of flexible condominiums.

(a) To convert convertible real estate or add additional real estate pursuant to an option reserved under section 2-106(1) the declarant shall prepare, execute, and record an amendment to the declaration (section 2-119) and comply with section 2-110. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each unit formed in the convertible or additional real estate, and reallocate common element interests, votes in the association, and common expense liabilities. The amendment must describe or delineate any limited common elements formed out of the convertible or additional real estate, showing or designating the unit to which each is allocated to the extent required by section 2-109.

(b) Convertible or withdrawable real estate may be created within any additional real estate added to the condominium if the amendment adding that real estate includes all matters required by section 2-105 or section 2-106, as the case may be, and the plat includes all matters required by section 2-110(b). This provision does not extend the time limit on conversion or contraction of a flexible condominium imposed by the declaration pursuant to section 2-106(2).

(c) Until conversion occurs or the period during which
conversion may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against convertible real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from convertible real estate inures to the declarant.

§36B-2-112. Withdrawal of withdrawable real estate.

(a) To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 2-106(1), the declarant shall prepare, execute, and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate common element interests, votes in the association, and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes, and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

(b) If a portion of the withdrawable real estate was described pursuant to section 2-106(6), that portion may not be withdrawn if any person other than the declarant owns a unit situated therein. If the portion was not so described, none of it is withdrawable if any person other than the declarant owns a unit situated therein.

(c) Until withdrawal occurs or the period during which withdrawal may occur expires, whichever occurs first, the declarant alone is liable for real estate taxes assessed against withdrawable real estate and all other expenses in connection with that real estate. No other unit owner and no other portion of the condominium is subject to a claim for payment of those taxes or expenses. Unless the declaration provides otherwise, any income or proceeds from withdrawable real estate inures to the declarant.

§36B-2-113. Alterations of units.

Subject to the provisions of the declaration and other provisions of law, a unit owner:
(1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;

(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;

(3) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§36B-2-114. Relocation of boundaries between adjoining units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their common element interests, votes in the association, and common expense liabilities, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and, upon recordation, is indexed in the name of the grantor and the grantee.

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

§36B-2-115. Subdivision or conversion of units.

(a) If the declaration expressly so permits, a unit may
be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided or converted into two or more units, common elements, or a combination of units and common elements. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, or upon application of a declarant to convert a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the common element interest, votes in the association, and common expense liability formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

(c) In the case of a unit owned by a declarant, if a declarant converts all of a unit to common elements, the amendment to the declaration must reallocate among the other units the common element interest, votes in the association, and common expense liability formerly allocated to the converted unit on the same basis used for the initial allocation thereof.

§36B-2-116. Interpretation of deeds.

1 In interpreting deeds and plans, the existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building.

§36B-2-117. Use for sales purposes.

1 A declarant may maintain sales offices, management offices, and models in the condominium only if the declaration so provides and specifies the rights of a de-
clarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium.

§36B-2-118. Easement to facilitate completion, conversion and expansion.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

§36B-2-119. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under sections 2-110(e) and (f), 2-111(a), or 2-112(a); the association under sections 1-107, 2-107(d), 2-109(c), or 2-115(a); or certain unit owners under sections 2-109(b), 2-114(a), 2-115(b), or 2-120(b), and except as limited by subsection (d), the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required
by other provisions of this chapter, no amendment may create
or increase special declarant rights, increase the number of
units, or change the boundaries of any unit, the common
element interest, common expense liability, or voting strength
in the association allocated to a unit, or the uses to which
any unit is restricted, in the absence of unanimous consent
of the unit owners.

(e) Amendments to the declaration required by this chap-
ter to be recorded by the association shall be prepared, exe-
cuted, recorded, and certified by any officer of the associa-
tion designated for that purpose or, in the absence of desig-
nation, by the president of the association.

§36B-2-120. Termination of condominium.

(a) Except in the case of a taking of all the units by
eminent domain (section 1-107), a condominium may be
terminated only by agreement of unit owners of units to
which at least eighty percent of the votes in the association
are allocated, or any larger percentage the declaration speci-
fies. The declaration may specify a smaller percentage only
if all of the units in the condominium are restricted exclusively
to nonresidential uses.

(b) An agreement of unit owners to terminate a con-
dominium must be evidenced by their execution of a termina-
tion agreement or ratifications thereof. If, pursuant to a
termination agreement, the real estate constituting the con-
dominium is to be sold following termination, the termination
agreement must set forth the terms of the sale. A termination
agreement and all ratifications thereof must be recorded in
every county in which a portion of the condominium is
situated, and is effective only upon recordation.

(c) The association, on behalf of the unit owners, may
contract for the sale of the condominium, but the contract
is not binding on the unit owners until approved pursuant to
subsections (a) and (b). If the real estate constituting
the condominium is to be sold following termination, title
to that real estate, upon termination, vests in the
association as trustee for the holder of all interest in
the units. Thereafter, the association has all powers
necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interest of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(d) If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

(e) Following termination of the condominium, and after payment of or provision for the claims of the association’s creditors, the assets of the association shall be distributed to unit owners in proportion to their respective interests as provided in subsection (f). The proceeds of sale described in subsection (c) and held by the association as trustees are not assets of the association.

(f) The respective interests of unit owners referred to in subsections (c), (d) and (e) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The
decision of the independent appraisers shall be distributed
to the unit owners and becomes final unless disap-
proved within thirty days after distribution by unit owners
of units to which twenty-five percent of the votes in the
association are allocated. The proportion of any unit
owner's interest to that of all unit owners is determined by
dividing the fair market value of that unit owner's unit and
common element interest by the total fair market value of
all the units and common elements.

(2) If any unit or any limited common element is des-
troyed to the extent that an appraisal of the fair market
value thereof prior to destruction cannot be made, the in-
terests of all unit owners are their respective common element
interests immediately before the termination.

(g) Foreclosure or enforcement of a lien or encumbrance
against the entire condominium does not of itself terminate
the condominium, and foreclosure or enforcement of a lien, or
encumbrance against a portion of the condominium, other
than withdrawable real estate, does not withdraw that portion
from the condominium. Foreclosure or enforcement of a lien
or encumbrance against withdrawable real estate does not of
itself withdraw that real estate from the condominium, but
the person taking title thereto has the right to require from
the association, upon request, an amendment excluding the
real estate from the condominium.

§36B-2-121. Rights of secured lenders.

1 The declaration may require that all or a specified number
2 or percentage of the mortgages or beneficiaries of deeds
3 of trust encumbering the units approve specified actions of
4 the unit owners or the association as a condition to the
5 effectiveness of those actions, but no requirement for approval
6 may operate to (1) deny or delegate control over the general
7 administrative affairs of the association by the unit owners
8 or the executive board, or (2) prevent the association or the
9 executive board from commencing, intervening in, or settling
10 any litigation or proceeding, or receiving and distributing any
11 insurance proceeds pursuant to section 3-112.
ARTICLE 3. MANAGEMENT OF THE CONDOMINIUM.

§36B-3-101. Organization of unit owners' association.

A unit owners' association shall be organized no later than the date the condominium is created. The membership of the association at all times shall consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under section 2-120, or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation or as an unincorporated association.

§36B-3-102. Powers of unit owners' association.

(a) Subject to the provisions of the declaration, the association, even if unincorporated, may:

(1) adopt and amend bylaws and rules and regulations;

(2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(3) hire and terminate managing agents and other employees, agents, and independent contractors;

(4) institute, defend, or intervene in litigation or ad-
ministrative proceeding in its own name on behalf of it-
self or two or more unit owners on matters effecting the
condominium;

(5) make contracts and incur liabilities;

(6) regulate the use, maintenance, repair, replacement,
and modification of common elements;

(7) cause additional improvements to be made as a part
of the common elements;

(8) acquire, hold, encumber, and convey in its own name
any right, title, or interest to real or personal property;

(9) grant easements, leases, licenses, and concessions
through or over the common elements;

(10) impose and receive any payments, fees or charges
for the use, rental, or operation of the common elements
other than limited common elements described in section
2-102(2) and (4);

(11) impose charges for late payment of assessments and,
after notice and an opportunity to be heard, levy reasonable
fines for violations of the declaration, bylaws, and rules
and regulations of the association;

(12) impose reasonable charges for the preparation and
recording of amendments to the declaration, resale cer-
tificates required by section 4-107, or statements of unpaid
assessments;

(13) provide for the indemnification of its officers and
executive board and maintain directors' and officers' liability
insurance;

(14) exercise any other powers conferred by the declaration
or bylaws;

(15) exercise all other powers that may be exercised in
this state by legal entities of the same type as the association;
and

(16) exercise any other powers necessary and proper for
the governance and operation of the association.
(b) Notwithstanding subsection (a), the declaration may not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.

§36B-3-103. Executive board members and officers.

(a) Except as provided in the declaration, the bylaws, in subsection (b), or other provisions of this chapter, the executive board may act in all instances on behalf of the association. The officers and members of the executive board appointed by the declarant are subject to liability as fiduciaries of the unit owners for their acts or omissions.

(b) The executive board may not act on behalf of the association to amend the declaration (section 2-119), to terminate the condominium (section 2-120), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (section 3-103(e)), but the executive board may fill vacancies in its membership for the unexpired portion of any term. In addition to other rights conferred by the declaration, bylaws or this act, the unit owners, by majority or any larger vote specified in the declaration, may reject any budget or capital expenditure approved by the executive board, within thirty days after the approval.

(c) Subject to subsection (d), the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Any period of declarant control extends from the date of the first conveyance of a unit to a person other than a declarant for a period not exceeding five years in the case of a flexible condominium containing convertible real estate or to which additional real estate may be added, or three years in the case of any other condominium. Regardless of the period provided in the declaration, a period of declarant control terminates no later than sixty days after conveyance of seventy-five percent of the units to unit owners other than a declarant. A declarant may voluntarily surrender the right to appoint and remove officers and members
of the executive board before termination of that period, but
in that event he may require, for the duration of the period
of declarant control, that specified actions of the association
or executive board, as described in a recorded instrument
executed by the declarant, be approved by the declarant
before they become effective.

(d) Not later than sixty days after conveyance of twenty-
five percent of the units to unit owners other than a de-
clarant, not less than twenty-five percent of the members
of the executive board shall be elected by unit owners other
than the declarant. Not later than sixty days after con-
vveyance of fifty percent of the units to unit owners other
than a declarant, not less than thirty-three and one-third
percent of the members of the executive board shall be
elected by unit owners other than the declarant.

(e) Not later than the termination of any period of
declarant control, the unit owners shall elect an executive
board of at least three members, at least a majority of whom
must be unit owners. The executive board shall elect the
officers. The persons elected shall take office upon election.

(f) In determining whether the period of declarant control
has terminated under subsection (c), or whether unit owners
other than a declarant are entitled to elect members of the
executive board under subsection (d), the percentage of the
units conveyed is presumed to be that percentage which would
have been conveyed if all the units the declarant has built
or reserved the right to build in the declaration were in-
cluded in the condominium.

§36B-3-104. Transfer of special declarant rights.

(a) No special declarant rights (section 1-103 (22)) created
or reserved under this chapter may be transferred except by
an instrument evidencing the transfer recorded in every
county in which any portion of the condominium is located.
The instrument is not effective unless executed by the trans-
feree.

(b) Upon transfer of any special declarant right, the lia-
bility of a transferor declarant is as follows:
(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to bring an action to enforce any obligation of the transferor;

(2) If a transferor retains any special declarant right, or if a successor to any special declarant right is an affiliate of a declarant (section 1-103(2)), the transferor is subject to liability for all obligations and liabilities imposed on a declarant by this chapter or by the declaration arising after the transfer and is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the condominium;

(3) A transferor who retains no special declarant right has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under bankruptcy act or receivership proceedings, of any units owned by a declarant in the condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights, or only to any rights reserved in the declaration pursuant to section 2-117 to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, sale by a trustee under a deed of trust, or sale under bankruptcy act or receivership proceedings, of all units in a condominium owned by a declarant:

(1) the declarant ceases to have any special declarant rights, and

(2) the period of declarant control (section 3-103(c) ) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.
(e) The liabilities and obligations of persons who succeed to special declarant rights are as follows:

1. A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on any declarant by this chapter or by the declaration;

2. A successor to any special declarant right, other than a successor described in paragraphs (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed upon a declarant by this chapter or the declaration, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous declarant or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant;

3. A successor to only a right reserved in the declaration to maintain models, sales offices, and signs (section 2-117), if he is not an affiliate of a declarant, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement, and any liability arising as a result thereof;

4. A successor to all special declarant rights who is not an affiliate of a declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (c), may declare his intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right to control the executive board in accordance with the provisions of section 3-103(c) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other
than liability for the successor's acts and omissions under section 3-103(c).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

§36B-3-105. Termination of contracts and leases of declarant.

1 If entered into before the executive board elected by the unit owners pursuant to section 3-103(e) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease to which a declarant or an affiliate of a declarant is a party, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3-103(e) takes office upon not less than ninety days' notice to the other party. This subsection does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

§36B-3-106. Bylaws.

1 (a) The bylaws of the association must provide for:

2 (1) the number of members of the executive board and the titles of the officers of the association;

3 (2) election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

4 (3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

5 (4) which, if any, of its powers the executive board or
officers may delegate to other persons or to a managing agent;
and

(5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§36B-3-107. Upkeep of the condominium.

(a) Except to the extent provided by the declaration or section 3-112(d), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

(b) If any unit in a condominium all of whose units are restricted to nonresidential use is damaged, and the exterior appearance of the unit is thereby affected, the person responsible for the exterior of the unit shall cause the unit to be repaired or rebuilt to the extent necessary to restore its exterior appearance. If that person fails within a reasonable period of time to effect the repairs or rebuilding, the association may purchase the unit at its fair market value to be determined by an independent appraiser selected by the association.

§36B-3-108. Meetings.

The bylaws must require that meetings of the association be held at least once each year and provide for special meetings. The bylaws must specify which of the association's officers, not less than ten nor more than sixty days in advance of any meeting, shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing
address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws.

§36B-3-109. Quorums.

(a) Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting. The bylaws may require a larger percentage or a smaller percentage not less than ten percent.

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of the votes on that board are present at the beginning of the meeting.

§36B-3-110. Voting; proxies.

(a) If only one of the multiple owners of a unit is present at a meeting of the association, he is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with their unanimous agreement unless the declaration expressly provides otherwise. There is unanimous agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated
or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) The declaration may provide for cumulative voting only for the purpose of electing members of the executive board and for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter.

(d) No votes allocated to a unit owned by the association may be cast.

§36B-3-111. Tort and contract liability.

(a) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the condominium which the declarant has the responsibility to maintain may not be brought against the association or a unit owner other than a declarant. Otherwise, an action in tort alleging a wrong done by the association or by an agent or employee of the association, or an action arising from a contract made by or on behalf of the association, shall be brought against the association. If the tort or breach of contract occurred during any period of declarant control (section 3-103(c)), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney's fees. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

(b) A judgment for money against the association if properly docketed as required by section five, article three, chapter thirty-eight of this code is a lien against all of the units. No other property of a unit owner is subject to the claims of creditors of the association. The association shall notify all unit owners in any manner reasonably calculated to give
notice to unit owners of the filing of any action against the
association, including notice by certified or registered mail,
return receipt requested.

(c) No judgment shall be a lien as against a subsequent
purchaser of any unit for valuable consideration without notice
unless it is docketed as required by section five, article three,
chapter thirty-eight of this code. A judgment against the asso-
ciation shall be indexed in the name of the condominium and
of the particular unit owners.

§36B-3-112. Insurance.

(a) Commencing not later than the time of the first
conveyance of a unit to a person other than a declarant, the
association shall maintain, to the extent reasonably available:

(1) property insurance on the common elements and units,
exclusive of improvements and betterments installed in units
by unit owners, insuring against all risks of direct physical
loss commonly insured against or, in the case of a conversion
condominium, against fire and extended coverage perils. The
total amount of insurance after application of any deductibles
shall be not less than eighty percent of the actual cash value
of the insured property, exclusive of land, excavations, founda-
tions, and other items normally excluded from property
policies; and

(2) comprehensive general liability insurance, including
medical payments insurance, in an amount determined by the
executive board but not less than any amount specified in
the declaration, covering all occurrences commonly insured
against for death, bodily injury, and property damage arising
out of or in connection with the use, ownership, or main-
tenance of the common elements.

(b) If the insurance described in subsection (a) is not
maintained, the association promptly shall cause notice of
that fact to be hand-delivered or sent prepaid by United
States mail to all unit owners. The declaration may require
the association to carry any other insurance, and the associa-
tion in any event may carry any other insurance it deems
appropriate to protect the association or the unit owners.
28 (c) Insurance policies carried pursuant to subsection (a) must provide that:
29
30 (1) each unit owner is an insured person under the policy with respect to liability arising out of his ownership of an undivided interest in the common elements or membership in the association;
31
32 (2) the insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of his household;
33
34 (3) no act or omission by any unit owner, unless acting within the scope of his authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and
35
36 (4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same property covered by the policy, the policy is primary insurance not contributing with the other insurance.
37
38 (d) Any loss covered by the property policy under subsection (a)(1) shall be adjusted with the association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (g), the proceeds shall be disbursed first for the repair or restoration of the damaged common elements and units, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored, or the condominium is terminated.
39
40 (e) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for his own benefit.
41
42 (f) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance
to the association and, upon request, to any unit owner, mortgagee, or beneficiary under a deed of trust. The insurance may not be canceled until thirty days after notice of the proposed cancellation has been mailed to the association, each unit owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

(g) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, and (3) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 2-120 governs the distribution of insurance proceeds if the condominium is terminated.

(h) The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.
§36B-3-113. Surplus funds.

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be credited to the unit owners to reduce their future common expense assessments.

§36B-3-114. Assessments for common expenses.

(a) Until the association makes a common expense assessment, the declarant shall pay all the expenses of the condominium. After any assessment has been made by the association, assessments shall be made at least annually and shall be based on a budget adopted at least annually by the association.

(b) Except for assessments under subsection (c), common expenses shall be assessed against all the units in accordance with the common expense liability allocated to each unit (section 2-108). Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding eighteen percent per year.

(c) Except as provided by the declaration:

(1) any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed in equal shares against the units to which that limited common element was assigned at the time the expense was incurred; and

(2) any common expense benefiting fewer than all of the units shall be assessed exclusively against the units benefited.

(d) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

§36B-3-115. Lien for assessments.

(a) The association has a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due.
The association's lien may be foreclosed in like manner as a mortgage on real estate or a power of sale under a deed of trust. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to section 3-102(10), (11) and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration, (2) mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment or the due date of the first installment payable on the assessment, and (3) liens for real estate taxes and other governmental assessments or charges against the unit. To the extent of the common expense assessments made under section 3-114(b) due during the six months immediately preceding institution of an action to enforce the lien, the lien is also prior to the mortgages and deeds of trust described in clause (2) above. This subsection does not affect the priority of mechanics' or materialmen's liens.

(c) For the purpose of perfecting and preserving its lien the association shall give notice to the unit owner in the manner set forth in section one, article two, chapter fifty-six of this code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform the owner of his liability for payment of the assessment. The lien shall be discharged as to subsequent purchasers for value without notice unless the association shall cause to be recorded a notice of the lien in the office of the clerk of the county commission of any county wherein any part of the condominium is located. The notice shall contain:

(1) A legally sufficient description of the unit;
(2) The name or names of the owners of the unit;
(3) The amount of unpaid assessments due together with the date when each fell due; and
(4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.

Upon payment of the assessment the association shall execute a written release of the lien in the manner set forth in section one, article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the county clerk wherein the notice of the lien was filed.

(d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the assessments become payable.

(e) Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (a) creates a lien, or to prohibit an association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action or suit brought under this section shall include costs and reasonable attorney's fees for the prevailing party.

(g) The association shall furnish to a unit owner upon written request a recordable statement setting forth the amount of unpaid assessments currently levied against his unit. The statement shall be furnished within ten business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

§36B-3-116. Association records.

The association shall keep financial records sufficiently detailed to enable the association to comply with section 4-107. All financial and other records shall be made reasonably available for examination by any unit owner and his authorized agents.
§36B-3-117. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.
§36B-4-102. Public offering statement; general provisions.
§36B-4-103. Same—Time-share estates.
§36B-4-104. Same—Conversion condominiums.
§36B-4-105. Same—Condominium securities.
§36B-4-106. Purchaser's right to cancel.
§36B-4-107. Resales of units.
§36B-4-108. Escrow of deposits.
§36B-4-109. Release of liens.
§36B-4-110. Conversion condominiums.
§36B-4-111. Warranty against structural defects.
§36B-4-112. Statute of limitations for warranties.
§36B-4-113. Effect of violations on rights of action; attorney's fees.
§36B-4-114. Labeling of promotional material.
§36B-4-115. Declarant's obligation to complete and restore.

§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.

(b) A public offering statement need not be prepared or delivered in the case of:

(1) gratuitous transfer of a unit;

(2) a disposition pursuant to court order;
§36B-4-102. Public offering statement; general provisions.

(a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:

(1) the name and principal address of the declarant and of the condominium;

(2) a general description of the condominium, including without limitation the types, number, and declarant's schedule of commencement and completion of construction of all buildings, units, and amenities;

(3) the total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units to investors;

(4) a brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under section 2-106(1) and the expected effects that withdrawal would have on the remaining portion of the condominium;

(5) copies and a brief narrative description of the significant features of the declaration (other than the plats and plans), the bylaws, and rules and regulations, copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3-105;

(6) any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first
conveyance to a purchaser, and thereafter the current budget
of the association, a statement of who prepared the budget,
and a statement of the budget's assumptions concerning oc-
cupancy and inflation factors. The budget must include,
without limitation:

(i) a statement of the amount, or a statement that there
is no amount, included in the budget as a reserve for repairs
and replacement;

(ii) a statement of any other reserves;

(iii) the projected common expense assessment by cate-
gory of expenditures for the association;

(iv) the projected monthly common expense assessment for
each type of unit;

(7) any services not reflected in the budget that the
declarant provides, or expenses that he pays, and that he
expects may become at any subsequent time a common expense
of the association and the projected common expense assess-
ment attributable to each of those services or expenses for
the association and for each type of unit;

(8) any initial or special fee due from the purchaser at
closing, together with a description of the purpose and
method of calculating the fee;

(9) a description of any liens, defects, or encumbrances
on or affecting the title to the condominium;

(10) a description of any financing offered by the de-
clarant;

(11) the terms and significant limitations of any war-
ranties provided by the declarant, including statutory war-
ranties and limitations on the enforcement thereof or on
damages;

(12) a statement that:

(i) within fifteen days after receipt of a public offering
statement a purchaser, before conveyance, may cancel any
contract for purchase of a unit from a declarant;
(ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit; and

(iii) if a purchaser receives the public offering statement more than fifteen days before signing a contract, he cannot cancel the contract;

(13) a statement of any judgments against the association, the status of any pending suits to which the association is a party, and the status of any pending suits material to the condominium of which a declarant has actual knowledge;

(14) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to section 4-106;

(15) any restraints on alienation of any portion of the condominium;

(16) a description of the insurance coverage provided for the benefit of unit owners;

(17) any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the condominium;

(18) the extent to which financial arrangements have been provided for completion of all improvements labeled “MUST BE BUILT" pursuant to section 4-115 (declarant’s obligation to complete and restore); and

(19) all unusual and material circumstances, features, and characteristics of the condominium and the units.

(b) If a condominium composed of not more than twelve units is not a flexible condominium and no power is reserved to a declarant to make the condominium part of a larger condominium, group of condominiums, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (3), (4), (10), (11), (16), (17), (18) and (19) of subsection (a), and the
narrative descriptions of documents required by paragraph (a) (5).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

§36B-4-103. Same—Time-share estates.

(a) For purposes of this section, “time-share estate” means either:

(1) an “interval estate,” meaning a combination of (i) an estate for years in a unit, during the term of which title to the unit rotates among the time-share owners thereof, vesting in each of them in turn for periods established by a fixed recorded schedule, with the series thus established recurring regularly until the term expires, coupled with (ii) a vested undivided fee simple interest in the remainder in that unit, the magnitude of that interest having been established by the declaration or by the deed creating the interval estate; or

(2) a “time-span estate,” meaning a combination of (i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate, coupled with (ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.

(b) If the declaration provides that ownership or occupancy of the units are or may be owned in time-shares, the public offering statement shall disclose in addition to the information required by section 4-102:

(1) the total number of units in which time-share estates may be created;

(2) the total number of time-share estates that may be created in the condominium;

(3) the projected common expense assessment for each time-share estate and whether those assessments may vary seasonally;
(4) a statement of any services not reflected in the budget which the declarant provides, or expenses which he pays, and which he expects may become at any subsequent time a common expense of the association, and the projected common expense assessment attributable to each of those services or expenses for each time-share estate;

(5) the extent to which the time-share owners of a unit are jointly and severally liable for the payment of real estate taxes and all assessments and other charges levied against that unit;

(6) the extent to which a suit for partition may be maintained against a unit owned in time-share estates; and

(7) the extent to which a time-share estate may become subject to a tax or other lien arising out of claims against other time-share owners of the same unit.

§36B-4-104. Same—Conversion condominiums.

(a) The public offering statement of a conversion condominium must contain, in addition to the information required by section 4-102:

(1) a statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(2) a statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

(3) a list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to units that may be occupied for residential use.

§36B-4-105. Same—Condominium securities.

If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United
States, a declarant satisfies all requirements relating to the
preparation of a public offering statement in this chapter if
he delivers to the purchaser a copy of the public offering
statement filed with the Securities and Exchange Commission.

§36B-4-106. Purchaser's right to cancel.

(a) Unless delivery of a public offering statement is
not required under section 4-101(b), a declarant shall
provide a purchaser of a unit with a copy of the public
offering statement and all amendments thereto before con-
veyance of that unit, and not later than the date of any
contract of sale. Unless a purchaser is given the public
offering statement more than fifteen days before execution of
a contract for the purchase of a unit, the purchaser, before
conveyance, may cancel the contract within fifteen days after
first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant
to subsection (a), he may do so by hand-delivering notice
thereof to the declarant or by mailing notice thereof by
prepaid United States mail to the declarant or to his agent
for service of process. Cancellation is without penalty, and
all payments made by the purchaser before cancellation shall
be refunded promptly.

(c) If a declarant fails to provide a purchaser to whom
a unit is conveyed with a public offering statement and all
amendments thereto as required by subsection (a), the pur-
chaser, in addition to any rights to damages or other relief,
is entitled to receive from the declarant an amount equal to
ten percent of the sales price of the unit.

§36B-4-107. Resales of units.

(a) In the event of a resale of a unit by a unit owner
other than a declarant, the unit owner shall furnish to a
purchaser before execution of any contract for sale of a
unit, or otherwise before conveyance, a copy of the de-
claration (other than the plats and plans), the bylaws, the
rules or regulations of the association, and a certificate
containing:
8. (1) a statement disclosing the effect on the proposed
disposition of any right of first refusal or other restraint
on the free alienability of the unit;

9. (2) a statement setting forth the amount of the monthly
common expense assessment and any unpaid common expense
or special assessment currently due and payable from the
selling unit owner;

10. (3) a statement of any other fees payable by unit owners;

11. (4) a statement of any capital expenditures proposed by
the association for the current and two next succeeding
fiscal years;

12. (5) a statement of the amount of any reserves for capital
expenditures and of any portions of those reserves designated
by the association for any specified projects;

13. (6) the most recent regularly prepared balance sheet and
income and expense statement, if any, of the association;

14. (7) the current operating budget of the association;

15. (8) a statement of any judgments against the association
and the status of any pending suits to which the association
is a party;

16. (9) a statement describing any insurance coverage pro-
vided for the benefit of unit owners;

17. (10) a statement as to whether the executive board has
knowledge that any alterations or improvements to the unit
or to the limited common elements assigned thereto violate
any provision of the declaration;

18. (11) a statement as to whether the executive board has
knowledge of any violations of the health or building codes
with respect to the unit, the limited common elements assigned
thereto, or any other portion of the condominium; and

19. (12) a statement of the remaining term of any leasehold
estate affecting the condominium and the provisions govern-
ing any extension or renewal thereof.

(b) The association, within ten days after a request by
a unit owner, shall furnish a certificate containing the in-
formation necessary to enable the unit owner to comply with
this section. A unit owner providing a certificate pursuant
to subsection (a) is not liable to the purchaser for any
erroneous information provided by the association and in-
cluded in the certificate.

(c) A purchaser is not liable for any unpaid assessment
or fee greater than the amount set forth in the certificate
prepared by the association. A unit owner is not liable to
a purchaser for the failure or delay of the association to
provide the certificate in a timely manner, but the purchase
contract is voidable by the purchaser until the certificate
has been provided and for five days thereafter or until con-
veyance, whichever first occurs.

§36B-4-108. Escrow of deposits.

Any deposit made in connection with the purchase or re-
servation of a unit from a declarant shall be placed in escrow
and held in this state in an account designated solely for
that purpose by an institution whose accounts are insured
by a governmental agency or instrumentality until (1) delivered
to the declarant at closing; (2) delivered to the declarant
because of purchaser's default under a contract to purchase
the unit; or (3) refunded to the purchaser.

§36B-4-109. Release of liens.

(a) Before conveying a unit, other than by deed in lieu of
foreclosure, to a purchaser other than a declarant, a declar-
ant shall record or furnish to the purchaser, releases of all
liens affecting that unit and its common element interest which
the purchaser does not expressly agree to take subject to or
assume. This subsection does not apply to any withdrawable
real estate in which no unit has been conveyed.

(b) Whether perfected before or after creation of the con-
dominium, if a lien other than a deed of trust or mortgage,
including a lien attributable to work performed or materials
supplied before creation of the condominium, becomes effec-
tive against two or more units, the unit owner of an affected
unit may pay to the lienholder the amount of the lien attri-
butable to his unit, and the lienholder, upon receipt of pay-
ment, promptly shall deliver a release of the lien covering that
unit and its common element interest. The amount of the
payment must be proportionate to the ratio which that unit
owner's common expense liability bears to the common ex-
pense liabilities of all unit owners whose units are subject to
the lien. After payment, the association may not assess or
have a lien against that unit owner's unit for any portion of
the common expenses incurred in connection with that lien.

§36B-4-110. Conversion condominiums.

(a) A declarant of a conversion condominium shall give
each of the tenants and any subtenant in possession of
buildings subject to this chapter notice of the conversion
no later than one hundred twenty days before the declarant
will require the tenants and any subtenant in possession to
vacate. The notice must set forth generally the rights of
tenants and subtenants under this section and shall be
hand-delivered to the unit or mailed by prepaid United
States mail to the tenant and subtenant at the address of
the unit or any other mailing address provided by a tenant.
No tenant or subtenant may be required by the declarant to
vacate upon less than one hundred twenty days' notice,
except by reason of nonpayment of rent, waste, or conduct
that disturbs other tenants' peaceful enjoyment of the pre-
mises, and the terms of the tenancy may not be altered
during that period. Failure of a declarant to give notice as
required by this section is a defense to an action for posses-

(b) For sixty days after delivery or mailing of the notice
described in subsection (a), the declarant shall offer to
convey each unit or proposed unit occupied for residential
use to the tenant who leases that unit. If a tenant fails to
purchase the unit during that sixty day period, the declarant
may not offer to dispose of an interest in that unit during the
following one hundred eighty days at a price or on terms
more favorable to the offeree than the price or terms
offered to the tenant. This subsection does not apply to any
unit in a conversion condominium if that unit will be
restricted exclusively to nonresidential use or the boundaries
of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a declarant, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, recordation of the deed conveying the unit extinguishes any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with subsection (b), but does not affect the right of a tenant to recover damages from the declarant for a violation of subsection (b).

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated, the notice also constitutes a notice to vacate specified by section five, article six, chapter thirty-seven of this code.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

§36B-4-111. Warranty against structural defects.

(a) Definition.—As used in this section “structural defects” means those defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the declarant responsible for any items of maintenance relating to the units or common elements.

(b) General rule.—A declarant warrants against structural defects in each of the units for two years from the date each is conveyed to a bona fide purchaser, and all of the common elements for two years. The two years shall begin as to each of the common elements whenever the common element has been completed or, if later:

(1) as to any common element within any additional real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser;

(2) as to any common element within any convertible real
estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; and

(3) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed to a bona fide purchaser.

(c) *Limitation for conversion condominiums.*—The declarant of a conversion condominium may offer the units, common elements, or both, in "as is" condition in which event the declarant's warranty against structural defects applies only to defects in components installed by declarant or work done by declarant except to the extent that the declarant gives a more extensive warranty in writing.

(d) *Exclusion or modification of warranty.*—Except with respect to a purchaser of a unit for residential use, the warranty against structural defects:

(1) may be excluded or modified by agreement of the parties; and

(2) is excluded by expression of disclaimer, such as "as is," "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

§36B-4-112. *Statute of limitations for warranties.*

(a) A judicial proceeding for breach of any obligation arising under this chapter must be commenced within six years after the cause of action accrues.

(b) Subject to subsection (c), a cause of action for breach of any express or statutory warranty, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance, if a nonpossessory interest was conveyed; and

(2) as to each common element, at the time the common element is completed or, if later, (i) as to a common element
within any additional or convertible real estate or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.

(c) If any express or statutory warranty explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

§36B-4-113. Effect of violations on rights of action; attorney’s fees.

If a declarant or any other person subject to this chapter violates any provision thereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the violation has a claim for appropriate relief. Punitive damages may be awarded in the case of a willful violation of the chapter. The court, in an appropriate case, may award reasonable attorney’s fees.

§36B-4-114. Labeling of promotional material.

If any improvement contemplated in a condominium is required by section 2-110(b)(3) to be labeled “NEED NOT BE BUILT” on a plat or plan, or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which describes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as “NEED NOT BE BUILT.”

§36B-4-115. Declarant’s obligation to complete and restore.

(a) The declarant shall complete all improvements labeled “MUST BE BUILT” on plats or plans prepared pursuant to section 2-110.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant to or created by sections 2-111, 2-112, 2-117 and 2-118.
CHAPTER 130
(H. B. 1473—By Mr. Yanni)

(Passed March 8, 1980; in effect July 1, 1980. Approved by the Governor.)

AN ACT to amend and reenact sections one, two and three, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage to two dollars and seventy-five cents per hour; and decreasing from forty-two to forty the maximum allowable work hours per week without overtime compensation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-1. Definitions.
§21-5C-3. Maximum hours; overtime compensation.

§21-5C-1. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of labor or his duly authorized representatives.

3 (b) "Wage and hour director" means the wage and hour director appointed by the commissioner of labor as chief of the wage and hour division.

4 (c) "Wage" means compensation due an employee by reason of his employment.

5 (d) "Employ" means to hire or permit to work.

6 (e) "Employer" includes the state of West Virginia, its agencies, departments and all its political subdivisions, any individual, partnership, association, public or private corpora-
tion, or any person or group of persons acting directly or indi-
14 rectly in the interest of any employer in relation to an em-
15 ployee; and who employs during any calendar week six or
16 more employees as herein defined in any one separate, distinct
17 and permanent location or business establishment: Provided,
18 That the term "employer" shall not include any individual, 
19 partnership, association, corporation, person or group of per-
20 sons or similar unit if eighty percent of the persons employed 
21 by him are subject to any federal act relating to minimum 
22 wage, maximum hours and overtime compensation. 
23 (f) "Employee" includes any individual employed by an 
24 employer but shall not include: (1) Any individual employed 
25 by the United States; (2) any individual engaged in the 
26 activities of an educational, charitable, religious, fraternal or 
27 nonprofit organization where the employer-employee relation-
28 ship does not in fact exist, or where the services rendered to 
29 such organizations are on a voluntary basis; (3) newsboys, 
30 shoeshine boys, golf caddies, pin boys and pin chasers in 
31 bowling lanes; (4) traveling salesmen and outside salesmen; 
32 (5) services performed by an individual in the employ of his 
33 parent, son, daughter or spouse; (6) any individual employed in 
34 a bona fide professional, executive or administrative capacity; 
35 (7) any person whose employment is for the purpose of on-
36 the-job training; (8) any person having a physical or mental 
37 handicap so severe as to prevent his employment or employ-
38 ment training in any training or employment facility other 
39 than a nonprofit sheltered workshop; (9) any individual em-
40 ployed in a boys or girls summer camp; (10) any person sixty-
41 two years of age or over who receives old-age or survivors 
42 benefits from the social security administration; (11) any 
43 individual employed in agriculture as the word agriculture is 
44 defined in the Fair Labor Standards Act of 1938, as amended; 
45 (12) any individual employed as a fire fighter by the state 
46 or agency thereof; (13) ushers in theaters; (14) any individual 
47 employed on a part-time basis who is a student in any recog-
48 nized school or college; (15) any individual employed by a 
49 local or interurban motorbus carrier; (16) so far as the maxi-
50 mum hours and overtime compensation provisions of this 
51 article are concerned, any salesman, parts man or mechanic 
52 primarily engaged in selling or servicing automobiles, trailers,
trucks, farm implements, or aircraft if employed by a non-
manufacturing establishment primarily engaged in the business
of selling such vehicles to ultimate purchasers; or (17) any
employee with respect to whom the United States department
of transportation has statutory authority to establish quali-
fications and maximum hours of service.

(g) "Workweek" means a regularly recurring period of one
hundred sixty-eight hours in the form of seven consecutive
twenty-four-hour periods, need not coincide with the calen-
lar week, and may begin any day of the calendar week and
any hour of the day.

(h) "Hours worked," indetermining for the purposes of sec-
tions two and three of this article, the hours for which an
employee is employed, there shall be excluded any time spent
in changing clothes or washing at the beginning or end of each
workday, time spent in walking, riding or traveling to and
from the actual place of performance of the principal activity
or activities which such employee is employed to perform and
activities which are preliminary to or postliminary to said
principal activity or activities, subject to such exceptions as
the commissioner may by rules and regulations define.


1 After the thirty-first day of December, one thousand nine
2 hundred eighty, every employer shall pay to each of his em-
3 ployees wages at a rate not less than two dollars and seventy-
4 five cents per hour.

§21-SC-3. Maximum hours; overtime compensation.

1 (a) On and after the first day of July, one thousand nine
2 hundred eighty, no employer shall employ any of his
3 employees for a workweek longer than forty hours, unless
4 such employee receives compensation for his employment
5 in excess of the hours above specified at a rate of not
6 less than one and one-half times the regular rate at which
7 he is employed.

8 (b) As used in this section the "regular rate" at which
9 an employee is employed shall be deemed to include all
remuneration for employment paid to, or on behalf of, the
employee, but shall not be deemed to include:

(1) Sums paid as gifts; payments in the nature of gifts
made at Christmas time or on other special occasions, as a
reward for service, the amounts of which are not measured by
or dependent on hours worked, production, or efficiency;

(2) Payments made for occasional periods when no work is
performed due to vacation, holiday, illness, failure of the
employer to provide sufficient work, or other similar cause;
reasonable payments for traveling expenses, or other ex-
penses, incurred by an employee in the furtherance of his
employer's interests and properly reimbursable by the em-
ployer, and other similar payments to an employee which
are not made as compensation for his hours of employment;

(3) Sums paid in recognition of services performed during
a given period if either: (a) Both the fact that payment
is to be made and the amount of the payment are deter-
mined at the sole discretion of the employer at or near the
end of the period and not pursuant to any prior contract,
agreement or promise causing the employee to expect such
payments regularly; or (b) the payments are made pursuant
to a bona fide profit-sharing plan or trust or bona fide
thrift or savings plan, meeting the requirements of the com-
missioner set forth in appropriate regulation which he shall
issue, having due regard among other relevant factors, to
the extent to which the amounts paid to the employee are
determined without regard to hours of work, production or
efficiency; or (c) the payments are talent fees (as such talent
fees are defined and delimited by regulations of the com-
missioner) paid to performers, including announcers, on radio
and television programs;

(4) Contributions irrevocably made by an employer to a
trustee or third person pursuant to a bona fide plan for
providing old-age, retirement, life, accident, or health insurance
or similar benefits for employees;

(5) Extra compensation provided by a premium rate paid
for certain hours worked by the employee in any day or
workweek because such hours are hours worked in excess of
eight in a day or in excess of the maximum workweek ap-
applicable to such employee under subsection (a) or in excess of the employee's normal working hours or regular working hours, as the case may be;

(6) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays or regular days of rest, or on the sixth or seventh day of the workweek, where such premium rate is not less than one and one-half times the rate established in good faith for like work performed in nonovertime hours on other days; or

(7) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal or regular workweek where such premium rate is not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workweek.

(c) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under subsection (a) if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement (1) specifies a regular rate of pay of not less than the minimum hourly rate provided in section two and compensation at not less than one and one-half times such rate for all hours worked in excess of such maximum workweek, and (2) provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(d) No employer shall be deemed to have violated subsection (a) by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under such subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such work-
week in excess of the maximum workweek applicable to such employee under such subsection:

(1) In the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half times the bona fide piece rates applicable to the same work when performed during nonovertime hours; or

(2) In the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during nonovertime hours; or

(3) Is computed at a rate not less than one and one-half times the rate established by such agreement or understanding as the basic rate to be used in computing overtime compensation thereunder: Provided, That the rate so established shall be authorized by regulation by the commissioner as being substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time; and if (i) the employee's average hourly earnings for the workweek exclusive of payments described in subdivisions (1) through (7) of subsection (b) are not less than the minimum hourly rate required by applicable law, and (ii) extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(e) Extra compensation paid as described in subdivisions (5), (6) and (7) of subsection (b) shall be creditable toward overtime compensation payable pursuant to this section.

CHAPTER 131

(§ 8. 515—By Mr. Nelson)

[Passed March 6, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred
forty-five, as amended, by adding thereto a new section, designated section fourteen, relating to the construction, acquisition, equipment, operation and maintenance of a general hospital in Cabell County; authorizing and relating to the issuance of revenue bonds by the board of trustees of said general hospital to finance the cost of construction and acquisition of additions, betterments, enlargements, extensions and improvements to, and equipment and furnishings for, said general hospital, including any property necessary therefor; and setting forth the terms and provisions for such revenue bonds.

Be it enacted by the Legislature of West Virginia:

That chapter one hundred fifty-seven, acts of the Legislature, regular session, one thousand nine hundred forty-five, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

CONSTRUCTION OF A GENERAL HOSPITAL IN CABELL COUNTY.

§14. Board authorized to issue revenue bonds to finance additions, improvements and equipment; terms of provisions of bonds.

The board shall have the authority, as provided in this section, to issue revenue bonds to finance the cost of acquisition and construction of additions, betterments, enlargements, extensions and improvements to and equipment and furnishings for, the Cabell County general hospital. The cost of said acquisition and construction shall include the costs of all appurtenances, necessary interests in real estate, legal fees, architectural and inspection fees, costs of issuance of such bonds, interest on such bonds during and for six months after completion of said acquisition and construction and such other costs as are necessarily and properly incurred in said financing acquisition, construction or placing in operation of the additions, betterments, enlargements, extensions, improvements, equipment, furnishings. The bonds shall be payable only from the net revenues derived from the operation of the Cabell County general hospital.

The issuance of such bonds shall be authorized by a
resolution adopted by the board; and such revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state, be subject to such terms of prior redemption at such prices; and shall have such other terms and provisions as the board shall determine. Such revenue bonds shall be signed by the chairman of the board under the seal of the board attested by the secretary of the board, and the coupons attached thereto shall bear the facsimile signature of the chairman of the board. Such revenue bonds shall be sold in such a manner as the board may determine to be in the best interests of the Cabell County general hospital.

The board may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds under the provisions of this section; and as to any other matters or provisions which are deemed necessary and advisable by the board in the best interests of the hospital and to enhance the marketability of such revenue bonds.

Such revenue bonds shall be and constitute negotiable instruments under the uniform commercial code of the state and shall, together with the interest thereon, be exempt from all taxation by the state of West Virginia, or by any county, school district, municipality or political subdivision thereof; and such revenue bonds shall not be deemed to be obligations or debts of either Cabell County or the city of Huntington, and the credit or taxing power of neither said county nor said city shall be pledged
therefor, but such revenue bonds shall be payable only from the net revenues pledged therefor as provided in this section.

CHAPTER 132
(S. B. 333—By Mr. Harman and Mr. Hinkle)
[Passed February 22, 1980; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-one, relating to the Grant County courthouse building and improvement fund; authority of county commission to transfer unexpended funds therefrom.

Be it enacted by the Legislature of West Virginia:

That section one, chapter one hundred sixty-four, acts of the Legislature, regular session, one thousand nine hundred sixty-one, be amended and reenacted to read as follows:

GRANT COUNTY COURTHOUSE BUILDING AND IMPROVEMENT FUND.

§1. Grant county commission authorized to create special courthouse building and improvement fund.

1 The county commission of Grant County is hereby authorized and empowered to create a special courthouse building and improvement fund, and, from year to year, to transfer to such special fund any surplus or unexpended funds in its general county funds. Said county commission is further authorized and empowered to use and expend the special fund created under authority of this act for the purpose of making repairs and improvements, including additions, to the present courthouse, or for constructing and equipping a new courthouse at the county seat of Grant County.
12 Any time that the county commission may determine
13 that the funds in the account created herein are not
14 needed for the purpose for which it was created, the
15 county commission may transfer such funds to the county
16 general fund or to any other special fund.

CHAPTER 133
(H. B. 1042—By Mrs. Neal)

[Passed March 7, 1980; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Greenbrier County
to make expenditures from the county general fund for the
support of the Greenbrier County Youth Camp.

Be it enacted by the Legislature of West Virginia:

GREENBRIER COUNTY YOUTH CAMP.

§1. Support of Greenbrier County Youth Camp.

1 The county commission of Greenbrier County is hereby
2 authorized, in its discretion, to expend a sum of money not
3 to exceed fifteen thousand dollars per year from the general
4 fund of that county for the support of the Greenbrier County
5 Youth Camp in employing a camp director.

CHAPTER 134
(Com. Sub. for H. B. 1025—By Mr. Harman)

[Passed February 22, 1980; in effect from passage. Approved by the Governor.]

AN ACT to authorize the sale by the board of regents of two and
one-half acres of land to the Keyser Church of Assumption for
use as a graveyard.
Be it enacted by the Legislature of West Virginia:

SALE OF REGENTS LAND TO KEYSER CHURCH OF ASSUMPTION.

§1. Board of regents authorized to sell land to the Keyser Church of Assumption for use as a graveyard.

The board of regents is hereby authorized and empowered to sell a two and one-half acre tract of land located in Mineral County to the legal and ecclesiastical representatives of the Keyser Church of Assumption for use as a graveyard at an agreed price not less than an independently appraised value. The proceeds from such sale shall be utilized by the board of regents for capital improvements at Potomac State College.

CHAPTER 135

(Com. Sub. for H. B. 1546—By Mrs. Hartman)

[Passed March 8, 1980; in effect from passage. Approved by the Governor.]

AN ACT to authorize the sale by the board of regents of the former residence of the president of Marshall University located at 1515 Fifth Avenue in Huntington at auction for a price not less than the average appraised value; and designating that proceeds be deposited in a Marshall University land acquisition account.

Be it enacted by the Legislature of West Virginia:

SALE OF REGENTS LAND IN HUNTINGTON TO HIGHEST BIDDER.

§1. Board of regents authorized to sell former residence of president of Marshall University.

§2. Proceeds to be deposited in Marshall University land acquisition account.

§1. Board of regents authorized to sell former residence of president of Marshall University.

The board of regents is hereby authorized and empowered to sell a house and lot, designated as Lot 3 and east 20 feet of Lot 2, Block 165, Gideon District, Cabell County, West
Virginia, which is the former residence of the president of Marshall University, located at 1515 Fifth Avenue in Huntington at a public auction: Provided, That prior to such auction the board of regents shall have the property appraised by two licensed appraisers and shall not sell the property for less than the average of the two appraisals.

§2. Proceeds to be deposited in Marshall University land acquisition account.

The proceeds from the sale of the property referred to in section one shall be deposited in a Marshall University land acquisition account for the purpose of future land acquisition by Marshall University.
Requesting the Congress of the United States to propose an amendment to the United States Constitution for ratification by the states which will protect the life of all human beings including unborn children at every stage of their biological development.

WHEREAS, Millions of abortions have been performed in this country since the Supreme Court of the United States rendered its landmark opinion concerning abortion laws on January 22, 1973; and

WHEREAS, Since such decision there has been in the United States an unending controversy over the issue of an unborn person's right to life; and

WHEREAS, It is the firm belief of the Legislature of West Virginia that there should be a uniform and consistent law among all the states concerning an unborn person's right to life; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of the State of West Virginia hereby urges the Congress of the United States to propose a constitutional amendment that will protect the life of all human beings including unborn children at every stage of their biological development; and, be it

Further Resolved, That certified copies of this resolution be presented to the president and secretary of the Senate of the United States, the speaker and clerk of the House of Representatives of the United States, and to each member of the Congress from this State attesting the adoption of this resolution by the Legislature of the State of West Virginia.
RESOLUTIONS

HOUSE CONCURRENT RESOLUTION NO. 10
(By Mr. Wright)
[Adopted January 23, 1980.]
Urging the release of the fifty American hostages held in Iran.

WHEREAS, The fifty Americans have been held against their will since November 4, 1979; and

WHEREAS, Forty-nine of the fifty American hostages were part of the diplomatic corps sent to Iran at the request and consent of the Ayatollah Khomeini; and

WHEREAS, The continued holding of the hostages is a breach of International Law, peace and "fair play"; and

WHEREAS, The further detention of the fifty American hostages is not in the best interests of Iran; therefore, be it

Resolved by the Legislature of West Virginia:
That the American hostages be released and returned unharmed to the United States immediately; and, be it

Further Resolved, That a certified copy of this resolution be sent to the Iranian Embassy in Washington, D. C.

HOUSE CONCURRENT RESOLUTION NO. 16
(By Messrs. Holt, Whitlow, Anello, Christian, Shiflet and Goodwin)
[Adopted February 19, 1980.]
Expressing the strong disapproval of the West Virginia Legislature of and urging the immediate termination of all federal studies and proposals for pumped storage hydroelectric power facilities on the New River at or near Bluestone Reservoir in Summers County, West Virginia.

WHEREAS, On May 10, 1962, the House of Representatives of the United States Congress authorized the United States Army Corps of Engineers to study the Kanawha Valley drainage area for potential hydroelectric power facilities; and
WHEREAS, Under that authorization the Corps of Engineers is planning and proposing the construction of pumped storage hydroelectric power facilities for the Bluestone Reservoir-New River area of Summers County, West Virginia; and

WHEREAS, Any such pumped storage facilities would remove from 1,800 to 9,300 acres from the real property taxation of Summers County, thereby removing much valuable property from local taxation; and

WHEREAS, The Corps of Engineers is incessantly planning and proposing more and more pumped storage hydroelectric power dams and facilities for those parts of Summers, Mercer and Monroe Counties adjacent to the New River; and

WHEREAS, Modern coal-fired steam generating power plants can clearly produce electricity cheaper than any pumped-storage facilities in this area of West Virginia where coal is an abundant energy resource; and

WHEREAS, It would shock the conscience and confound the judgment to try to explain to the thousands of out-of-work coal miners in southern West Virginia that their Federal Government is going to use their tax money to build pumped storage facilities that operate at a cost of four dollars to pump up and generate three dollars worth of electricity in lieu of using and promoting the use of low sulfur, high B.T.U. coal so abundant in southern West Virginia; and

WHEREAS, At this critical time when matters of energy, economy and environment have been repeatedly represented to the American public by the President of the United States as being the moral equivalent of war, it is gross abuse of public trust for the Federal Government to propose any pumped storage facilities for southern West Virginia; and

WHEREAS, The Nation and the State of West Virginia are on the brink of meeting their peak power energy needs with low sulfur, high B.T.U. West Virginia coal, low head generators, methane gas, storage batteries, wind, sun, heat from the earth, tidal wave power, wood heat and other such energy sources; and

WHEREAS, Any such pumped storage facilities would significantly adversely change the water quality of the New River; and
WHEREAS, Any such pumped storage facility would destroy the Bluestone Public Hunting and Fishing Area, which is the second largest facility of its kind in the State of West Virginia, and would also destroy one of the best canoe white water rivers in the Eastern United States; and

WHEREAS, With the Nation already losing from two to three million acres of farmland each year to dams, roadways and urban development, it is not in the best interests of the United States to unnecessarily destroy and waste the homes and farms of approximately fifty families along with churches, cemeteries, roads and other structural, cultural and environmental aspects of the affected communities; and

WHEREAS, Electricity consumers would have to unfairly, unjustly and unreasonably pay for the construction and operation of these uneconomic, environmentally undesirable and energywise unnecessary pumped storage facilities with higher electric bills and higher land taxes; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature of West Virginia hereby expresses its strong disapproval of and urges the immediate termination of all federal studies and proposals for pumped storage hydroelectric power facilities on the New River at or near Bluestone Reservoir in Summers County, West Virginia; and, be it

Further Resolved, That the Clerk of the House of Delegates send copies of this resolution to each member of the House Public Works Committee of the United States House of Representatives, each member of the West Virginia Congressional delegation and the President of the United States.

HOUSE CONCURRENT RESOLUTION NO. 19
(Originating in the House Committee on Rules)

[Adopted January 30, 1980]

Urging support of President Carter’s proposal for the athletes, Olympic Committee and people of the United States and other nations to boycott and not participate in the International
Olympic Games scheduled to be held in the summer of 1980 in the Soviet Union, with such boycott to constitute a clear act of denunciation of the dastardly invasion and intervention by the Soviet Union in the sovereign affairs of the nation of Afghanistan; and with such boycott to continue unless the Soviet Union withdraws its troops and presence from Afghanistan by February 20, 1980, or unless the site for the holding of such games is changed or such games are canceled.

WHEREAS, Participation in the International Olympic Games is symbolic of the community of interests, friendship and respect between the nations and peoples of the world and their dedication to fundamental doctrines of fairness, a striving for the best, and the reward of honest achievement; and

WHEREAS, Attendance and participation in the International Olympic Games within the borders of a particular host nation constitutes an act of recognition by other participating nations that such host nation is a member of the world community believing in and capable of meeting such standards; and

WHEREAS, The Soviet Union has undertaken, as an action of open national policy, to invade and intervene in the sovereign affairs of its neighbor, the nation of Afghanistan, and has thus posed itself as a direct threat to world peace, to the vital interests of the United States and of all nations in the Middle East area, and has thus divorced itself from the community of nations; therefore, be it

Resolved by the Legislature of West Virginia:

That the proposal of President Carter for the athletes, Olympic Committee and people of the United States and other nations to boycott and not participate in the International Olympic Games scheduled to be held in the summer of 1980 in the Soviet Union be fully supported, with such boycott to constitute a clear act of denunciation of the dastardly invasion and intervention by the Soviet Union in the sovereign affairs of the nation of Afghanistan; and with such boycott to continue unless the Soviet Union withdraws its troops and presence from Afghanistan by February 20, 1980, or unless the site for the holding of such games is changed to a location not within the Soviet Union or such games are canceled; and, be it
Further Resolved, That certified copies of this resolution be presented to the President of the United States, the United States Olympic Committee, the President and Secretary of the Senate of the United States, the Speaker and Clerk of the House of Representatives of the United States, and to each member of the Congress from this State attesting the adoption of this resolution by the Legislature of the State of West Virginia.

HOUSE CONCURRENT RESOLUTION NO. 53
(By Mr. Martin, 35th Dist., and Mr. Albright)

[Adopted March 8, 1980.]

Approving in part and disapproving in part the Public Service Commission's General Order No. 195, Rule for Reorganization and directing that a supplemental rule be issued and that certain reports be made to the Regular Session of the Legislature in the year one thousand nine hundred eighty-one.

WHEREAS, Pursuant to the provisions of Enrolled H. B. 1280 (Regular Session 1979), passed by the West Virginia Legislature on the tenth day of March, one thousand nine hundred seventy-nine, the Public Service Commission was directed to make certain reports, more particularly itemized therein, to the Legislature and to undergo a thorough internal reorganization; and

WHEREAS, By said Enrolled H. B. 1280 (Regular Session 1979) the Public Service Commission was directed to incorporate within said reorganization plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, one thousand nine hundred seventy-nine, and entitled "A Plan for Regulatory Reform and Management Improvement"; and

WHEREAS, Pursuant to said H. B. 1280 the Public Service Commission has filed those certain reports and its plan for reorganization; and

WHEREAS, Said reports and plan for reorganization have been thoroughly studied for compliance with the directive of Enrolled
H. B. 1280 (Regular Session 1979) and the recommendations of said final report; and

WHEREAS, The Legislature complied with the recommendation of said report and did not pass an overly detailed statute or in any way unnecessarily restrict the policy and management flexibility required by the Public Service Commission; and

WHEREAS, The Legislature recognizes the severe time constraints placed upon the Public Service Commission in its efforts to comply with the directive of said Enrolled H. B. 1280 and commends it for its full and complete cooperation with the Legislature and appreciates its diligence in its efforts to comply with said Enrolled H. B. 1280 while still carrying out and performing its other many and varied responsibilities in a highly satisfactory and professional manner; and

WHEREAS, It appears that the Public Service Commission has not completed the development of its independent knowledge of and capacity to analyze key conditions and trends in the industries it regulates to include industry analysis and supply and demand forecasting; and

WHEREAS, The Public Commission Rule for Reorganization did not make specific recommendations respecting its efforts to attract and retain a highly skilled staff, and, specifically did not include in its Rule a statement concerning the technical and professional personnel it needs to execute the responsibilities assigned to it by law, the present provision for such technical and professional personnel, the time table for hiring and the specific qualifications needed for the additional technical and professional personnel required by the commission, the added capabilities expected to be attained by the commission where such additional technical and professional personnel are hired and the proposed salary levels for such technical and professional personnel; and

WHEREAS, Provisions for the creation of a consumer advocate division do not ensure the representation before the commission of the competing interests of each class of consumers and do not provide a means for such consumer advocate to appeal the orders of the commission and in no manner addresses how such division will be departmentally and financially independent; and
WHEREAS, Any change in the Rule for Reorganization relative to the consumer advocate may require that the commission review the provisions of such Rule regarding ex parte communication between the different divisions within the Public Service Commission; and

WHEREAS, The Public Service Commission has not given sufficient indication to the Legislature that it has secured an independent facility for housing its operation; and

WHEREAS, The Public Service Commission has not resolved the questions of whether they will or do have a director of management systems and a personnel manager; and

WHEREAS, The Public Service Commission report entitled "Extent and Effect of Shut-in Gas Wells in West Virginia, 1980, is said by the Public Service Commission to be based at least in part on unreliable and speculative statistical data depriving the conclusions therein of adequate credibility; and

WHEREAS, The Public Service Commission report entitled "Electric Supply and Demand Balance, 1979-1989" is based primarily on information and forecasts supplied by the regulated industries; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby approves in part and disapproves in part the Public Service Commission Rule for Reorganization, General Order No. 195, issued by the Public Service Commission pursuant to the provisions of subsection (f), section one, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, as hereinafter set forth; and, be it

Further Resolved, That said Rule for Reorganization is disapproved insofar as it does not provide a plan to attract and retain a highly skilled staff and does not provide a plan for attracting the additional technical and professional personnel, if any, which it needs to execute the responsibilities assigned to it and does not provide a time table for the hiring of and the specific qualifications needed for such additional technical and professional personnel required by the commission and does not provide a description of the new capabilities, if any, expected to be acquired by the commission
when such technical and professional personnel are hired and does not clearly provide for the proposed salary levels for such additional technical and professional personnel; and, be it

*Further Resolved*, That the said Rule for Reorganization is disapproved in that it does not fully provide for the development by the Public Service Commission of its independent knowledge of and capacity to analyze key conditions and trends in the industries it regulates and to effectively forecast supply and demand needs in the gas and electric utility industries; and, be it

*Further Resolved*, That the provisions of said Rule for Reorganization relating to the creation of a consumer advocate division are hereby disapproved insofar as it does not provide for:

1. An office of consumer affairs within the secretary's office to administer the Public Service Commission consumer complaint system, including motor carrier complaints and provide liaison with and assistance to consumer intervenors in Public Service Commission cases,

2. The means by which the commission will authorize and direct the consumer advocate division to advocate the interests of residential consumers in each major rate case before the commission and in such other cases as the consumer advocate division may determine,

3. The means by which the commission will provide freedom of action to the consumer advocate division, or some part thereof, to appeal the orders of the commission determined by the division to be adverse to the residential consumers' position presented before the commission, by whatever legal means or strategy the advocate division may determine. Specifically the Legislature recommends that the commission consider creating a special appellate advocacy section free to determine which cases to appeal, free to prepare, request and apply before the Legislature for a separate appropriation for the appellate advocacy section, or the consumer advocate division, such section to be under supervision of a director, who may also be the director of the division: *Provided*, That the commission and the Joint Committee on Government and Finance or a designated subcommittee thereof, shall also consult upon and the commission shall include in such rule, appropriate provisions for
RESOLUTIONS

a legislative consumer committee, which shall effectively oversee the operations of the consumer advocate division,

4. The capability of the consumer advocate division to also advocate the interests of a class of nonresidential consumers which interests may conflict with those of residential consumers, and

5. The provision for adequate technical and professional staff, offices, equipment and budget for the division so as to provide for the departmental and financial independence of the consumer advocate; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not indicate to the Legislature that the Public Service Commission has secured an independent facility for housing its operation or a time table for doing so; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not address the employment of a Director of Management Systems having the responsibility and capability of providing the expertise described in Chapter VI, pages 25, 32 and 38, et seq. of the consultants report dated February, 1979, and entitled “A Plan for Regulatory Reform and Management Improvement,” including particularly data processing and other management systems, and did not address the subject of a personnel manager; and, be it

Further Resolved, That the Rule for Reorganization is disapproved insofar as it does not provide for the process of amendment thereof, including the process of consultation with and comment by the Legislature as the Joint Committee on Government and Finance or the appropriate subcommittee thereof before any such amendment is made effective; and, be it

Further Resolved, That the said Rule for Reorganization is disapproved insofar as it does not provide for an annual report respecting the progress of the Railroad Safety Division in the promulgation and enforcement of railroad safety rules of the Public Service Commission and the enforcement of federal law assigned to that division; and, be it

Further Resolved, That the Department of Finance and Administration do assist the Public Service Commission in its efforts to
promptly find and utilize an independent facility to house its operation; and, be it

Further Resolved, That the Public Service Commission report to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on the effect and extent of gas well shut-ins in West Virginia and make every effort to base such report on reliable data, deriving conclusions therefrom and making recommendations to the Legislature on what actions should be taken; and, be it

Further Resolved, That the Public Service Commission report to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on the current balance of supply and demand for natural gas and electric utility services in West Virginia and a forecast of the probable balance of such supply and demand for the next ten years using its own analysis in addition to that information and analysis supplied by the regulated utilities; and reporting upon the development of its own capability of doing the analysis required for such report; and, be it

Further Resolved, That the Public Service Commission consult on a regular basis with the Joint Committee on Government and Finance, or the appropriate subcommittee thereof and report in a comprehensive manner to the Legislature on the first day of the Regular Session, one thousand nine hundred eighty-one, on its progress in effecting the Plan for Reorganization given; and, be it

Further Resolved, That except as disapproved herein, the said Public Service Commission Rule for Reorganization, General Order No. 195, is, in all other respects, approved.

SENATE CONCURRENT RESOLUTION NO. 8
(By Mr. Colombo, Mr. Boettner, Miss Herndon and Mr. Gilligan)
[Adopted February 5, 1980.]

Urging the government of the United States of America to maintain diplomatic relations with the Republic of China and adopting Taiwan as a sister state.
WHEREAS, The Republic of China is of great strategic importance in the defense of East Asia and the Pacific against Communism; and

WHEREAS, The people of the Republic of China have been among the most trusted friends of the people of the United States since the founding of the Chinese Republic in 1912; and

WHEREAS, The commercial, cultural and other nongovernmental relations between the American people and the Republic of China are now and have always been excellent and mutually beneficial; and

WHEREAS, The people of West Virginia wish to conduct and carry out numerous economic and cultural programs, transactions and other relations with the people of the Republic of China, and Taiwan; and

WHEREAS, West Virginia coal is now being purchased in large quantity by Taiwan Power Company, and it is the hope that further and future purchases of West Virginia coal and other products of West Virginia will be forthcoming; and

WHEREAS, The Legislature has strong reason to believe that it is the will and pleasure of the people of this State that diplomatic relations be maintained with the Republic of China and that Taiwan be adopted as a sister state; therefore, be it

Resolved by the Legislature of West Virginia:

That the government of the United States of America is hereby urged to maintain diplomatic relations with the government of the Republic of China; and, be it

Further Resolved, That Taiwan is hereby adopted as West Virginia's sister state; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President of the United States of America, the Clerk of the United States Senate, the Clerk of the United States House of Representatives and the chief executive officer of the government of the Republic of China, and the Speaker of the Provincial Legislature of Taiwan.

SENATE CONCURRENT RESOLUTION NO. 27
(By Mr. Harman, et al.)
[Adopted March 6, 1980.]
Urging the Veterans Administration to reopen the national cemetery at Grafton, West Virginia.
WHEREAS, The United Veterans Committee of West Virginia organized and composed of every major veteran organization including the American Legion, Veterans of Foreign Wars, Veterans of World War I, Disabled American Veterans, Retired Officers Association and the Military Order of the Purple Heart has initiated action toward the reopening of West Virginia's only national cemetery at Grafton; and

WHEREAS, The national cemetery at Grafton has served for over one hundred years as West Virginia's patriotic focal point for memorial services honoring the heroic dead; and

WHEREAS, The United Veterans National Cemetery Committee has met the basic criteria of the Veteran's Administration and has worked closely with the Veteran's Administration for the past two years on the reopening of the national cemetery; and

WHEREAS, The Veteran's Administration has requested an impact study before the national cemetery is reopened instead of recommending the immediate reopening of the cemetery; and

WHEREAS, The delay in the impact study will deny approximately 275,000 West Virginians the privilege of being buried in West Virginia soil in a reverent and hallowed military grave; and

WHEREAS, The United Veterans National Cemetery Committee has received endorsement of their goal of the immediate reopening of the national cemetery from Governor Rockefeller, Senator Byrd, Senator Randolph, Congressman Mollohan, Congressman Staggers, Congressman Slack and Congressman Rahall; therefore, be it

Resolved by the Legislature of West Virginia:

That the national cemetery at Grafton be ordered reopened immediately pursuant to Chapter 24, Title 38 of the United States Code Annotated; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to President Carter.
Proposing an amendment to the Constitution of the State of West Virginia, amending section thirty-six, article six thereof, relating to empowering the Legislature to authorize, regulate and control bingo games and raffles for charitable or public service groups; providing for local elections to disallow bingo games and raffles; providing that all proceeds from bingo games and raffles be used in support of charitable or public service purposes; providing mandatory penalties; 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 primary or general election to be held in the year one thousand nine hundred eighty, which proposed amendment is that section thirty-six, article six be amended to read as follows:

ARTICLE VI. THE LEGISLATURE.

§36. Lotteries prohibited; exception for bingo; county option.

The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State; except that the Legislature may authorize state (regulated) bingo games and raffles for the purpose of raising money by charitable or public service organizations or the state fair of West Virginia for charitable or public service purposes: Provided, That each county may disapprove the holding of bingo games and raffles within that county at a regular, primary or special election but once having disapproved such activity, may thereafter authorize the holding of bingo games and raffles, by majority vote at a regular, primary, or special election held not sooner than five years after the election resulting in disapproval; that all proceeds from the bingo games and raffles be used for the purpose of supporting charitable or public service purposes; and that the Legislature shall provide a means of regulat-
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 proposed amendment is hereby numbered "Amendment No. 1" and designated as the "West Virginia Bingo Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to pass laws authorizing state controlled bingo games and raffles for charitable or public service organizations."

HOUSE JOINT RESOLUTION NO. 39
(By Mr. Caudle and Mr. Chambers)

[Adopted March 8, 1980.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article ten thereof, relating to an exemption from ad valorem taxation of the first ten thousand dollars valuation of real property or a mobile home occupied as a residence by the owner who is sixty-five years of age or older or permanently and totally disabled; 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 eighty, which proposed amendment is that section one-b, article ten thereof be amended to read as follows:
ARTICLE X. TAXATION AND FINANCE.

§1b. Exemption from ad valorem property taxation of real property or mobile home occupied as a residence by the owner thereof who is sixty-five years of age or older or permanently and totally disabled.

Notwithstanding any other provision of this Constitution to the contrary, the first ten thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this State and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the Legislature shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law: Provided, That the Legislature annually shall appropriate state funds in an amount sufficient to pay to each levying body in this State the amount of tax revenue lost by reason of this amendment to such body during the preceding year: Provided, however, That such levying bodies shall be reimbursed by the Legislature only for that portion of the ad valorem taxation exemption above and beyond the exemption for the initial five thousand dollar valuation of real property owned and occupied by a citizen who is sixty-five years of age or older.

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 proposed amendment is hereby numbered "Amendment No. 2" and designated as the "Homestead and Taxation Exemption Amendment" and the purpose of the proposed amendment is summarized as follows: "To exempt from ad valorem property taxation the first ten thousand dollars of any real property or mobile home occupied as a residence by the owner who is sixty-five years of age or older or is permanently and totally disabled."
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, 1980

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