ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 1985
This volume contains the Acts of the First Regular Session of the 67th Legislature.

First Regular Session, 1985

The First Regular Session of the 67th Legislature convened on January 9, 1985, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 13th day of November, 1984, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and separately and concurrently acting on certain other matters incident to organization, took an adjournment until February 13, 1985, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional 60-day limit on the duration of the session being at midnight April 13, 1985, sine die adjournment came on April 16, 1985.

Bills totaling 1846 were introduced in the two houses during the session (1132 House and 714 Senate). The Legislature passed 192 bills, 109 House and 83 Senate. The Governor approved 176 bills and vetoed 16. However, three bills were amended, repassed by the Legislature and approved by the Governor. One bill was repassed, notwithstanding the Governor's objections, leaving a net total of 12 bills lost through veto. A net total of 180 bills became law.

There were 100 concurrent resolutions during the session, 55 House and 45 Senate, of which 8 House and 13 Senate were adopted. Thirty-six House Joint and 17 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. The Legislature adopted one Senate Joint Resolution and two House Joint Resolutions. The House had 39 House Resolutions and the Senate had 37 Senate Resolutions, of which 16 House and 33 Senate were adopted.

The Senate failed to pass 43 House bills passed by the House and 60 Senate bills failed passage by the House. One House bill, one Senate bill and one House Concurrent Resolution died in conference.
FOREWORD

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.

DONALD L. KOPP
Clerk, House of Delegates

ERRATA

Page 91, Conservation and Development, following—
“72—Geological and Economic Survey,”
insert
“(WV Code Chapter 29)
Acct. No. 5200.”
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Regular Session, 1985

Officers

President—Dan Tonkovich, Benwood
President Pro Tem—J. R. “Bob” Rogers, Madison
Clerk—Todd C. Willis, Logan
Sergeant at Arms—Estil Bevins, Williamson
Doorkeeper—Aubrey R. Grizzell, St. Albans

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1 Appointed a member of the Senate January 30, 1985, to fill the vacancy created by the resignation of the Honorable James L. Davis.


(D) Democrats ........................................... 30
(R) Republican ........................................ 4

Total ................................................. 34
MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1985

OFFICERS

Speaker—Joseph P. Albright, Parkersburg
Speaker Pro Tem—W. Marion Shiflet, Union
Clerk—Donald L. Kopp, Clarksburg
Sergeant at Arms—Oce W. Smith, Jr., Fairmont
Doorkeeper—Dannie Wingo, Yukon

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1 Appointed a member of the House of Delegates January 18, 1985, to fill the vacancy created by the resignation of the Honorable Joe C. Ferrell.
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<td>Richard H. Martin (D)</td>
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2 Appointed a member of the House of Delegates December 2, 1984, to fill the vacancy created by the death of the Honorable Donald F. Anello.

3 Appointed a member of the House of Delegates March 7, 1985, to fill the vacancy created by the resignation of the Honorable Charlotte Lane.

(D) Democrats ............................................. 73
(R) Republican ........................................... 27
Total ......................................................... 100
COMMITTEES OF THE SENATE

Regular Session, 1985

STANDING

Agriculture

Parker (Chairperson), Lucht (Vice Chairperson), Ash, Holliday, Sharpe, Spears, Whitacre, Whitlow and Shaw.

Banking and Insurance

Tucker (Chairperson), Rogers (Vice Chairperson), Chafin, Cook, Kaufman, Loehr, Palumbo, Tomblin, Whitacre, B. Williams, R. Williams, Karras and White.

Confirmations

Kaufman (Chairperson), Tomblin (Vice Chairperson), Boettner, Burdette, Chafin, Parker, Tucker, Whitlow and Karras.

Education

R. Williams (Chairperson), Burdette (Vice Chairperson), Ash, Boettner, Colombo, Holliday, Palumbo, Parker, Sharpe, B. Williams, Yanero and White.

Energy, Industry and Mining

Tomblin (Chairperson), Fanning (Vice Chairperson), Burdette, Chernenko, Holmes, Nelson, Rogers, Sharpe, Stacy, Tucker, R. Williams, Yanero and Karras.

Finance

Spears (Chairperson), Tomblin (Vice Chairperson), Burdette, Chernenko, Colombo, Craigo, Fanning, Holmes, Kaufman, Loehr, Parker, Sharpe, Whitacre, B. Williams, R. Williams, Harman and Karras.

Government Organization

Whitlow (Chairperson), Stacy (Vice Chairperson), Burdette, Cook, Craigo, Loehr, Lucht, Nelson, Palumbo, Spears, R. Williams and Harman.
SENATE COMMITTEES

Health and Human Resources

Ash (Chairperson), Holliday (Vice Chairperson), Craigo, Jarrell, Loehr, Sharpe, Spears, Stacy, B. Williams, R. Williams and Harman.

Interstate Cooperation

Sharpe (Chairperson), Palumbo (Vice Chairperson), Burdette, Colombo, Cook, Fanning and Shaw, (Mr. President, Mr. Tonkovich is ex officio nonvoting member).

Judiciary

Chafin (Chairperson), Tucker (Vice Chairperson), Ash, Boettner, Cook, Holliday, Jarrell, Lucht, Nelson, Palumbo, Rogers, Stacy, Whitlow, Yanero, Shaw and White.

Labor

Holmes (Chairperson), Colombo (Chairperson), Fanning, Holliday, Jarrell, Rogers, Sharpe, Stacy and Karras.

Military

Jarrell (Chairperson), Chernenko (Vice Chairperson), Colombo, Lucht, Nelson, Palumbo, Spears, Tucker and Shaw.

Natural Resources

Whitacre (Chairperson), B. Williams (Vice Chairperson), Chernenko, Cook, Craigo, Holmes, Palumbo, Parker, Rogers, Tomblin, Tucker, Whitlow and Harman.

Transportation

Fanning (Chairperson), Craigo (Vice Chairperson), Chernenko, Nelson, Parker, Rogers, Tomblin, Yanero and White.

Rules

Tonkovich (Chairperson), Boettner, Chafin, Rogers, Spears, Tomblin, Tucker, Whitlow, R. Williams and Shaw.
SENATE COMMITTEES

JOINT

Enrolled Bills

B. Williams (Chairman), Holmes, Kaufman, Loehr and Karras.

Government and Finance

Tonkovich (CoChairman), Boettner, Chafin, Sharpe, Spears, Harman and Karras.

Rules

Tonkovich (CoChairman), Boettner and Harman.

Rule-Making Review

R. Williams (Chairman), Boettner, Rogers, Tomblin, Harman and Shaw, (Mr. President, Mr. Tonkovich is ex officio nonvoting member).

SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

Boettner (Chairman), Tomblin (Vice Chairman), Ash, Chernenko, Fanning, Loehr, Palumbo, Spears, R. Williams and Karras.

COMMISSIONS

Pensions and Retirement

Parker (Chairman), Whitacre and Harman.

Special Investigations

Tonkovich (CoChairman), Boettner, Tucker, Karras and Shaw.
STANDING

_Agriculture and Natural Resources_

Neal (Chairman of Agriculture), Burke (Vice Chairman of Agriculture), Love (Chairman of Natural Resources), Roop (Vice Chairman of Natural Resources), Ashcraft, Bailey, Damron, Hawse, Johnson, Jordan, Louisos, McNeely, Mullett, Murphy, Phillips, Shiflet, Southern, Underwood, Woolsey, Overington, Peddicord, Prunty, Shaffer, Springfield and Stiles.

_Banking and Insurance_

McCormick (Chairman of Banking), Hamilton (Vice Chairman of Banking), Riffle (Chairman of Insurance), Starcher (Vice Chairman of Insurance), Anderson, Brown, Flanigan, Fry, Hawse, Jordan, Mastrantoni, Murensky, Phillips, Pritt, Schifano, Shiflet, Southern, Stacy, White, Ashley, Carmichael, Conley, McKinley, Reed and Stemple.

_Constitutional Revision_

Humphreys (Chairman), J. Martin (Vice Chairman), Anderson, Casey, Feinberg, Fry, Fullen, Garrett, Hatfield, Hutchinson, Kelly, Kidd, E. Martin, W. Martin, Shepherd, Wiedebusch, Woolsey, Wooten, Carmichael, Nicely, Otte, Overington, Prunty, Reed and Stemple.

_Education_

Sattes (Chairman), Murphy (Vice Chairman), Ashcraft, Bailey, Dalton, Givens, Hale, Kidd, W. Martin, McCormick, Merow, Mullett, Phillips, Pino, Ryan, Stacy, Wellman, Yanni, Conley, Hoblitzell, Jones, Otte, Overington, Prunty and Rogers.

_Finance_

Farley (Chairman), Murensky (Vice Chairman), Blatnik, Burke, Davis, Flanigan, Fry, Hutchinson, Jordan, E. Martin, Neal, Pritt, Riffle, Seacrist, Simpkins, Smith, Starcher, White, Faircloth, McKinley, Nicely, Reed, Shanboltz, Stemple and Wells.
Government Organization

Knight (Chairman), Minard (Vice Chairman), Anderson, Gilliam, Given, Hatfield, Hawse, Johnson, Kelly, Louisos, Love, Merow, Rollins, Southern, Stacy, Underwood, Wellman, Woolsey, Ashley, Hoblitzeil, Peddicord, Richards, Rogers, Stiles and Traylor.

Health and Welfare

Givens (Chairman), Flanigan (Vice Chairman), Blatnik, Dalton, Davis, Hamilton, Hatfield, Leary, Louisos, J. Martin, McCormick, Minard, Moore, Mullett, Roop, Seacrist, Shepherd, White, Ashley, Conley, R. Harman, Otte, Richards, Rogers and Traylor.

Industry and Labor

Moore (Chairman), Simpkins (Vice Chairman), Brown, Crookshanks, Fullen, Garrett, Given, Leary, Mastrantoni, McNeely, Murphy, Pino, Riffle, Stacy, Starcher, Underwood, Wellman, Yanni, Hoblitzeil, Jones, McKinley, Nicely, Peddicord, Prunty and Richards.

Interstate Cooperation

Schifano (Chairman), Given (Vice Chairman), Love, Neal, Yanni, Otte and Rogers, (Mr. Speaker, Mr. Albright is ex officio nonvoting member).

Judiciary

Chambers (Chairman), Damron (Vice Chairman), Brown, Casey, Crookshanks, Feinberg, Fullen, Garrett, Hamilton, Humphreys, Leary, J. Martin, Mastrantoni, McNeely, Moore, Roop, Schifano, Shepherd, Carmichael, M. Harman, R. Harman, Haynes, Shaffer, Smirl and Springston.

Political Subdivisions

Davis (Chairman), Seacrist (Vice Chairman), Casey, Feinberg, Gilliam, Garrett, Hale, Humphreys, Kelly, Kidd, E. Martin, W. Martin, Merow, Minard, Murensky, Fritt, Rollins, Ryan, M. Harman, R. Harman, Haynes, Otte, Richards, Shanholz and Smirl.

Roads and Transportation

Yanni (Chairman), Blatnik (Vice Chairman), Ashcraft, Bailey, Burke, Crookshanks, Dalton, Damron, Feinberg, Gilliam, Given, Hale, Hawse, Johnson, Merow, Pino, Ryan, Underwood, Conley, Haynes, Jones, Shanholz, Smirl, Stiles and Traylor.

Rules

Albright (Chairman), Chambers, Farley, McCormick, Neal, Sattes, Shiflet, Wiedebusch, Wooton, Faircloth, Swann and Wells.
JOINT

Enrolled Bills
Fullen (Chairman), Kelly (Vice Chairman), Kidd, Ashley and Stiles.

Government and Finance
Albright (Cochairman), Chamber, Farley, Sattes, Wooton, Carmichael and Swann.

Rule-Making Review
Casey (Chairman), Knight, Schifano, Wiedebusch, Shaffer and Springston (Mr. Speaker, Mr. Albright is ex officio nonvoting member).

Rules
Albright (Cochairman), Wooton and Swann.

SELECT COMMITTEE ON ECONOMIC POLICY
Casey (Chairman), Rollins (Vice Chairman), Chambers, Farley, Hamilton, Leary, Knight, Sattes, Shiflet, R. Harman, Shaffer and Springston.

COMMISSIONS

Pensions and Retirement
Murenksy (Chairman), Starcher and Swann.

Special Investigations
Albright (Cochairman), Sattes, Wooton, Faircloth and Nicely.
AN ACT to amend and reenact section eighteen, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section six, article seven, chapter fifty-five of said code, all relating to limitations of actions generally; providing for an extension of the limitation period for new action after abatement, dismissal, etc., in wrongful death actions.

Be it enacted by the Legislature of West Virginia:

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

Article
2. Limitation of Actions and Suits.
7. Actions for Injuries.

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-18. Extension of period for new action after abatement, dismissal, etc., of action commenced within due time.

1. If any action or suit, including an action for wrongful death, commenced within due time, in the name of or against one or more plaintiffs or defendants, abate as to one of them by the return of no inhabitant, or by his or her death
or marriage, or if, in an action or suit, including an action for wrongful death, commenced within due time, judgment or decree (or other and further proceedings) for the plaintiffs should be arrested or reversed on a ground which does not preclude a new action or suit for the same cause, or if there be occasion to bring a new action or suit by reason of such cause having been dismissed for want of security for costs, or by reason of any other cause which could not be plead in bar of an action or suit, or of the loss or destruction of any of the papers or records in a former action or suit which was in due time; in every such case, notwithstanding the expiration of the time within which a new action or suit must otherwise have been brought, the same may be brought within one year after such abatement, dismissal or other cause, or after such arrest or reversal of judgment or decree, or such loss or destruction, but not after. The provisions of this section shall not apply to actions brought for the death of any person occurring prior to the first day of July, one thousand nine hundred eighty-two.

ARTICLE 7. ACTIONS FOR INJURIES.

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

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another state, territory or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of one hundred dollars, conditioned that such personal representative shall pay all costs adjudged against him and that he shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.
(b) In every such action for wrongful death the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section, may direct in what proportion the remaining net damages shall be distributed to the surviving spouse and children, including adopted children, stepchildren and grandchildren of the deceased, and other persons, if any who were dependent upon the decedent for support, in whole or in part, or if there be none such, then to parents, brothers and sisters of the deceased, or if there be none such, then to such other persons, if any, entitled to inherit pursuant to the provisions of section one, article one, chapter forty-two of this code, unless the jury shall by its verdict allocate the remaining net amount in differing amounts and proportions among any surviving spouse, children, adopted children, stepchildren, grandchildren, other dependents, parents, brothers and sisters of the deceased. Where the matter was tried without a jury the court may find upon just and equitable principles that such net amount recovered should be distributed to such last named persons in different amounts and proportions, in which event the court shall make written findings of fact and then and there order such remaining net damages distributed to those persons in such amounts and proportions as the court finds to be fair, just and equitable.

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

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

(d) Every such action shall be commenced within two years after the death of such deceased person, subject to the provisions of chapter fifty-five, article two, section eighteen. The provisions of this section shall not apply to actions brought for the death of any person occurring prior to the first day of July, one thousand nine hundred eighty-two.

CHAPTER 2
(S. B. 83—By Senator Whitlow)

[Passed March 15, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article seven, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to immunity from civil liability for persons rendering emergency care to victims at the scene of a crime.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. ACTIONS FOR INJURIES.
§55-7-15. Aid to victim of accident and victim of crime; immunity from civil liability.

1 No person, including a person licensed to practice medicine or dentistry, who in good faith renders emergency care at the scene of an accident or to a victim at the scene of a crime, without remuneration, shall be liable for any civil damages as the result of any act or omission in rendering such emergency care.
AN ACT to amend and reenact sections one, three, four, five, six, eight and nine, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to definitions; consent; consent by infants; revocation of consent or relinquishment for adoption; when given; requirements; filing of petition; notice; and proceedings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ADOPTION.

§48-4-1. Definitions.

As used in this article, unless the context otherwise requires:

1. (a) A "legal father" is, before adoption, the male person having the legal relationship of parent to a child, (1) who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child.

8. (b) A "determined father" is, before adoption, a person (1) adjudicated to be the father of a child under the provisions of article seven of this chapter; or (2) who makes an affidavit stating that he is the father of a child and who is identified as the father by the mother in a like affidavit; or (3) who has,
at his instance, been otherwise judicially determined to be the biological father of the child entitled to parental rights with respect to the child; or (4) who claims to be the father of the child.

(c) An "unknown father" is the biological father who, before adoption, is neither the legal father nor determined father of the child.

(d) A "birth mother" is the biological mother of the child;

(e) A "birth father" is the biological father of the child; and

(f) The "adoptive parents" or "adoptive mother" or "adoptive father" shall mean those persons who, after adoption, are the mother and father of the child.

§48-4-3. Consent.

(a) The mother and legal father or determined father shall consent to the adoption by a writing acknowledged as in the case of deeds, unless the court orders, after hearing, that the parental rights of such person are terminated, abandoned or permanently relinquished, or that the person is under disability solely because of age. If the person is under disability, the court may decree the adoption if it orders (1) that the parental rights of the persons are terminated, abandoned or permanently relinquished, (2) that the person is incurably insane, or (3) the disability arises solely because of age and an otherwise valid consent has been given.

(b) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

(c) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the person of such child by law, then and in such case, the written consent, acknowledged as aforesaid, of the legal guardian of such child or those having at the time the legal custody of the child shall be obtained and so presented, and if there be no legal guardian nor any person having the legal custody of the child, then such consent must be obtained from some discreet and suitable person appointed
26 by the court or judge thereof to act as the next friend of such
27 child in the adoption proceedings.
28 (d) If one of the persons entitled to parental rights of the
29 child sought to be adopted is deceased, only the consent or
30 relinquishment of the surviving person entitled to parental
31 rights shall be required.
32 (e) In addition to the consent required in subsections (a)
33 through (d) of this section, in any case where the child sought
34 to be adopted is twelve years of age or over, the written
35 consent of such child to such adoption, given in the presence
36 of the judge having jurisdiction thereof, must also be obtained
37 and presented before the entry of any order of adoption, unless
38 for extraordinary cause such is waived by court order.

§48-4-4. Consent by infants.
1 If it appears that a person giving consent to adoption is
2 under eighteen years of age at the time of the filing of the
3 petition, and that such infant parent is a resident of the state,
4 the consent shall be specifically reviewed and approved by the
5 court and a guardian ad litem may be appointed to represent
6 the interests of the consenting infant parent. The guardian ad
7 litem shall conduct a discreet inquiry regarding the consent
8 given, and may inquire of any attorney, social worker, notary
9 public or other person having knowledge of the consent. If the
10 guardian ad litem finds reasonable cause to believe that the
11 consent given was obtained by fraud or duress, the court may
12 request the consenting infant parent to appear before the court
13 or at a deposition, so that inquiry may be made regarding the
14 consent given. Failure to appoint a guardian ad litem is not
15 grounds for setting aside a decree of adoption.

§48-4-5. Revocation of consent or relinquishment for adoption;
when given; professional fees.
1 (a) Parental consent or relinquishment of legal custody for
2 adoption purposes, whether given by an adult or minor, is
3 irrevocable from the time of execution, except where a court
4 of competent jurisdiction finds that, notwithstanding the terms
5 of the consent or relinquishment, such consent or relinquish-
6 ment was obtained by fraud or duress, if:
7 (1) The consent or relinquishment is executed after the
8 expiration of seventy-two hours after the birth of the child,
and the consent so states;

(2) The parent executing the consent or relinquishment is informed that the consent is irrevocable from the time executed, and the consent so states;

(3) The consent or relinquishment includes a statement that the parent executing the consent does so of his own free will, that the consent was not obtained through fraud or duress, that the parent executing the consent believes the adoption of the child to be in the best interests of the child, expressly waives notice of any adoption proceeding to be filed, and joins in the petition to be filed and the prayer that the child be adopted; and

(4) In the case of a consenting parent under the age of eighteen, either a guardian ad litem is appointed pursuant to the provisions of section four of this article and the consent reviewed and approved by the court, or the consent or relinquishment is executed in the presence of and approved by a judge of a court of record in the county in which such relinquishment is made.

(b) Any parental consent or relinquishment of legal custody for adoption purposes which does not conform to the requirements of subsection (a) of this section may be revoked by such parent within ten days after the consent is executed and, whether given by an adult or a minor, is irrevocable thereafter except where a court of competent jurisdiction finds that such consent or relinquishment for adoption was obtained by fraud or duress.

(c) A consent or relinquishment of legal custody which is revocable pursuant to the provisions of subdivision (b) hereunder, if executed in this state, shall set forth the method by which the same may be revoked, including the name and location of the person to contact in the event the person desires to exercise his or her right of revocation. Notwithstanding any provision of this section to the contrary, any revocable consent which does not so state the method of revocation may be revoked within twenty days of the time of execution and, whether given by an adult or a minor, is irrevocable thereafter except where a court of competent jurisdiction finds that such consent or relinquishment for adoption was obtained by fraud or duress.
(d) Notwithstanding any other provision of this section to the contrary, a relinquishment of legal custody for adoption of a child given by a minor to a licensed private child welfare agency or to the state department of human services shall be with section one, article three, chapter forty-nine of this code.

(e) Any payment to physicians, attorneys, adoption agencies or to any other person involved in the adoption process shall be limited to cover fees from services rendered.

§48-4-6. Delivery of child for adoption; filing of petition.

(a) Whenever a person delivers a child for adoption the person first receiving such child and the prospective adopting parent or parents shall be entitled to receive from such person a written recital of all known circumstances surrounding the birth, medical and family medical history of the child, and an itemization of any facts or circumstances unknown or requiring further development.

(b) The petition for adoption may be filed at any time after the child who is the subject of the adoption is born and the adoptive placement determined, with or without all requisite consents, but the hearing on said petition shall not be held until after the child shall have lived in the house of the adopting parent or parents for a period of six months.

§48-4-8. Notice.

(a) Unless waived by a writing acknowledged as in the case of deeds or by other proper means, notice of the adoption proceeding shall be served on any known person entitled to parental rights of a child prior to its adoption who has not signed either a consent for the adoption of the child or a relinquishment of custody of such child, or whose parental rights have not otherwise been terminated.

(b) Such notice shall be served on each such person at least twenty days before the date of the final hearing in the adoption proceeding and shall inform the person that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within twenty days of such service. In the case of any such person who is a nonresident or whose whereabouts are unknown, service shall be achieved (1) by personal service, (2) by registered or certified mail, return receipt requested, postage
prepaid, to the person’s last-known address, with instructions
to forward, or (3) by publication. If personal service is not
acquired, then if the person giving notice shall have any
knowledge of the whereabouts of the person to be served,
including a last-known address, service by mail shall be first
attempted as herein provided. Any such service achieved by
mail shall be complete upon mailing and shall be sufficient
service without the need for notice by publication. In the event
that no return receipt is received giving adequate evidence of
receipt of the notice by the addressee or of receipt of the notice
at the address to which the notice was mailed or forwarded,
or if the whereabouts of the person are unknown, then the
person required to give notice shall cause service of such notice
by publication as a Class II publication in compliance with
the provisions of article three, chapter fifty-nine of the code,
and the publication area shall be the county where such
proceedings are had, and in the county where the person to
be served was last known to reside except in cases of foreign
adoptions where the child is admitted to this country for
purposes of adoptive placement and the United States
Immigration and Naturalization Service has issued the foreign-
born child a visa or unless good cause is shown for not
publishing in the county where the person was last known to
reside. The notice shall state the court and its address but not
the names of the adopting parents. In the case of a person
under disability, service shall be made on the person and his
personal representative, or if there be none, on a guardian ad
litem.

In the case of service by publication or mail or service on
a personal representative or a guardian ad litem, the person
shall be allowed thirty days from the date of the first
publication or mailing or such service on a personal
representative or guardian ad litem in which to appear and
defend such parental rights.


(a) When the cause has matured for hearing but not sooner
than six months after the child has resided continuously in the
home of the petitioner or petitioners, the court shall decree
the adoption if:

(1) It determines that no person retains parental rights in
such child except the petitioner and the petitioner’s spouse, or
the joint petitioners;
(2) That all applicable provisions of this article have been
complied with;
(3) That the petitioner is, or the petitioners are, fit persons
to adopt the child; and
(4) That it is in the best interests of the child to order such
adoption.
(b) The court or judge thereof may adjourn the hearing of
such petition or the examination of the parties in interest from
time to time, as the nature of the case may require. Between
the time of the filing of the petition for adoption and the
hearing thereon, the court or judge thereof shall, unless the
court or judge otherwise directs, cause a discreet inquiry to
be made to determine whether such child is a proper subject
for adoption and whether the home of the petitioner or
petitioners is a suitable home for such child. Any such inquiry,
if directed, shall be made by any suitable and discreet person
not related to either the persons previously entitled to parental
rights or the adoptive parents, or by an agency designated by
the court, or judge thereof, and the results thereof shall be
submitted to the court or judge thereof prior to or upon the
hearing on the petition and shall be filed with the records of
the proceeding and become a part thereof. The report shall
include, but not be limited to, the following:
(1) A description of the family members, including medical
and employment histories;
(2) A physical description of the home and surroundings;
and
(3) A description of the adjustment of the child and family.
(c) If it shall be necessary, under the provisions of this
article, that a discreet and suitable person shall be appointed
to act as the next friend of the child sought to be adopted,
then and in that case the court or judge thereof shall order
a notice of the petition and of the time and place when and
where the appointment of next friend will be made, to be
published as a Class II legal advertisement in compliance with
the provisions of article three, chapter fifty-nine of this code,
and the publication area for such publication shall be the
county where such court is located. At the time and place so
named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested.

(d) Upon the day so assigned, the court or judge thereof shall proceed to a final hearing of the petition and examination of the parties in interest, under oath, and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make an order reciting the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and those persons previously entitled to parental rights, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise provided in this article: Provided, That no such order shall disclose the names or addresses of those persons previously entitled to parental rights.

CHAPTER 4
(H. B. 1545—By Delegate Burke and Delegate Neal)

[Passed April 5, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section four-b, article one, chapter nineteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to extending the authorization of the commissioner of the department of agriculture to increase certain fees by rules to a maximum.

Be it enacted by the Legislature of West Virginia:

That section four-b, article one, 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 1. DEPARTMENT OF AGRICULTURE.

§19-1-4b. Authority of commissioner to increase certain fees by rules or regulations.

The commissioner is hereby authorized to promulgate and adopt rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, fixing dues for permits, licenses, certificates, registrations and laboratory tests when, in the opinion of the commissioner, it becomes necessary to increase these fees in order to cover the cost of providing the services involved or issuing the permits, licenses, certificates or registrations applicable: Provided, That this authority is granted only with regard to the following sections and articles of this chapter and may be exercised by the commissioner up to a maximum extent of causing all such fees, as the same exists on the first day of January, one thousand nine hundred eighty-four, to be doubled.

Section six, article two-a (permits for public markets); section ten, article two-a (licensing of weighmen and auctioneers); section eleven, article two-a (grading, classifying or standardizing license); section fourteen, article two-a (testing and inspection of livestock for infectious disease); section four, article two-b (license for commercial slaughterer, etc.); section six, article two-c (auctioneer license); section one, article three (commission merchant license); section four, article five-a (warehouse operations license); section two, article nine-a (permit to feed garbage to swine); section three, article ten-a (certificate to sell eggs); section five, article eleven (permit to manufacture or purchase milk and cream); section nine, article twelve (certificate of nurserymen, etc.); section six, article fourteen (fees for feed inspection); section two, article fifteen (registration fee for commercial fertilizer); section four, article fifteen (inspection fees for commercial fertilizers);
section two, article fifteen-a (registration of agricultural liming material); section four, article fifteen-a (inspection fee for liming material); section three, article sixteen (fee for sale of seeds); and section four, article sixteen-a (fees for economic poisons registration).

Any money collected by the commissioner as a result of any fee increases pursuant to rule or regulation authorized by this section shall be deposited in the same fund or funds with the state treasurer and expended in the same manner as those fees collected prior to the enactment of this section, except that fees collected under authority of section six, article two-c shall be deposited into the state treasury to the credit of a special fund for implementation of the article.

CHAPTER 5
(S. B. 344—By Senator Parker)

[Passed April 11, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten-b, relating to enacting a livestock dealer's licensing act; providing definitions; providing that a license be procured before engaging in the business of livestock dealing; providing for refusals, suspensions and revocation of licenses; providing for a fee and surety bond; providing for records of transactions, inspections by and orders of the commissioner; hearings and review; disposition of fees; rules and regulations; penalties.

Be it enacted by the Legislature of West Virginia:

That chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article ten-b, to read as follows:
ARTICLE 10B. LIVESTOCK DEALERS'S LICENSING ACT.

§19-10B-1. Short title.

This article shall be known and may be cited as "The West Virginia Livestock Dealer's Licensing Act."

§19-10B-2. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Bond" means a written instrument issued or executed by a surety or an insurance company licensed to do business in this state, guaranteeing that the person bonded shall faithfully fulfill the terms of the contract of purchase and guarantee payment of the purchase price of all livestock purchased by him, made payable to the commissioner for the benefit of persons sustaining loss resulting from the nonpayment of the purchase price or the failure to fulfill the terms of the contract of purchase.

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

(c) "Department" means the department of agriculture of the state of West Virginia.

(d) "Livestock" means cattle, horses, swine, sheep, goats or any other animal of the bovine, equine, porcine, ovine or caprine specie and domestic poultry.

(e) "Livestock dealer" means a person other than a livestock producer who buys, receives or assembles livestock for resale, either for his own account or that of another person.
(f) "Livestock producer" means a person selling livestock which he has raised or others which he has additionally purchased and summered or wintered.

(g) "Person" means an individual, partnership, corporation, association or other legal entity.

§19-10B-3. License required; fee.

It shall be unlawful for any person except a livestock producer to engage in the business of buying, receiving or assembling livestock for resale, or selling livestock in this state without being licensed as a livestock dealer by the commissioner. All applications for a livestock dealer's license or renewal of such license shall be made on forms provided by the commissioner and shall be filed on or before June thirtieth of each year with the commissioner. A fee of thirty dollars shall be remitted with each such application. Any license not renewed by the first day of July of any year shall expire.

§19-10B-4. Applicant to furnish surety bond.

Before issuing any livestock dealer's license, the commissioner shall require the applicant to file either:

(1) A properly attested sworn statement that he or she is maintaining a valid surety bond pursuant to the requirements of The Federal Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as amended; or

(2) A fully executed surety bond in an amount prescribed by the commissioner by regulation, but not less than ten thousand dollars for the benefit of the sellers of livestock who have been wronged or damaged by any fraud or fraudulent practices of the livestock dealer, and so adjudged by a court of competent jurisdiction and who shall have the right of action for damage for compensation against such bonds.

§19-10B-5. Records of transactions; inspection by commissioner.

Every licensed livestock dealer shall make and retain for at least two years written livestock sales records
in the form and manner prescribed by the commissioner, including, but not limited to, records indicating the identification numbers or letters, sex, brand and approximate weight of all livestock bought, sold, received, exchanged or otherwise transferred, and the names and addresses of all owners, sellers, consignors or buyers with whom he has in any manner exchanged livestock, with the date of such exchanges.

If the commissioner has reasonable cause to believe any livestock in this state are diseased in a manner such as to constitute a health hazard to other livestock, wherever located, he may request in writing the livestock sales records of any livestock dealer in the state for the purpose of tracing or discovering the diseased livestock, the source of the disease, and all other livestock which may be affected by the disease. A livestock dealer shall comply with such request within twenty-four hours.

The commissioner shall have the authority to enter premises and buildings occupied by a livestock dealer at any reasonable time in order to examine books and records maintained by the livestock dealer.

The commissioner may require livestock dealers to file in such form as he may prescribe, regular or special reports, or answers in regard to specific questions, for the purpose of providing information concerning livestock movement and animal disease control.

§19-10B-6. Refusals, suspensions or revocation of licenses.

The commissioner may refuse to grant or may suspend or revoke a livestock dealer’s license when he determines from evidence presented him that there is reasonable cause to believe that any of the following situations exists:

(a) Where the applicant or licensee has violated the laws of the state or official regulations governing the interstate or intrastate movement, shipment or transportation of livestock.

(b) Where there have been false or misleading statements as to the health or physical condition of the animals with regard to the official tests or quality of the animals, or the practice of fraud or misrepresentation in
connection therewith or in the buying or receiving of animals or receiving, selling, exchanging, soliciting or negotiating the sale, resale, exchange, weighing or shipment of animals.

(c) Where the applicant or licensee acts as a dealer for a person attempting to conduct business in violation of this article, after the notice of such violation has been given the licensee by the commissioner.

(d) Where the applicant or licensee fails to practice measures of sanitation, disinfection and inspection of premises or vehicles used for the yarding, holding or transportation of livestock.

(e) Where there has been a failure to keep records required by the commissioner or where there is a refusal on the part of the applicant or licensee to produce records of transactions in the carrying on of the business for which such license is granted.

(f) Where the licensee fails to maintain a bond or to adjust a bond upon thirty days' notice or refuses or neglects to pay the fees or inspection charges required to be paid.

(g) Where the licensee has been suspended by order of the secretary of agriculture of the United States department of agriculture under provisions of The Federal Packers and Stockyards Act of 1921, 42 Stat 159.7 USCA, 181, as amended.

§19-10B-7. Orders of the commissioner; hearing; review.

Any order of the commissioner shall be served upon all persons affected thereby by registered mail. Within ten days of receipt of such order, any party adversely affected thereby may, in writing, request a hearing before the commissioner. Such hearing and any judicial review thereof shall be conducted in accordance with the applicable provisions of articles five and six, chapter twenty-nine-a of this code, as if the same were set forth herein in extenso. The effect of any order shall be suspended during the course of any hearing or subsequent appeals.

§19-10B-8. Fees paid into special fund in state treasury.

All funds collected under this article shall be paid
2 into the state treasury and credited to a special fund to
3 be appropriated by order of the commissioner for the
4 enforcement of this article.

§19-10B-9. Commissioner to enforce article; rules and regula-
1 The commissioner shall administer and enforce the
2 provisions of this article and shall have authority to issue
3 regulations, after a public hearing, following due notice
4 in conformance with the provisions of the state admin-
5 istrative procedures as set forth in chapter twenty-nine-a
6 of this code, to carry out the provisions of this article.

§19-10B-10. Penalties.
1 Any person who shall violate any of the provisions of
2 this article shall be guilty of a misdemeanor, and, upon
3 conviction thereof, shall for the first offense be fined
4 not less than fifty dollars nor more than five hundred
5 dollars, and upon conviction of each subsequent offense
6 shall be fined not less than one hundred dollars nor more
7 than one thousand dollars.

§19-10B-11. Construction.
1 The provisions of this article are remedial and shall be
2 liberally construed and applied so as to promote the pur-
3 poses set out in the various sections of the article.

CHAPTER 6
(S. B. 619—Originating in the Senate Committee on Finance)

[Passed April 1, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public
money out of the treasury from the balance of all general
revenues remaining unappropriated for the fiscal year
ending June thirtieth, one thousand nine hundred eighty-five, to the Office of Economic and Community Development, Account No. 1210, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1210, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 6—Office of Economic and Community Development

5 Account No. 1210

6 15 National Youth Science Camp .................. $ 50,000

7 20 Total............................................ $8,622,559

8 The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1984-85. Such amount shall be available for expenditure upon the effective date of this bill.
AN ACT making a supplementary appropriation of federal funds out
of the treasury from the balance of all federal funds remaining
unappropriated for the fiscal year ending June thirtieth, one
thousand nine hundred eighty-five, to the Office of Economic
and Community Development, Account No. 1210, supple­
menting chapter twenty-two, acts of the Legislature, regular
session, one thousand nine hundred eighty-four, know as a
budget bill.

WHEREAS, The chief executive has established the availability of
federal funds receivable for new programs and available for
expenditure in fiscal year 1984-85; a portion of the same are hereby
appropriated by the terms of this supph;mentary appropriation bill;
therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1210, chapter twenty-two, acts of the
Legislature, regular session, one thousand nine hundred eighty-four,
known as the budget bill, be supplemented and amended by adding
thereto an amount to be designated line item and with the same to
thereafter read as follows:

TITLE 2. APPROPRIATIONS.

Section 2. Appropriations of federal funds.

6—Office of Economic and Community Development

Acct. No. 1210

18 To local entities .................. $35,124,777
20 Total ........................... $46,004,062

The purpose of this supplementary appropriation bill is to
supplement and amend the designated line item in this account
in the amount of $800,000 to provide federal funds for
expenditure in the current fiscal year of 1984-85. Such
amounts shall be available for expenditure immediately upon
12 the effective date of the bill. Any unexpended balance 
13 remaining at the end of such fiscal year is hereby reappro-
14 priated for expenditure in fiscal year 1985-86.

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Governor's Office—Civil Contingent Fund, Account No. 1240, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 1240, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding thereto the following sum to the designated line item:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

9—Governor's Office—Civil Contingent Fund

Account No. 1240

1 Unclassified—Total $500,000

The purpose of the bill is to supplement the aforesaid account and item therein, with such amount being available for expenditure upon the effective date of this bill and in the fiscal year 1984-85. Any unexpended balance remaining at the close of the fiscal year 1984-85, in the above appropriation is hereby reappropriated for expenditure during the fiscal year 1985-86.

CHAPTER 9

(H. B. 1644—By Delegate Riffle and Delegate Starcher)

[Passed March 25, 1985; 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-five, to the Department of Corrections-Correctional Units, Account No. 3770, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the
current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 3770, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be supplemented by adding thereto the following new line item and language of appropriation:

1 TITLE 2. APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
3 CORRECTIONS
4 42—Department of Corrections—
5 Correctional Units
6 Acct. No. 3770

5a Capital Outlay—
Industrial
5b Home for Youth—
Total .................. $ — $ 99,000

6 Total .................. $ — $ 20,322,648

The purpose of this supplementary appropriation bill is to establish the above new line item in Account No. 3770 in the budget bill for the current fiscal year of 1984-85. This appropriation shall be available for expenditure upon the effective date of the bill, with any unexpended balance remaining in the appropriation at the close of current fiscal year 1984-85, being hereby reappropriated for expenditure during the subsequent fiscal year 1985-86.

CHAPTER 10
(S. B. 281—Originating in the Senate Committee on Finance)

[Passed March 12, 1985; 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-five, to the Department of Human Services, Account No. 4050, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4050, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding the following sum to the designated line item:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 47—Department of Human Services

4 Acct. No. 4050

5 5 Assistance Payments $ — $ 3,306,536

6 20 Total $ — $112,945,994

The purpose of this supplementary appropriation bill is to supplement the aforesaid account and item therein for expenditure in the current fiscal year 1984-85. Such amounts shall be available for expenditure upon the effective date of this bill.
CHAPTER 11
(S. B. 491—Originating in the Senate Committee on Finance)

[Passed April 1, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all general revenues remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the State Board of Education—Rehabilitation Division, Account No. 4400, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature Executive Budget Document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4400, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding thereto the following new line item and language of appropriation:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HEALTH AND HUMAN SERVICES

4 50-State Board of Education—Rehabilitation Division

5 Acct. No. 4400

6 11a Capital Outlay-Roof Replacement... — $ 315,000

7 12 Total.................................................$— $10,301,282
The purpose of this supplementary appropriation bill is to establish the above new line item in Account No. 4400 in the budget bill for the current fiscal year 1984-85. This appropriation shall be available for expenditure upon the effective date of this bill, with any unexpended balance remaining in the appropriation at the end of the current fiscal year 1984-85, being hereby reappropriated for expenditure during the subsequent fiscal year 1985-86.

CHAPTER 12
(H. B. 1643—By Delegate White and Delegate Reed)

[Passed March 25, 1985; 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-five, to the Department of Employment Security, Account No. 4510, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature an executive budget document, dated February 13, 1985, wherein is set forth the revenue estimates and financial statements for the general revenue fund; and

WHEREAS, It appears from such executive budget document that there now remains unappropriated a balance in the state fund, general revenue, available for further appropriation during the current fiscal year 1984-85, a part of which balance is hereby appropriated by the terms of this supplementary appropriation; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 4510, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be supplemented by adding thereto the following sum to the designated line item:
TITLE 2. APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUSINESS AND INDUSTRIAL RELATIONS

54—Department of Employment Security

Acct. No. 4510

State
General
Revenue
Fiscal Year
1984-1985

Interest Assessment—

Total ..................... $ — $ 6,100,000

The purpose of this supplementary appropriation bill is to supplement the designated line item in the budget bill for the current fiscal year of 1984-85, in the amount of $6,100,000; thus providing a new total amount for such line item in the aggregate of $8,000,000. Such $6,100,000 will provide funds for paying the federal government interest due on loan advances made to the state of West Virginia, for payment of unemploy­ment compensation benefits. This supplementary appropria­tion shall be available for expenditure upon the effective date of this bill.

CHAPTER 13

(Com. Sub. for H. B. 1824—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed March 29, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Public Land Corporation, Account No. 5660, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Chief executive has informed the Legislature that
federal funds have been received for new programs and are available for expenditure in fiscal year 1984-85; a portion of the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 5660, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding the following item and language of appropriation:

<table>
<thead>
<tr>
<th>TITLE 2. APPROPRIATIONS.</th>
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<tbody>
<tr>
<td>Section 2. Appropriations of federal funds.</td>
</tr>
<tr>
<td>CONSERVATION AND DEVELOPMENT</td>
</tr>
<tr>
<td>71—Public Land Corporation</td>
</tr>
<tr>
<td>Acct. No. 5660</td>
</tr>
</tbody>
</table>

| 4a Capital Outlay—Blennerhassett Historical Park Commission—Total... | $ 700,000 |
| Federal Funds Fiscal Year 1984-1985 |

The purpose of this supplementary appropriation bill is to appropriate federal funds in accordance with chapter 4, article 11, section 5 of the code to the Blennerhassett Historical Park Commission for construction and overall capital outlay purposes. These funds shall be available for expenditure in the current fiscal year of 1984-85, and upon the effective date of the bill. Any unexpended balance remaining at the end of such fiscal year is hereby reappropriated for expenditure in fiscal year 1985-86.

CHAPTER 14

(H. B. 1756—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed March 26, 1985; in effect from passage. Approved by the Governor.]
remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the state Department of Highways, Account No. 6700, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated February 13, 1985, wherein on page XII thereof is set forth the revenues and expenditures of the State Road Fund, including fiscal year 1984-1985; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1984-1985, 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 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-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented as follows:

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<tr>
<th></th>
<th>TITLE 2. APPROPRIATIONS.</th>
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<tbody>
<tr>
<td></td>
<td>2 Section 3. Appropriations from other funds.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 85—State Department of Highways</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4 Acct. No. 6700</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 TO BE PAID FROM STATE ROAD FUND</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Federal Revenue</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Revenue Fiscal Year</td>
</tr>
<tr>
<td>8</td>
<td></td>
<td>1984-1985</td>
</tr>
<tr>
<td>9</td>
<td></td>
<td>Other Revenue Fiscal Year</td>
</tr>
<tr>
<td>10</td>
<td>1 Maintenance Expressway</td>
<td>$ -0-</td>
</tr>
<tr>
<td>11</td>
<td>2 Trunkline and Feeder . . . . .</td>
<td>$ 49,523,000</td>
</tr>
<tr>
<td>12</td>
<td>3 Maintenance, State</td>
<td>$ -0-</td>
</tr>
<tr>
<td>13</td>
<td>4 Local Services . . . . . . . .</td>
<td>$ 67,155,000</td>
</tr>
</tbody>
</table>
### CHAPTER 15

(Com. Sub. for H. B. 1945—By Mr. Speaker, Mr. Albright, and Delegate Swann by request of the Executive)

[Passed April 12, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Office of Economic and Community Development, Account No. 8032, supplementing chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The chief executive has established the availability of federal block grant moneys receivable for new programs and

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Maintenance, Contract</td>
<td>5 19,584,000</td>
</tr>
<tr>
<td>15</td>
<td>Paving and</td>
<td>6 1,425,000</td>
</tr>
<tr>
<td>16</td>
<td>Secondary Road</td>
<td>7</td>
</tr>
<tr>
<td>17</td>
<td>Maintenance</td>
<td>8 4,375,000</td>
</tr>
<tr>
<td>18</td>
<td>Inventory Revolving</td>
<td>9 17,674,000</td>
</tr>
<tr>
<td>19</td>
<td>Equipment Revolving</td>
<td>10 80,000,000</td>
</tr>
<tr>
<td>20</td>
<td>General Operations</td>
<td>11 160,000,000</td>
</tr>
<tr>
<td>21</td>
<td>Debt Service</td>
<td>12</td>
</tr>
<tr>
<td>22</td>
<td>Interstate Construction</td>
<td>13 8,189,000</td>
</tr>
<tr>
<td>23</td>
<td>Other Federal</td>
<td>14</td>
</tr>
<tr>
<td>24</td>
<td>Aid Programs</td>
<td>15 128,021,000</td>
</tr>
<tr>
<td>25</td>
<td>Appalachian Program</td>
<td>16 25,406,000</td>
</tr>
<tr>
<td>26</td>
<td>Nonfederal Aid</td>
<td>17</td>
</tr>
<tr>
<td>27</td>
<td>Construction</td>
<td>18 8,189,000</td>
</tr>
<tr>
<td>28</td>
<td>Total</td>
<td>19 $561,352,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement existing items in the aforesaid account for expenditure in the fiscal year of 1984-1985, and to reflect the new total spending authority of the spending unit for such fiscal year. Such increased amounts shall be available for expenditure upon the effective date of this bill."
available for expenditure in fiscal year 1984-85, a portion of the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 8032 be newly established in section 10, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented and amended by the item and language of appropriation therein as follows:

TITLE 2. APPROPRIATIONS.

Section 10. Appropriation from federal block grants.

124-A—Office of Economic and Community Development—Justice Assistance Act
Acc. No. 8032

TO BE PAID FROM FEDERAL FUNDS

1 To Local Entities—Total .................. $600,000

The purpose of this appropriation bill is to supplement section ten, designated “Appropriations from federal block grants” with the aforesaid new account therein and item and language of appropriation in respect of such account for expenditure in the current fiscal year of 1984-85. Such amount shall be available for expenditure immediately upon the effective date of the bill. Any unexpended balance remaining at the end of such fiscal year is hereby reappropriated for expenditure in fiscal year 1985-86.

CHAPTER 16
(S. B. 710—Originating in the Senate Committee on Finance)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of all federal
funds remaining unappropriated for the fiscal year ending June thirtieth, one thousand nine hundred eighty-five, to the Crime Victim Reparation, Account No. 8412, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor has informed the Legislature that federal funds have been received for new programs and are available for expenditure in fiscal year 1984-85; a portion of the same are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That Account No. 8412, chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented by adding the following item and language of appropriation:

1 TITLE 2. APPROPRIATIONS.
2
3 Section 2. Appropriations of federal funds.
4
5 105—Crime Victim Reparation

6 Acct. No. 8412

Federal Funds Fiscal Year 1984-85

5 3A Victim Compensation Program $ 52,639

6 4 Total $ 52,639

The purpose of this supplementary appropriation bill is to appropriate federal funds in accordance with chapter four, article eleven, section five of the code. These funds shall be available for expenditure in the current fiscal year of 1984-85, and upon the effective date of the bill. Any unexpended balance remaining at the end of such fiscal year is hereby reappropriated for expenditure in fiscal year 1985-86.
AN ACT supplementing and amending items of the existing appropriation of the Department of Human Services, Account No. 4050, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4050, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, and being prior appropriated federal funds, be supplemented, and amended with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations of federal funds.

3 47—Department of Human Services

4 Account No. 4050

5 2 Current Expenses .................................. $ 174,320,722

6 20 Total ........................................... $ 190,865,290

7 The purpose of this supplementary appropriation bill is to appropriate federal funds in the amount of $50,500 for the West Virginia Office of Volunteer Services. These funds became available after passage of chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four. These funds will be available May 1, 1985.
CHAPTER 18
(S. B. 700—Originating in the Senate Committee on Finance)

[Passed April 8, 1985; 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 College of Osteopathic Medicine, Account No. 2810, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 2810, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended and transferred and with such items to thereafter read as follows:

<table>
<thead>
<tr>
<th>TITLE 2. APPROPRIATIONS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1. Appropriations from general revenue.</td>
</tr>
<tr>
<td>25—West Virginia College of Osteopathic Medicine Acct. No. 2810</td>
</tr>
<tr>
<td>1 Personal Services $2,710,057</td>
</tr>
<tr>
<td>2 Current Expenses $1,028,000</td>
</tr>
<tr>
<td>5 Primary Health Training $240,000</td>
</tr>
<tr>
<td>Total $4,105,057</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 such fiscal year shall be available for expenditure upon the effective date of this bill.
CHAPTER 19
(H. B. 2056—By Delegate Neal and Delegate Flanigan)

[Passed April 11, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Department of Corrections-Central Office, Account No. 3680, and the Department of Corrections-Correctional Units, Account No. 3770, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 3680 and Account No. 3770, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 40—Department of Corrections—Central Office

4 Acct. No. 3680

5 6

7 8

9 10 5 Adult Female

11 Offenders Contract ...................... $ 694,646

12 Current Expenses ....................... $673,742

13 6 Total ................................ $ 1,559,229

14 42—Department of Corrections—Correctional Units

15 Acct. No. 3770
The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of two hundred fifty thousand dollars, state general revenue, prior appropriated to item five and the “Current Expenses” subitem thereof in Account No. 3680 from the Central Office account to the Correctional Units Account No. 3770 and item one thereof, being the “Personal Services” item; with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such accounts, during the current fiscal year, one thousand nine hundred eighty-five, shall be available for such expenditure upon the effective date of the bill.

CHAPTER 20
(S. B. 441—Originating in the Senate Committee on Finance)

[Passed March 28, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the State Board of Education—Rehabilitation Division, Account No. 4400, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 4400, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known
as the budget bill, and being prior appropriated federal funds, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 2. Appropriations of federal funds.

3 50—State Board of Education—Rehabilitation Division

4 Acct. No. 4400

<table>
<thead>
<tr>
<th>Federal Funds</th>
<th>Fiscal Year 1984-85</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$10,052,861</td>
</tr>
<tr>
<td>2 Current Expenses</td>
<td>5,120,131</td>
</tr>
<tr>
<td>3 Repairs and Alterations</td>
<td>220,736</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>421,195</td>
</tr>
<tr>
<td>5 Case Services</td>
<td>2,870,343</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$26,933,763</strong></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 of federal funds for current fiscal year, one thousand nine hundred eighty-five, 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 such fiscal year shall be available for expenditure upon the effective date of this bill.

CHAPTER 21

(H. B. 1997—By Delegate Biatnik and Delegate McKinley)

[Passed April 5, 1985; 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 Railroad Maintenance Authority, Account No. 5690,
for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

_Be it enacted by the Legislature of West Virginia:_

That items of the total appropriation of Account No. 5690, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, be supplemented, amended and transferred and with such items to thereafter read as follows:

**TITLE 2. APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

73—West Virginia Railroad Maintenance Authority

Acct. No. 5690

<table>
<thead>
<tr>
<th>State General Revenue Fiscal Year</th>
<th>1984-1985</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 2 Current Expenses..............</td>
<td>$ 190,000</td>
</tr>
<tr>
<td>11 3 Repairs and Alterations ......</td>
<td>$ 190,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend and transfer the sum of fifty thousand dollars, state general revenues, prior appropriated to item three, “Repairs and Alterations” to item 2, “Current Expenses”, with no new moneys being appropriated hereby. The amounts as newly itemized for expenditure in such account, during the current fiscal year, one thousand nine hundred eighty-five, shall be available for such expenditure upon the effective date of the bill. Any unexpended balances remaining in such items 2 and 3, at the close of fiscal year 1984-85, are hereby reappropriated for expenditure in fiscal year 1985-86.
AN ACT supplementing, amending and transferring amounts between items of the existing appropriation of the Human Rights Commission, Account No. 5980, for the fiscal year ending the thirtieth day of June, one thousand nine hundred eighty-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That items of the total appropriation of Account No. 5980, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended and transferred and with such items to thereafter read as follows:

1 TITLE 2. APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 78—Human Rights Commission

4 Acct. No. 5980

5 1 Personal Services $436,543

6 2 Current Expenses $226,448

7

8 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 shall be available upon the effective date of this bill.

* Clerk’s Note: The Governor reduced the amount appropriated for Personal Services by $500 and deleted all of Line Item Total.
CHAPTER 23
(Com. Sub. for H. B. 1757—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed March 26, 1985; in effect from passage. Approved by the Governor.]

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-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the total appropriation 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-five, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended and transferred to read as follows:

1  TITLE 2. APPROPRIATIONS.

2  Section 3. Appropriations from other funds.

3  85—State Department of Highways

4  Acct. No. 6700

5  TO BE PAID FROM STATE ROAD FUND

<table>
<thead>
<tr>
<th></th>
<th>Federal Revenue</th>
<th>Other Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year 1984-1985</td>
<td>Fiscal Year 1984-1985</td>
</tr>
<tr>
<td>10</td>
<td>Maintenance Expressway...</td>
<td>$</td>
</tr>
<tr>
<td>11</td>
<td>Trunkline and Feeder.....</td>
<td>$0</td>
</tr>
<tr>
<td>12</td>
<td>Maintenance, State</td>
<td>$0</td>
</tr>
<tr>
<td>13</td>
<td>Local Services ...........</td>
<td>$0</td>
</tr>
</tbody>
</table>
The purpose of this supplementary appropriation bill is to supplement, amend and transfer certain moneys from items of the existing appropriation to other items of such appropriation for the designated spending unit, and to reflect the total spending authority of the spending unit for the 1984-1985 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 24

(H. B. 2023—By Delegate Burke and Delegate Faircloth)

[Passed April 5, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revolving revenue fund of the Department of Motor Vehicles, Account No. 8421-09, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of seven hundred fifty thousand dollars of the balances in Account No. 8421-09, including balances carried forward on the first day of July, one thousand nine hundred eighty-four,
available for expenditure in the current fiscal year 1984-85, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, and with such amount to be available for other and further appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the special revolving revenue fund of the Department of Motor Vehicles, available for expenses related to auto insurance coverage certification, and into the state fund, general revenue of the state, the sum of seven hundred fifty thousand dollars, such moneys being formerly appropriated by the language of “Sec. 12.—Special revenue appropriations.” section in the budget bill for the current fiscal year 1984-85.

CHAPTER 25

(Com. Sub. for H. B. 2051—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of accrued interest, earned through the twenty-eighth day of February, one thousand nine hundred eighty-five, and contained in the accounts, as designated, and in the amounts, as hereinafter specified, of the West Virginia Geological Survey, Account No. 7929-08; of the Treasurer's Office—Abandoned and Unclaimed Property, Account No. 8000-12; of the Treasurer's Office—Investment Pool, Account No. 8004-08; of the Real Estate Commission, Account No. 8010-22; of the Office of Economic and Community Development, Domestic Violence—Operations, Account No. 8026-22; of the Office of Economic and Community Development, Domestic Violence—Administration, Account No. 8026-23; of the Office of Economic and Community Development, Law-Enforcement Training—
Operations, Account No. 8026-24; of the Office of Economic and Community Development, Law-Enforcement Training—Administration, Account No. 8026-25; of the Office of Economic and Community Development—Oil Overcharge Refunds, Account No. 8046-10; of the West Virginia Board of Examiners of Radiologic Technology, Account No. 8079-06; of the State Tax Department—Chief Inspector, Account No. 8090-06; of the State Tax Department—Federal Reimbursement, Account No. 8090-07; of the State Tax Department—County Tax Fund, Account No. 8090-08; of the Oil and Gas Conservation Commission—Annual Lease Tax, Account No. 8096-06; of the West Virginia Board of Accountancy, Account No. 8100-05; of the West Virginia Board of Dental Examiners, Account No. 8102-15; of the West Virginia Board of Land Surveyors, Account No. 8103-20; of the West Virginia Board of Pharmacy, Account No. 8105-30; of the West Virginia Board of Examiners of Practical Nurses, Account No. 8106-35; of the West Virginia Board of Registered Nurses, Account No. 8110-55; of the West Virginia Board of Chiropractic Examiners, Account No. 8130-05; of the West Virginia Board of Embalmers and Funeral Directors, Account No. 8131-10; of the Department of Finance and Administration—Revolving Fund, Account No. 8140-08; of the Department of Finance and Administration—State Agency for Surplus Property, Account No. 8145-45; of the Department of Finance and Administration—Information Systems Services Division, Account No. 8152-07; of the Department of Finance and Administration—Transportation Division, Account No. 8157-07; of the Department of Agriculture—Indirect Cost Funds, Account No. 8185-10; of the Department of Agriculture—Rural Resources, Account No. 8190-13; of the Department of Agriculture—Investment Account, Account No. 8194-16; of the Department of Agriculture, Soil Conservation Committee—Operating Account, Account No. 8195-06; of the Department of Agriculture—Small Watershed Program, Account No. 8195-09; of the Department of Corrections—Prison Industries, Account No. 8222-05; of the State Department of Education—Stonewall Jackson Memorial Fund, Account No. 8240-20; of the State Department of Education—Stonewall Jackson Memorial Fund, Account No. 8240-21; of the State Department of Education—Textbook Adoption, Account No. 8240-46; of the State Department of...
Education—FFA-FHA Camp and Conference Center—Room and Board, Account No. 8245-07; of the State Department of Education—FFA-FHA Camp and Conference Center—Crafts Program, Account No. 8245-08; of the Department of Employment Security—Interest on Employers Delinquent Contributions, Account No. 8250-08; of the Department of Veterans Affairs—Veterans Home Improvement, Account No. 8260-11; of the Department of Veterans Affairs—Resident Maintenance Collection, Account No. 8260-13; of the Public Employees Insurance Board—Basic Insurance Premium, Account No. 8265-05; of the Public Employees Insurance Board—Administration Expense, Account No. 8265-06; of the Public Employees Insurance Board—Optional Life Insurance Premiums, Account No. 8265-07; of the State Board of Insurance—Pensions and Self Insured Losses, Account No. 8275-06; of the State Board of Insurance—Professional Liability Trust Fund, Account No. 8275-07; of the State Board of Insurance—Mine Subsidence Insurance Fund, Account No. 8275-08; of the Public Service Commission—Special Revenue Administration, Account No. 8280-08; of the Public Service Commission—Gas Pipeline Division, Account No. 8285-08; of the Public Service Commission—Motor Carrier Division, Account No. 8290-08; of the Department of Natural Resources—Watter's Smith State Park, Account No. 8320-11; of the Department of Natural Resources—Investments, Account No. 8325-09; of the Railroad Maintenance Authority—South Branch Valley Railroad, Account No. 8344-06; of the Department of Public Safety—Purchase of Investments, Account No. 8350-12; of the Department of Public Safety—Purchase of Investments, Account No. 8352-12; of the Department of Public Safety—Drunk Driving Prevention, Account No. 8355-10; of the Department of Banking—Revolving Account, Account No. 8392-06; of the Department of Banking—Purchase of Investments, Account No. 8395-08; of the Secretary of State—Filing Fees, Account No. 8436-06; of the State Health Department—Investments, Account No. 8500-30; of the West Virginia Geological Survey—Publication Sales, Account No. 8590-10; of WPBY-TV—Operating Account, Account No. 8595-05; of WPBY-TV—Grants—Even Fund Years, Account No. 8595-08; of WPBY-TV—Capital Expenditure, Account No. 8595-25; of Grandview Educational TV—Operating Expense, Account No. 8596-06; of WSWP-
TV—Corporation for Public Broadcasting Grant, Account No. 8596-16; of WSWP-TV—Corporation for Public Broadcasting Grant, Account No. 8596-20; of WSWP-TV—Capital Outlay, Account No. 8596-26; of Educational Broadcasting Authority—Statwide Service, Account No. 8597-09; of Educational Broadcasting Authority—Radio Network, Account No. 8597-10; of Educational Broadcasting Authority—Radio Network, Account No. 8597-11; of Educational Broadcasting Authority—WV Public Radio, Account No. 8597-14; of Educational Broadcasting Authority—Microwave Interconnect System, Account No. 8597-17; of Educational Broadcasting Authority—Capital Outlay—Equipment, Account No. 8597-27; of WNPB-TV—C.P.B.—A, Account No. 8598-23; of WNPB-TV—C.P.B.—B, Account No. 8598-28; of the West Virginia Board of Regents—Investments, Account No. 8890-07; of the West Virginia University—Medical Schools, Account No. 9280-12; of the Economic and Community Development—Industrial Development Loan Fund, Account No. 9290-15; of the Economic and Community Development—E.D.A.—Title IX Loan Fund, Account No. 9290-20; of the State Building Commission—Parking Lot Operating, Account No. 9500-08; of the State Building Commission—Operating Expense Capitol Complex, Account No. 9500-09; of the State Building Commission—Cafeteria Operating Account, Account No. 9500-12; of the State Building Commission—Bond Forfeiture, Account No. 9500-15; as heretofore being invested, accruing and appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

WHEREAS, The Governor, by executive order, has required accrued interest to remain in the interest accounts and not be transferable or distributable back to their respective primary accounts; and

WHEREAS, The Legislature has determined that such amounts of interest, accrued and remaining in such interest accounts, as designated herein and in the amounts herein specified, should be expired from such specified accounts back into the state fund, general revenue of the state, so as to become available for other and further appropriations; therefore

Be it enacted by the Legislature of West Virginia:

That the accrued interest, unexpended and unencumbered,
contained in the accounts, as designated, and in the amounts, as hereinafter specified, earned through the twenty-eighth day of February, one thousand nine hundred eighty-five, and as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended, reduced and caused to expire from such designated accounts and back into the state fund, general revenue of the state, and with such amounts to be thereafter available for other and further appropriation upon the effective date of this bill; Account No. 7929-08—$4,528.83; 8000-12—$111,250.21; 8004-11—$8,160.05; 8010-22—$77,213.37; 8026-22—$56,750.69; 8026-23—$4,709.03; 8026-24—$147,957.37; 8026-25—$19,644.57; 8046-10—$7,837.50; 8079-06—$180.07; 8090-06—$240,087.63; 8090-07—$72,887.35; 8090-08—$157,850.91; 8096-06—$5,313.66; 8100-05—$1,247.40; 8102-15—$33.82; 8110-55—$17,259.13; 8130-05—$3,189.62; 8131-10—$1,999.92; 8140-08—$20,146.89; 8145-45—$109,987.19; 8152-07—$28,933.16; 8157-07—$49,660.18; 8185-10—$11,605.62; 8190-13—$106,091.74; 8194-16—$1,700.68; 8195-06—$86,347.41; 8195-09—$60,762.87; 8222-05—$14,232.19; 8240-20—$19,211.85; 8240-21—$10,110.32; 8240-46—$7,547.34; 8245-07—$1,696.11; 8245-08—$689.13; 8250-08—$50,637.97; 8260-11—$473,737.79; 8260-13—$69,223.33; 8265-05—$847,691.96; 8265-06—$92,326.93; 8265-07—$1,006,349.59; 8275-06—$193,316.82; 8275-07—$172,444.15; 8275-08—$64,223.09; 8280-08—$1,194,448.16; 8285-08—$102,398.31; 8290-08—$210,019.25; 8320-11—$34,942.92; 8325-09—$1,964,846.99; 8344-06—$6,792.02; 8350-12—$2,409.48; 8352-12—$2,813.00; 8355-10—$9,489.95; 8392-06—$14,345.16; 8395-08—$101,486.75; 8436-06—$2,898.52; 8500-30—$299,054.54; 8590-10—$27,087.41; 8595-05—$4,338.46; 8595-08—$1,493.80; 8595-25—$3,475.35; 8596-06—$2,364.32; 8596-16—$11,320.17; 8596-20—$4,377.61; 8596-26—$2,506.26; 8597-09—$23,210.38; 8597-10—$4,139.85; 8597-11—$519.66; 8597-14—$12,869.28; 8597-17—$75,533.14; 8597-27—$1,230.68; 8598-23—$27,507.07; 8598-28—$2,669.60; 8890-07—$1,128,270.02; 9280-12—$11,510.84; 9290-15—$490,660.64; 9290-20—$8,712.95; 9500-08—$299,398.87; 9500-09—$160,880.25; 9500-12—$41,081.86; 9500-15—$345.59.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire into the state fund, general revenue, certain unexpended and unencumbered amounts of accrued interest contained in the accounts as designated and in the
amounts as specified in this bill and as earned through the twenty-eighth day of February, one thousand nine hundred eighty-five; to be thereafter available for other and further appropriations, upon the effective date of this bill.

CHAPTER 26

(Com. Sub. for H. B. 1966—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of the Executive)

[Passed April 12, 1985; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and causing to expire into the state fund, general revenue of the state, certain unexpended and unencumbered amounts of the special revenue fund of the West Virginia Public Employees Insurance Board, Account No. 8265-07, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the sum of two million one hundred twenty-one thousand five hundred sixty-three dollars, of the balances in Account No. 8265-07, being dividends received in respect of optional life insurance premiums, carried forward and available for expenditure, as appropriated by chapter twenty-two, acts of the Legislature, regular session, one thousand nine hundred eighty-four, known as the budget bill, be supplemented, amended, reduced and caused to expire into the state fund, general revenue of the state, from such account; and with such amount to be thereafter available for further and other appropriation upon the effective date of this bill.

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and cause to expire out of the special revenue fund of the West Virginia public employees insurance board and into the state fund, general revenue of the state, the sum of two million one hundred twenty-one thousand five hundred sixty-three dollars, being dividends received in respect of optional life insurance premiums, such moneys being formerly appropriated by "Sec. 12.—Special
Ch. 27] APPROPRIATIONS 49

20 revenue appropriations" language and section in the budget
21 bill for the current fiscal year of 1984-85. Such moneys shall
22 be available for further and other appropriation upon the
23 effective date of this bill.

CHAPTER 27
(Com. Sub. for S. B. 200—By Mr. Tonkovich, Mr. President)

[Passed April 16, 1985; in effect from passage. Approved and disapproved
by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title
1. General provisions.
2. Appropriations.
3. Administration.

TITLE I. GENERAL PROVISIONS.
§1. General policy.
§2. Definitions.
§3. Classification of appropriations.
§5. Maximum expenditures.

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

Sec. 2. Definitions.—For the purpose of this act: “Govern-
or” shall mean the Governor of the state of West Virginia.
“Code” shall mean the code of West Virginia, one thousand
nine hundred thirty-one, as amended.
“Spending unit” shall mean the department, agency or
institution to which an appropriation is made.

The “fiscal year one thousand nine hundred eighty-six” shall
mean the period from July first, one thousand nine hundred
eighty-five through June thirtieth, one thousand nine hundred eighty-six.

"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 article two, chapter five-a of the code.

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, upon approval of the governor, there may be transferred 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.

“Annual increment” shall mean funds appropriated for “eligible employees” and shall be disbursed only in accordance with article five, chapter five of the code.

Funds appropriated for “annual increment” shall be transferred to “personal services” or other designated items only as required.

“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 routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands, or buildings and lands, with such category or item of appropriation to remain in effect as provided by section twelve, article three, chapter twelve of the code.

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.

Sec. 4. Method of expenditure.—Money appropriated by this act, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures.—No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this act.

TITLE 2. APPROPRIATIONS.

§1. Appropriations from general revenue.
§2. Appropriations of federal funds.

AGRICULTURE

Department of agriculture—Acct. No. 5100
Department of agriculture (agricultural awards)—Acct. No. 5150
Department of agriculture (division of rural resources)—Acct. No. 5130
Department of agriculture (meat inspection)—Acct. No. 5140
Department of agriculture (soil conservation committee)—Acct. No. 5120
Farm management commission—Acct. No. 5110
# Appropriations

## Business and Industrial Relations
- Bureau of labor and department of weights and measures—Acct. No. 4500
- Department of employment security—Acct. No. 4510
- Department of energy—Acct. No. 4700
- Department of mines—Acct. No. 4600
- Interstate commission on Potomac river basin—Acct. No. 4730
- Ohio river valley water sanitation commission—Acct. No. 4740
- State athletic commission—Acct. No. 4790
- West Virginia air pollution control commission—Acct. No. 4760
- West Virginia nonintoxicating beer commissioner—Acct. No. 4900
- West Virginia racing commission—Acct. No. 4950
- West Virginia state aeronautics commission—Acct. No. 4850

## Conservation and Development
- Department of natural resources—Acct. No. 5650
- Geological and economic survey—Acct. No. 5200
- Public land corporation—Acct. No. 5660
- Water development authority—Acct. No. 5670
- Water resources board—Acct. No. 5640
- West Virginia railroad maintenance authority—Acct. No. 5690

## Corrections
- Department of corrections—Central office—Acct. No. 3680
- Department of corrections—Correctional units—Acct. No. 3770
- Probation and parole board—Acct. No. 3650
- West Virginia penitentiary—Acct. No. 3750

## Educational
- Department of culture and history—Acct. No. 3510
- Educational broadcasting authority—Acct. No. 2910
- Education employees grievance board—Acct. No. 2860-25
- Marshall University (medical school)—Acct. No. 2840
- State board of education (vocational division)—Acct. No. 2890
- State department of education—Acct. No. 2860
- State department of education (aid for exceptional children)—Acct. No. 2960
- State department of education (school lunch program)—Acct. No. 2870
- State department of education (state aid to schools)—Acct. No. 2930
- State department of education (state aid to schools)—Acct. No. 2940
- State department of education (state aid to schools)—Acct. No. 2950
- State FFA-FHA camp and conference center—Acct. No. 3360
- Teachers retirement board—Acct. No. 2980
- West Virginia board of regents—Acct. No. 2800
- West Virginia board of regents (control)—Acct. No. 2790
- West Virginia college of osteopathic medicine—Acct. No. 2810
- West Virginia library commission—Acct. No. 3500
- West Virginia schools for the deaf and the blind—Acct. No. 3330
- West Virginia University (medical school)—Acct. No. 2850

## Executive
- Department of commerce—Acct. No. 1250
- Governor's office—Acct. No. 1200
- Governor's office (civil contingent fund)—Acct. No. 1240
- Governor's office (custodial fund)—Acct. No. 1230
- Office of community and industrial Development—Acct. No. 1210
- Office of economic and community development emergency employment, training and education—Acct. No. 1220
- Office of emergency services—Acct. No. 1300
## Fiscal
- Auditor's office (general administration) - Acct. No. 1500
- Auditor's office (social security) - Acct. No. 1510
- Auditor's office (unemployment compensation) - Acct. No. 1520
- Department of finance and administration - Acct. No. 2100
- Municipal bond commission - Acct. No. 1700
- State board of insurance - Acct. No. 2250
- State tax department - Acct. No. 1800
- Treasurer's office - Acct. No. 1600
- Treasurer's office (school building sinking fund) - Acct. No. 1650

## Health and Human Services
- Department of human services - Acct. No. 4050
- Department of veterans affairs - Acct. No. 4040
- Solid waste disposal - Acct. No. 4020
- State board of education (rehabilitation division) - Acct. No. 4400
- State commission on aging - Acct. No. 4060
- State health department (central office) - Acct. No. 4000
- State health department - medical facilities (control) - Acct. No. 4070

## Incorporating and Recording
- Secretary of state - Acct. No. 2500

## Judicial
- Supreme Court - General Judicial - Acct. No. 1110

## Legal
- Attorney general - Acct. No. 2400
- Commission on uniform state laws - Acct. No. 2450

## Legislative
- House of Delegates - Acct. No. 1020
- Joint expenses - Acct. No. 1030
- Senate - Acct. No. 1010

## Miscellaneous Boards and Commissions
- Human rights commission - Acct. No. 5980
- Insurance commissioner - Acct. No. 6160
- State fire commission - Acct. No. 6170
- West Virginia civil service system - Acct. No. 5840
- West Virginia public employees insurance board - Acct. No. 6150
- West Virginia public employees retirement board - Acct. No. 6140
- West Virginia public legal services council - Acct. No. 5900
- Women's commission - Acct. No. 6000

## Protection
- Adjutant general (state militia) - Acct. No. 5800
- Department of public safety - Acct. No. 5700

### §3. Appropriations from other funds.
### §4. Appropriations of federal funds.

#### Payable from Federal Funds
- Department of education - (veterans education) - Acct. No. 7979

#### Payable from Medical School Fund
- West Virginia University - (medical center) - Acct. No. 9280
PAYABLE FROM SPECIAL REVENUE FUND

Audit or’s office (land department operating fund)—Acct. No. 8120
Board of regents (special capital improvement fund)—Acct. No. 8830
Board of regents (special capital improvement fund)—Acct. No. 8840
Board of regents (state system registration fee—revenue bond construction fund)—Acct. No. 8845
Board of regents (state system registration fee—special capital improvements fund—capital improvement and bond retirement fund)—Acct. No. 8835
Board of regents (state system tuition fee—revenue bond construction fund)—Acct. No. 8860
Board of regents (state system tuition fee—special capital improvements fund—capital improvement and bond retirement fund)—Acct. No. 8855
Crime victim reparation—Acct. No. 8312
Department of agriculture—Acct. No. 8180
Department of banking—Acct. No. 8395
Department of finance and administration (division of purchasing—revolving fund)—Acct. No. 8140
Department of finance and administration (information systems services division fund)—Acct. No. 8151
Department of natural resources—Acct. No. 8300
Department of public safety—(drunk driving prevention fund)—Acct. No. 8355
Department of public safety (inspection fees)—Acct. No. 8350
General John McCausland Memorial Farm—Acct. No. 8194
Geological and economic survey—Acct. No. 8589
Health care cost review authority—Acct. No. 8510
Public service commission—Acct. No. 8280
Public service commission (consumer advocate)—Acct. No. 8295
Public service commission (gas pipeline division)—Acct. No. 8285
Public service commission (motor carrier division)—Acct. No. 8290
Real estate commission—Acct. No. 8010
State committee of barbers and beauticians—Acct. No. 8220
State health department—hospital services revenue account (special fund) (capital improvement, renovation and operation)—Acct. No. 8500
Treasurer’s office—(abandoned and unclaimed property)—Acct. No. 8000
West Virginia alcohol beverage control commissioner—Acct. No. 9270
West Virginia hospital finance authority—Acct. No. 8525
West Virginia racing commission—Acct. No. 8080

PAYABLE FROM STATE ROAD FUND

Department of motor vehicles—Acct. No. 6710
State department of highways—Acct. No. 6700

PAYABLE FROM WORKERS’ COMPENSATION FUND

Workers’ compensation commissioner—Acct. No. 9000

§5. Awards for claims against the state.
§7. Supplemental and deficiency appropriation.

Department of corrections (correctional units)—Acct. No. 3770
Department of employment security—Acct. No. 4510
Department of human services—Acct. No. 4050
Governor’s office (civil contingent fund)—Acct. No. 1240
§8. Appropriations from revenue sharing trust fund.

Department of agriculture—Acct. No. 9771
Department of culture and history—Acct. No. 9750
Department of finance and administration—Acct. No. 9793
Department of human services—Acct. No. 9777
Office of economic and community development—Acct. No. 9792

§9. Reappropriations.

§10. Reappropriations—revenue sharing trust fund.

§11. Appropriations from federal block grants.

Department of human services (energy assistance)—Acct. No. 9147
Department of human services (social services)—Acct. No. 9161
Office of economic and community development (community development)—Acct. No. 8029
Office of economic and community development (community service)—Acct. No. 8031
Office of economic and community development (job partnership training act)—Acct. No. 8030
Office of economic and community development (justice assistance)—Acct. No. 8032
State health department (alcohol, drug abuse and mental health)—Acct. No. 8503
State department of education (education grant)—Acct. No. 8242
State health department (maternal and child health)—Acct. No. 8502
State health department (preventive health)—Acct. No. 8506

§12. Special revenue appropriations.

§13. State improvement fund appropriation.

§14. Specific funds and collection accounts.

§15. Appropriations for refunding erroneous payment.

§16. Sinking fund deficiencies.

§17. Appropriations to pay costs of publication of delinquent corporations.

§18. Appropriations for local governments.

§19. Total appropriations.

§20. 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 article two, chapter five-a of the code, the following amounts, as itemized, for expenditure during the fiscal year one thousand nine hundred eighty-six.

Sec. 2. Appropriations of federal funds.—In accordance with article eleven, chapter four, federal funds are hereby
appropriated conditionally upon the fulfillment of the
provisions set forth in article two, chapter five-a of the code,
the following amounts, as itemized, for expenditure during the
fiscal year one thousand nine hundred eighty-six.

Any unexpended actual cash balances remaining for federal
funds at the close of the fiscal year 1984-85 are hereby
reappropriated for expenditure during the fiscal year 1985-86.

LEGISLATIVE

1—Senate

Acct. No. 1010

<table>
<thead>
<tr>
<th></th>
<th>Federal Funds</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Fiscal Year 1985-1986</td>
<td>Fiscal Year 1985-1986</td>
</tr>
<tr>
<td>Compensation of Members</td>
<td>$</td>
<td>$ 300,000*</td>
</tr>
<tr>
<td>Compensation and Per Diem of Officers and Employees</td>
<td>—</td>
<td>985,000</td>
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<tr>
<td>Expenses of Members</td>
<td>—</td>
<td>215,000</td>
</tr>
<tr>
<td>Current Expenses and</td>
<td>—</td>
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</tr>
<tr>
<td>Contingent Fund</td>
<td>—</td>
<td>175,000</td>
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<tr>
<td>Printing Blue Book</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$</td>
<td>$ 2,100,000</td>
</tr>
</tbody>
</table>

* Includes Basic Salary of Legislator at $6,500 per annum.

The distribution of the blue book shall be by the office of
the clerk of the senate and shall include seventy-five copies to
each member of the legislature and two copies to each
classified and approved high and junior high school and one
to each elementary school within the state.

The appropriations for the senate for the fiscal year 1984-85 are to remain in full force and effect, and are hereby reappropriated to June 30, 1986.

Any balances so reappropriated may be transferred and credited to the 1985-86 accounts.

Upon written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation
in order to protect or increase the efficiency of the service.

The clerk of the senate, with approval of the president, is authorized to draw his requisition upon the state 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 state auditor.

The clerk of the senate, with written approval of the president, or the president of the senate 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 written approval of the president, or the president of the senate 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 February, 1985 and payable out of the amount appropriated for Compensation and Per Diem of Officers and Employees.

2—House of Delegates

Acct. No. 1020

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Compensation of Members</td>
<td>$ —</td>
</tr>
<tr>
<td></td>
<td>$ 850,000*</td>
</tr>
<tr>
<td>Compensation and Per Diem of</td>
<td>—</td>
</tr>
<tr>
<td>Officers and Employees</td>
<td>446,000</td>
</tr>
</tbody>
</table>
The appropriations for the house of delegates for the fiscal year 1984-85 are to remain in full force and effect and are hereby reappropriated to June 30, 1986.

Any balances so reappropriated may be transferred and credited to the 1985-86 accounts.

Upon the written request of the clerk of the house of delegates, the state auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the house of delegates, with approval of the speaker, is authorized to draw his requisitions upon the state auditor, payable out of the Current Expenses and 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 state auditor.

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, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution, for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the legislature, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the state auditor, payable from the Compensation and Per Diem of Officers and Employees fund or the Current Expenses and Contingent Fund of the house of delegates for such services.

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 the house resolution, unless increased between
sessions under the authority of the speaker, with approval of
the house committee on rules, and payable from the
Compensation and Per Diem of Officers and Employees item
or the Current Expenses and Contingent Fund item of the
house of delegates.

3—Joint Expenses

Acct. No. 1030

1 Joint Committee on Government and Finance .... $ — $ 4,906,223
2 To Pay Cost of Legislative Printing ........ 940,000
3 Rule-Making
4 Review Committee .................. 50,000
7 Total .................. $ — $ 5,896,223

The appropriation for Joint Expenses for the fiscal year
1984-85 are to remain in full force and effect and are hereby
reappropriated to June 30, 1986. Any balances so reappropriated may be transferred and credited to the 1985-86 accounts.

Upon written request of the clerk of the senate and the clerk
of the house of delegates, the state auditor shall transfer
amounts between items of the total appropriation in order to
protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1 Personal Services .................. $ — $ 15,729,375*
2 Annual Increment .................. 73,337
3 Other Expenses .................. 30,000 2,542,058
4 Judges' Retirement System ....... 1,076,008
5 Other Court Costs ................ 2,011,700
6 Judicial Training Programs ...... 250,000
7 Mental Hygiene Fund ............. 320,000
8 Total .................. $30,000 $ 22,002,478

* Includes salaries of supreme court justices at $55,000 per annum.
This appropriation shall be administered by the Administrative Director of the Supreme Court of Appeals who shall draw his requisitions for warrants in payment in the form of payrolls making deductions therefrom, as required by law, for taxes and other items.

The appropriation for Judges' Retirement System is to be transferred to the Judges' Retirement Fund, in accordance with the law relating thereto upon requisition of the Administrative Director of the Supreme Court of Appeals.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

Any balances so reappropriated may be transferred and credited to the 1985-86 accounts.

EXECUTIVE

5—Governor's Office
(WV Code Chapter 5)

Acct. No. 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Governor</td>
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<tr>
<td>Other Personal Services</td>
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<tr>
<td>Annual Increment</td>
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<tr>
<td>Current Expenses</td>
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</tr>
<tr>
<td>Equipment</td>
<td>$4,340</td>
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<td>Total</td>
<td>$1,458,898</td>
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6—Office of Community and Industrial Development

Acct. No. 1210

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
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</tr>
<tr>
<td>Annual Increment</td>
<td>$5,413</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$954,585</td>
</tr>
<tr>
<td>Equipment</td>
<td>$12,850</td>
</tr>
<tr>
<td>Economic Development</td>
<td></td>
</tr>
<tr>
<td>Loan Fund</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>W. Va. Automobile</td>
<td>$50,000</td>
</tr>
</tbody>
</table>


Any unexpended balance remaining in the appropriation for Federal State Coordination, Coal Development, Regional Council, Community Water Development and Partnership Grants, Fire Departments, Emergency Assistance to Small Municipal and Public Service Districts Water and Sewage Systems, Flood and National Youth Science Camp at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during fiscal year 1985-86.

Any unexpended balance remaining in Acct. No. 1210-08 (fiscal year 1978) and 1210-08 (fiscal year 1979) shall expire June 30, 1985.

7—Office of Economic and Community Development
Emergency Employment, Training and Education

(WV Code Chapter 5)

Acct. No. 1220

Any unexpended balance remaining in the appropriation for “Emergency Jobs Program Public Service Jobs”, “Vocational Centers Computer Network”, and “Emergency Jobs Pro-
gram—Parks” at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

8—Governor’s Office—Custodial Fund
(WV Code Chapter 5)
Acct. No. 1230

1 Unclassified—Total ........ $ — $ 340,658
2 To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions, and any additional household expenses occasioned by such official functions.

9—Governor’s Office—Civil Contingent Fund
(WV Code Chapter 5)
Acct. No. 1240

1 Unclassified—Total ........ $ — $ 1,000,000
2 From this 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.

Any unexpended balance remaining in this appropriation at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

10—Department of Commerce
Acct. No. 1250

1 Unclassified ....................... $ — $ 9,239,639*
2 State Parks—Capital Outlay..... — 1,035,000
3 Total ......................... $ — $ 10,274,639

*Includes within the above appropriation on line one, Unclassified, the salary of the commissioner at $65,000 per annum as fixed by statute.

Any unexpended balance remaining in the appropriation for Chief Logan State Park and Cacapon State Park—Capital Outlay at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.
### 11—Office of Emergency Services

*(WV Code Chapter 15)*

**Acct. No. 1300**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$288,460</td>
<td>$264,183*</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>1,091</td>
<td>5,411</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>227,383</td>
<td>44,371</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>27,500</td>
<td>6,500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>100,900</td>
<td></td>
</tr>
<tr>
<td>6 To Local Entities</td>
<td>675,000</td>
<td></td>
</tr>
<tr>
<td>7 Transfer to State Spending</td>
<td>176,796</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,497,130</td>
<td>$320,465</td>
</tr>
</tbody>
</table>

*Includes salary of director at $30,500 per annum.

### FISCAL

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

*(WV Code Chapter 12)*

**Acct. No. 1500**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of State Auditor</td>
<td>—</td>
<td>$46,800</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>—</td>
<td>1,581,128</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>—</td>
<td>25,560</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>—</td>
<td>671,527</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>—</td>
<td>55,650</td>
</tr>
<tr>
<td>6 Microfilm</td>
<td>—</td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>—</td>
<td>$2,400,665</td>
</tr>
</tbody>
</table>

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

*(WV Code Chapter 12)*

**Acct. No. 1510**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To Match Contributions of State Employees for Social Security—Total</td>
<td>—</td>
<td>$20,188,846</td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state’s share of social security costs for those spending units operating from the general revenue fund. The state department of highways, department of motor vehicles, workers’ compensation commissioner, 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.

Any unexpended balance remaining in the appropriation for Auditor’s Office—Social Security at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

14—Auditor’s Office—Unemployment Compensation
(WV Code Chapter 12)

Acct. No. 1520

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

The above appropriation is intended to cover the state’s share of unemployment compensation costs for those spending units operating from the general revenue fund. The state department of highways, department of motor vehicles, workers’ compensation commissioner, and other departments operating from special revenue funds and/or federal funds shall pay their proportionate share of the unemployment compensation cost for their respective divisions.

Should this appropriation be insufficient to meet the requirements of state spending units operating from the general revenue fund, any excess costs shall be a proper charge against the units and each spending unit shall reimburse to the Auditor’s Office—Unemployment Compensation any amounts required for that department for costs in excess of this appropriation.

15—Treasurer’s Office
(WV Code Chapter 12)

Acct. No. 1600

1 Salary of State Treasurer ........ $ — $ 50,400
2 Other Personal Services .......... — $ 771,078
3 Annual Increment ................ — $ 7,000
4 Current Expenses ................ — $ 302,835
5 Equipment ....................... — $ 30,000
6 Microfilm Program ............... — $ 10,000
7 Total .......................... $ — $ 1,171,313
16—Treasurer's Office—School Building Sinking Fund

(WV Code Chapter 12)

Acct. No. 1650

1 Total ................................ $ — $ 15,046,500

Any unexpended balance remaining in the appropriation for “Treasurer's Office—School Building Sinking Fund” at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

17—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 1700

1 Personal Services ............. $ — $ 85,476
2 Annual Increment ............. — 1,260
3 Current Expenses ............. — 45,643
4 Equipment ..................... — 1,000
5 Total ................................ $ — $ 133,379

18—State Tax Department

(WV Code Chapter 11)

Acct. No. 1800

1 Personal Services ............. $ — $ 9,688,604*
2 Annual Increment ............. — 170,280
3 Current Expenses ............. — 6,200,902
4 Repairs and Alterations ........ — 23,000
5 Equipment ..................... — 147,806
6 Circuit Breaker Reimbursement — 15,000
7 Multi-State Tax Compact ...... — 0
8 Property Reappraisal Program . — 1,000,000
9 Total ................................ $ — $ 17,245,592

* Includes salary of commissioner at $47,500 per annum.

Any unexpended balance remaining in the appropriation for Other Expenses and Property Reappraisal Program at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

**Department of Finance and Administration**

(WV Code Chapter 5A)

Acct. No. 2100

| 1 | Personal Services | $125,976 | $2,678,574* |
| 2 | Annual Increment | $1,188 | 54,468 |
| 3 | Current Expenses | $1,328,552 | 1,065,200 |
| 4 | Repairs and Alterations | $1,000 | 252,500 |
| 5 | Equipment | $1,109,167 | 42,800 |
| 6 | Postage | $1,700,000 |
| 7 | Utilities | $410,000 |
| 8 | Public Transportation | $410,000 |
| 9 | Fire Service Fee | $39,000 |
| 10 | Building Equipment and Supplies | $12,200 |
| 11 | Southern Regional Education Board | $80,000 |
| 12 | Council of State Governments | $37,300 |
| 13 | National Governors Association | $39,800 |
| 14 | Southern States Energy Board | $19,400 |
| 15 | Retrofit Governor's Elevator | $100,000 |
| 16 | Total | $2,565,883 | 6,941,242 |

* Includes salary of the commissioner at $45,500 per annum.

The workers' compensation commissioner, department of human services, 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 1984-85 is hereby reappropriated
for expenditure during the fiscal year 1985-86.

State department of highways shall reimburse the appropri-
ation of the department of finance and administration monthly
for all actual expenses incurred pursuant to the provisions of
section thirteen, article two-a, chapter seventeen of the code.

20—State Board of Insurance
(WV Code Chapter 29)

Acct. No. 2250

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$92,516</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$648</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$37,900</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$3,000</td>
</tr>
<tr>
<td>5</td>
<td>Premiums, Claims and Other Expenses</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$4,134,064</td>
</tr>
</tbody>
</table>

The above appropriation on line 5-6 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.

Any and all of the funds appropriated for Premiums, Claims
and Other Expenses may be transferred to a special account
for the payment of premiums, self-insurance losses, loss
adjustment expenses and loss prevention engineering fees.

Any or all of the funds appropriated for Premiums, Claims,
and Other Expenses may be transferred to a special account
for disbursement for payment of premiums and insurance
losses.
APPROPRIATIONS

LEGAL

21—Attorney General
(WV Code Chapters 5, 14, 46 and 47)

Acct. No. 2400

1 Salary of Attorney General .... $ 50,400
2 Other Personal Services ...... $ 1,858,454
3 Annual Increment ............ $ 15,904
4 Current Expenses ............ $ 401,965
5 Equipment .................. $ 63,815
6 Publication of Reports and Opinions .......... $ 20,000
7 To Protect the Resources or Tax Structure of the State in Controversies or Legal Proceedings Affecting Same .... $ 3,250
8 Consumer Protection ........ $ 305,380
9 Personal Services ........... $ (232,271)
10 Annual Increment ............ $ (1,692)
11 Current Expenses .......... $ (62,977)
12 Equipment .................. $ (8,440)

13 Total ....................... $ 2,719,168

When legal counsel or secretarial help is appointed by the attorney general, for any state spending unit, this account shall be reimbursed from such unit's appropriated account in an amount agreed upon by the attorney general and the proper authority of said spending unit.

Any unexpended balance remaining in the appropriation for Publication of Reports and Opinions at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

22—Commission on Uniform State Laws
(WV Code Chapter 29)

Acct. No. 2450

1 Unclassified—Total .......... $ 12,000
2 To pay expenses of members of the commission on uniform state laws.
## INCORPORATING AND RECORDING

### 23—Secretary of State

(WV Code Chapters 3, 5 and 59)

**Acct. No. 2500**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Salary of Secretary of State</td>
<td>$43,200</td>
</tr>
<tr>
<td>2</td>
<td>Other Personal Services</td>
<td>$488,629</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>$5,256</td>
</tr>
<tr>
<td>4</td>
<td>Current Expenses</td>
<td>$249,820</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$30,000</td>
</tr>
<tr>
<td>6</td>
<td>Certification of Primary and General Elections</td>
<td>$98,778</td>
</tr>
<tr>
<td>7</td>
<td>General Elections</td>
<td>$5,000</td>
</tr>
<tr>
<td>8</td>
<td>Publication of State Register</td>
<td>$98,778</td>
</tr>
<tr>
<td>9</td>
<td>Annual Increment</td>
<td>$576</td>
</tr>
<tr>
<td>10</td>
<td>Election Training Presentation</td>
<td>$5,000</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$921,259</strong></td>
</tr>
</tbody>
</table>

Funds appropriated on line 9 for Annual Increment shall be transferred to line 8, Publication of State Register, only as required.

Any unexpended balance remaining in current expenses and equipment at the close of the fiscal year 1984-85 is hereby reappropriated for expenditures during the fiscal year 1985-86.

## EDUCATIONAL

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

(WV Code Chapter 18)

**Acct. No. 2790**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td><strong>$126,729,154</strong></td>
</tr>
<tr>
<td>2</td>
<td>Personal Services—</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Marketing Conditions</td>
<td>$300,000</td>
</tr>
<tr>
<td>4</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>5</td>
<td>Current Expenses</td>
<td>$23,717,125</td>
</tr>
<tr>
<td>6</td>
<td>Repairs and Alterations</td>
<td>$1,309,000</td>
</tr>
<tr>
<td>7</td>
<td>Equipment</td>
<td>$1,124,000</td>
</tr>
<tr>
<td>8</td>
<td>Bureau of Coal Research</td>
<td>$1,205,000</td>
</tr>
<tr>
<td>9</td>
<td>National Research Center for Coal and Energy</td>
<td>$1,600,000</td>
</tr>
<tr>
<td>10</td>
<td>Cancer Research—W.V.U.</td>
<td>$25,000</td>
</tr>
<tr>
<td>11</td>
<td>Doctoral Research—W.V.U.</td>
<td></td>
</tr>
</tbody>
</table>
12 Agricultural and Forestry
13 Experiment Station—W.V.U.  
   Personal Services  
   Current Expenses  
14 Total  

15 $158,160,936

16 Out of the above appropriation for Current Expenses, $100,000 shall be used in accordance with Enrolled Committee Substitute for House Bill No. 1664, Regular Session, 1985.

17 Funds to cover mandated salary increases for those extension agents and specialists who are paid through nonstate appropriated funds are included in the personal services appropriation and are to be distributed to West Virginia University for that purpose.

18 Contained within line one, Personal Service, in this account, is the three percent salary increase for Extension Agents deemed by the Legislature to be the maximum available for such purpose. It is not intended that the local entity employer be required to provide any further or additional percentage increase.

25—West Virginia Board of Regents  
(WV Code Chapter 18)  
Acct. No. 2800

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$845,639</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$10,000</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$378,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$7,000</td>
</tr>
<tr>
<td>5</td>
<td>Higher Education Grant</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Program</td>
<td>$3,500,000</td>
</tr>
<tr>
<td>7</td>
<td>Tuition Contract Programs</td>
<td>$710,000</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$5,450,639</td>
</tr>
</tbody>
</table>

26—West Virginia College of Osteopathic Medicine  
(WV Code Chapter 18)  
Acct. No. 2810

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,830,750</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$0</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$1,118,000</td>
</tr>
<tr>
<td>Ch. 27</td>
<td>APPROPRIATIONS</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$50,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$64,000</td>
</tr>
<tr>
<td>6</td>
<td>Primary Health Training</td>
<td>$240,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$4,302,750</td>
</tr>
</tbody>
</table>

**27—Marshall University—Medical School**

(WV Code Chapter 18)

Acct. No. 2840

| 1 | Personal Services | $4,979,550 |
| 2 | Annual Increment | $0 |
| 3 | Current Expenses | $1,099,000 |
| 4 | Repairs and Alterations | $50,000 |
| 5 | Equipment | $100,000 |
| 6 | Total | $6,228,550 |

**28—West Virginia University—Medical School**

(WV Code Chapter 18)

Acct. No. 2850

| 1 | Personal Services | $17,518,541 |
| 2 | Annual Increment | $0 |
| 3 | Current Expenses | $6,236,000 |
| 4 | Repairs and Alterations | $300,000 |
| 5 | Equipment | $375,000 |
| 6 | Family Practice Residency Support | $458,000 |
| 7 | Community Hospital Residency Support | $945,000 |
| 8 | Total | $25,832,541 |

May be transferred to West Virginia University—medical school fund upon requisition of the governor.

**29—State Department of Education**

(WV Code Chapters 18 and 18A)

Acct. No. 2860

| 1 | Personal Services | $2,279,940 |
| 2 | Annual Increment | $36,949 |
| 3 | Current Expenses | $1,219,077 |
4 Repairs and Alterations .......... — 1,100
5 Equipment ........................ — 22,400
6 Statewide Testing Program ...... — 1,017,334
   Personal Services .............. — (203,037)
   Annual Increment .............. — (1,368)
   Other Expenses ................ — (498,411)
   Equipment ........................ — (14,500)
   Professional Competency Testing .... — (300,018)
7 Aid to Children’s Home ......... — 50,000
8 Regional Education Service Agencies ................ — 0
10 Child Development Program ... — 571,208
11 Tuition Waiver ................ — 162,216
12 Microcomputer Network Program ................ — 200,000
14 Total .......................... $ 5,800 $ 5,560,224
15 The above appropriation includes the State Board of Education and their executive office.

30—Education Employees Grievance Board
Acct. No. 2860-25

1 Unclassified—Total ............. $ — $ 100,000

31—State Department of Education—School Lunch Program
(WV Code Chapters 18 and 18A)
Acct. No. 2870

1 Personal Services ................ $ 463,302 $ 172,860
2 Annual Increment ................ 7,416 3,348
3 Current Expenses ................ 714,870 19,512
4 Repairs and Alterations .......... 1,700 —
5 Equipment ........................ 8,000 —
6 Aid to Counties—Includes Hot Lunches and Canning for
7 Hot Lunches ....................... — 1,950,000
9 To Local Entities ................ 27,098,055 —
10 Total ............................ $ 28,293,343 $ 2,145,720
### 32—State Board of Education—Vocational Division

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Acct. No. 2890</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$761,264</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>11,972</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>600,186</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>2,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>81,912</td>
</tr>
<tr>
<td>6</td>
<td>Vocational Aid</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Adult Basic Education</td>
<td>—</td>
</tr>
<tr>
<td>8</td>
<td>Start-Up Funds and Equipment for New and Existing Facilities</td>
<td>—</td>
</tr>
<tr>
<td>9</td>
<td>New and Expanding Industries</td>
<td>—</td>
</tr>
<tr>
<td>10</td>
<td>To Local Entities</td>
<td>7,175,976</td>
</tr>
<tr>
<td>11</td>
<td>Capital Outlay (Construction)</td>
<td>—</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$8,633,310</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for New and Expanding Industries at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

### 33—Educational Broadcasting Authority

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Acct. No. 2910</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>80,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>1,592,141</td>
</tr>
<tr>
<td>5</td>
<td>Regional ETV and Radio</td>
<td>—</td>
</tr>
<tr>
<td>6</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Capital Outlay—Equipment</td>
<td>—</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$1,672,141</td>
</tr>
</tbody>
</table>

Regional ETV and Radio is for the construction and operation of regional ETV and radio stations.

Funds appropriated for Regional ETV and Radio may be transferred to special revenue accounts for matching college,
13 university, city, county, federal and/or other generated revenue.

15 Funds appropriated under line 6 for Annual Increment shall be transferred to line 5, Regional ETV and Radio, only as required.

### 34—State Department of Education—State Aid to Schools  
(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2930</td>
<td>Professional Educators</td>
<td>$-0-</td>
</tr>
<tr>
<td></td>
<td>Service Personnel</td>
<td>$-0-</td>
</tr>
<tr>
<td></td>
<td>Fixed Charges</td>
<td>$-0-</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

### 35—State Department of Education—State Aid to Schools  
(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2940</td>
<td>Salary Equalization—Total</td>
<td>$-0-</td>
</tr>
</tbody>
</table>

### 36—State Department of Education—State Aid to Schools  
(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Account No.</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2950</td>
<td>Professional Educators</td>
<td>$461,445,783</td>
</tr>
<tr>
<td></td>
<td>Service Personnel</td>
<td>$163,308,742</td>
</tr>
<tr>
<td></td>
<td>Fixed Charges</td>
<td>$70,222,389</td>
</tr>
<tr>
<td></td>
<td>Transportation</td>
<td>$25,507,853</td>
</tr>
<tr>
<td></td>
<td>Administration</td>
<td>$4,383,733</td>
</tr>
<tr>
<td></td>
<td>Other Current Expenses</td>
<td>$40,609,033</td>
</tr>
<tr>
<td></td>
<td>Improve Instructional Programs</td>
<td>$27,120,013</td>
</tr>
<tr>
<td></td>
<td>Basic Foundation Allowances</td>
<td>$792,597,546</td>
</tr>
<tr>
<td></td>
<td>Less Local Share</td>
<td>$103,648,187</td>
</tr>
<tr>
<td></td>
<td>Total Basic State Aid</td>
<td>$688,949,359</td>
</tr>
<tr>
<td></td>
<td>Loss Reduction</td>
<td>$2,699,443</td>
</tr>
<tr>
<td></td>
<td>Staffing Improvement</td>
<td>$1,461,181</td>
</tr>
<tr>
<td></td>
<td>Professional Educators</td>
<td>$702,918</td>
</tr>
<tr>
<td></td>
<td>Service Personnel</td>
<td>$758,263</td>
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### Ch. 27] Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increased Enrollment</td>
<td>200,000</td>
</tr>
<tr>
<td>Total</td>
<td>$693,309,983</td>
</tr>
</tbody>
</table>

#### 37—State Department of Education—Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Acct. No. 2960

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$426,902</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>5,368</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$775,596</td>
</tr>
<tr>
<td>Equipment</td>
<td>25,971</td>
</tr>
<tr>
<td>Out-of-State Instruction</td>
<td>$428,000</td>
</tr>
<tr>
<td>Aid-to-Counties</td>
<td>252,992</td>
</tr>
<tr>
<td>County Grant Awards</td>
<td>(6,054,303)</td>
</tr>
<tr>
<td>Regional Education Service Agency Grants</td>
<td>-0-</td>
</tr>
<tr>
<td>Special State Projects</td>
<td>(209,397)</td>
</tr>
<tr>
<td>Regional Education Service Agency Evaluations</td>
<td>-0-</td>
</tr>
<tr>
<td>Medley Educational Programs</td>
<td>(1,191,458)</td>
</tr>
<tr>
<td>Summer Camp for Gifted Children</td>
<td>(77,978)</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>19,303,787</td>
</tr>
<tr>
<td>PreSchool Handicapped Fund</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$20,790,616</td>
</tr>
</tbody>
</table>

10 The appropriation for Out-of-State Instruction may be expended to provide instruction, care and maintenance for educable persons who are severely handicapped and for whom the state provides no facilities.

14 The appropriation for Aid-to-Counties may be expended by county boards of education for the initiation, maintenance and/or improvement of special education programs including employment of special professional education personnel solely...
The appropriation for Special State Projects may be expended to support (1) an instructional materials center for visually handicapped children at the West Virginia schools for the deaf and the blind, (2) the state special olympics program, (3) the West Virginia advisory council for the education of exceptional children at the West Virginia college of graduate studies, and (4) statewide training activities or other programs benefitting exceptional children.

38—Teachers' Retirement Board

(WV Code Chapter 18)

Acct. No. 2980

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Teachers' Retirement Fund</td>
<td>$33,200,000</td>
</tr>
<tr>
<td>2</td>
<td>Supplemental Benefits for Annuitants</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Annuitants</td>
<td>6,400,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$39,600,000</td>
</tr>
</tbody>
</table>

39—West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Acct. No. 3330

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,801,943</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>899,800</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>396,200</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>223,100</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$5,320,043</td>
</tr>
</tbody>
</table>

40—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Acct. No. 3360

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$144,439</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>2,584</td>
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</table>
### Ch. 27] APPROPRIATIONS

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>WV Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>Chapter 10</td>
<td>$93,700</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td></td>
<td>$19,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td></td>
<td>$5,250</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$264,973</td>
</tr>
</tbody>
</table>

#### 41—West Virginia Library Commission

(WV Code Chapter 10)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>WV Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>Chapter 10</td>
<td>$90,771</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$22,140</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td></td>
<td>$220,500</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td></td>
<td>$4,100</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td></td>
<td>$10,000</td>
</tr>
<tr>
<td>6</td>
<td>Per-Capita Grants</td>
<td></td>
<td>$5,812,964</td>
</tr>
<tr>
<td>7</td>
<td>Library Matching Fund (Construction)</td>
<td></td>
<td>$250,940</td>
</tr>
<tr>
<td>8</td>
<td>Books, Periodicals and Films</td>
<td></td>
<td>$250,000</td>
</tr>
<tr>
<td>9</td>
<td>To Local Entities</td>
<td></td>
<td>$543,615</td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td></td>
<td>$1,061,226</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for “Library Matching Fund (Construction)” at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

#### 42—Department of Culture and History

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>WV Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>Chapter 29</td>
<td>$188,020</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td></td>
<td>$11,736</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td></td>
<td>$287,899</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td></td>
<td>$30,100</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td></td>
<td>$51,900</td>
</tr>
<tr>
<td>6</td>
<td>Arts and Humanities Fund</td>
<td></td>
<td>$868,832</td>
</tr>
<tr>
<td>7</td>
<td>Personal Services</td>
<td></td>
<td>(189,181)</td>
</tr>
<tr>
<td>8</td>
<td>Annual Increment</td>
<td></td>
<td>(1,800)</td>
</tr>
<tr>
<td>9</td>
<td>Current Expenses</td>
<td></td>
<td>(601)</td>
</tr>
<tr>
<td>10</td>
<td>Grants and Contractual Services</td>
<td></td>
<td>(677,250)</td>
</tr>
<tr>
<td>11</td>
<td>Department Programming</td>
<td></td>
<td>$480,400</td>
</tr>
</tbody>
</table>

*Note: Amounts are in thousands.*
### Appropriations

<table>
<thead>
<tr>
<th>Program</th>
<th>Budget 1983-84</th>
<th>Budget 1984-85</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outreach and Education</td>
<td></td>
<td>(92,570)</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td></td>
<td>(92,830)</td>
</tr>
<tr>
<td>Cultural Center Programs</td>
<td></td>
<td>(295,000)</td>
</tr>
<tr>
<td>Historical Preservation</td>
<td>69,051</td>
<td>150,751</td>
</tr>
<tr>
<td>Washington Carver Camp</td>
<td></td>
<td>140,226</td>
</tr>
<tr>
<td>Grants, Fairs and Festivals</td>
<td></td>
<td>655,000</td>
</tr>
<tr>
<td>Independence Hall</td>
<td></td>
<td>80,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$815,462</td>
<td>$3,863,533</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $36,500 per annum.

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 five-a and article three, chapter twelve of the code.

All federal moneys received as reimbursement to the department of culture and history for moneys expended from the general revenue fund for Arts and Humanities and Historical Preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

Any unexpended balance remaining in the appropriation for Washington Carver Camp at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

## Corrections

### Probation and Parole Board

(WV Code Chapter 62)

Accnt. No. 3650

<table>
<thead>
<tr>
<th>Description</th>
<th>Budget 1983-84</th>
<th>Budget 1984-85</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries of Members of Board</td>
<td></td>
<td>$81,000*</td>
</tr>
<tr>
<td>of Probation and Parole</td>
<td>$81,000*</td>
<td></td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$50,552</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$864</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$25,000</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$300</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>$1,600</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$159,316</td>
<td></td>
</tr>
</tbody>
</table>

*Three members at $27,000 per annum each.
### 44—Department of Corrections—Central Office

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$—</td>
<td>$473,838*</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>—</td>
<td>2,484</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>—</td>
<td>213,418</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>—</td>
<td>1,500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>—</td>
<td>100,000</td>
</tr>
<tr>
<td>6 Adult Female</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7 Offenders Contract</td>
<td>—</td>
<td>945,901</td>
</tr>
<tr>
<td>Personal Services</td>
<td>—</td>
<td>(21,848)</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>(311)</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>(923,742)</td>
</tr>
<tr>
<td>8 Total</td>
<td>$—</td>
<td>$1,737,141</td>
</tr>
</tbody>
</table>

* Includes Salary of the Commissioner at $36,500 per annum.

### 45—West Virginia Penitentiary

Acct. No. 3750

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$11,564,665</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>—</td>
<td>156,271</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>—</td>
<td>6,698,394</td>
</tr>
<tr>
<td>Inmate Medical Expenses</td>
<td>—</td>
<td>(1,586,887)</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>(5,111,507)</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>—</td>
<td>239,500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>—</td>
<td>115,000</td>
</tr>
<tr>
<td>6 Capital Outlay</td>
<td>—</td>
<td>2,000,000</td>
</tr>
<tr>
<td>7 Pruntytown Facility—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Unclassified)</td>
<td>—</td>
<td>1,000,000</td>
</tr>
<tr>
<td>8 Total</td>
<td>$—</td>
<td>$21,773,830</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

### 46—Department of Corrections—Correctional Units

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$—</td>
<td>$11,564,665</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>—</td>
<td>156,271</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>—</td>
<td>6,698,394</td>
</tr>
<tr>
<td>Inmate Medical Expenses</td>
<td>—</td>
<td>(1,586,887)</td>
</tr>
<tr>
<td>Other</td>
<td>—</td>
<td>(5,111,507)</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>—</td>
<td>239,500</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>—</td>
<td>115,000</td>
</tr>
<tr>
<td>6 Capital Outlay</td>
<td>—</td>
<td>2,000,000</td>
</tr>
<tr>
<td>7 Pruntytown Facility—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Unclassified)</td>
<td>—</td>
<td>1,000,000</td>
</tr>
<tr>
<td>8 Total</td>
<td>$—</td>
<td>$21,773,830</td>
</tr>
</tbody>
</table>
The commissioner of corrections, 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 the lines 1, 2, 3, 4 and 5 above.

HEALTH AND HUMAN SERVICES

47—State Health Department—Central Office

(WV Code Chapter 16)

Acct. No. 4000

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
<th>2023 Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,132,101</td>
<td>$6,998,249*</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>28,908</td>
<td>121,104</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>19,858,256</td>
<td>4,728,830</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>30,000</td>
<td>4,000</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>91,352</td>
<td>130,104</td>
</tr>
<tr>
<td>6</td>
<td>Reimbursement to Community Mental Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Retardation Centers</td>
<td>—</td>
<td>19,351,508</td>
</tr>
<tr>
<td>8</td>
<td>MH/MR Special Projects—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Current Expenses</td>
<td>—</td>
<td>1,000,000</td>
</tr>
<tr>
<td>10</td>
<td>Reimbursement to Community Behavioral Health Programs</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>for Social Services</td>
<td>—</td>
<td>1,613,632</td>
</tr>
<tr>
<td>12</td>
<td>Special Olympics</td>
<td>—</td>
<td>28,000</td>
</tr>
<tr>
<td>13</td>
<td>State Aid to Local Agencies</td>
<td>—</td>
<td>6,077,898</td>
</tr>
<tr>
<td>14</td>
<td>Grants to Counties and EMS Entities</td>
<td>—</td>
<td>1,870,000</td>
</tr>
<tr>
<td>15</td>
<td>EMS Entities</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Maternal and Child Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Clinics, Clinicians and Medical Contracts</td>
<td>—</td>
<td>2,430,000</td>
</tr>
<tr>
<td>18</td>
<td>Foster Grandparents</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Stipends/Travel</td>
<td>—</td>
<td>62,370</td>
</tr>
<tr>
<td>20</td>
<td>Hemophiliac Assistance Program</td>
<td>—</td>
<td>124,212</td>
</tr>
<tr>
<td>21</td>
<td>Annual Increment</td>
<td>—</td>
<td>720</td>
</tr>
</tbody>
</table>
Placement Programs for the Developmentally Disabled ... $3,842,750
Primary Care Contracts to Community Health Centers ... $1,831,500
Agent Orange ... $204,117
Annual Increment ... $468
Alcohol, Drug Abuse, and D.D. Corporate Nonprofit Community Health Centers F.M.H.A.
Mortgage Finance ... $105,913
Rural Consortia Development Fund for Community Health Centers $500,000
Total ... $22,140,617 $53,461,375
* Includes salary of director at $54,500 per annum.

Funds appropriated on line 24 for Annual Increment shall be transferred to line 23, Hemophiliac Assistance Program, only as required.
Funds appropriated on line 30 for Annual Increment shall be transferred to line 29, Agent Orange, only as required.
Any unexpended balance remaining in the appropriation for Placement Programs for the Developmentally Disabled and Agent Orange at the end of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

Contained within line 15, State Aid to Local Agencies, in this account, is the three percent salary increase deemed by the Legislature to be the maximum available for such purpose; and notwithstanding the applicability of any civil service classification schedule, it is not intended that the local entity employer be required to provide any further or additional percentage increase.

48—Department of Veterans Affairs—Veterans Home
(WV Code Chapter 9A)
Acct. No. 4010

Personal Services ... $1,154,472
Annual Increment ... 13,716
Current Expenses ... 624,143
4 Equipment ........................ 13,900
5 Total ......................... $ 638,043 $ 1,168,188

Any unexpended balance remaining in the appropriation for Repairs and Alterations and Equipment at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

49—Solid Waste Disposal
(WV Code Chapter 16)
Acct. No. 4020

1 Personal Services ................ $ — $ 97,750
2 Annual Increment ................ — $ 792
3 Current Expenses ................ — $ 32,100
4 Equipment ....................... — $ 1,000
5 Total ............................ $ — $ 131,642

50—Department of Veterans’ Affairs
(WV Code Chapter 9A)
Acct. No. 4040

1 Personal Services ................ $ — $ 708,145*
2 Annual Increment ................ — $ 15,156
3 Current Expenses ................ — $ 129,998
4 Equipment ....................... — $ 2,000
5 Educational opportunities for children of War Veterans   — $ 9,500
6 In aid of Veterans Day         — $ 7,000
7 Patriotic Exercises ............. — $ 7,000
8 Total ............................ $ — $ 871,799

* Includes salary of the director at $30,500 per annum.

Moneys in lines 7-8 above are 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.
### 51—Department of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$17,447,232</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>387,984</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>205,757,809</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>104,250</td>
</tr>
<tr>
<td>6</td>
<td>Assistance Payments</td>
<td>—</td>
</tr>
<tr>
<td>7</td>
<td>Social Security</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Matching Fund</td>
<td>—</td>
</tr>
<tr>
<td>9</td>
<td>Indigent Burials</td>
<td>—</td>
</tr>
<tr>
<td>10</td>
<td>Social Services</td>
<td>—</td>
</tr>
<tr>
<td>11</td>
<td>Emergency Assistance</td>
<td>—</td>
</tr>
<tr>
<td>12</td>
<td>Medical Services</td>
<td>—</td>
</tr>
<tr>
<td>13</td>
<td>T.R.I.P</td>
<td>—</td>
</tr>
<tr>
<td>14</td>
<td>Food Stamps (Value)</td>
<td>150,000,000†</td>
</tr>
<tr>
<td>15</td>
<td>Government Donated</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Food (Value)</td>
<td>28,000,000†</td>
</tr>
<tr>
<td>17</td>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Retirement Matching</td>
<td>—</td>
</tr>
<tr>
<td>19</td>
<td>Public Employees Health</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Insurance</td>
<td>—</td>
</tr>
<tr>
<td>21</td>
<td><strong>Total</strong></td>
<td><strong>$223,697,275</strong></td>
</tr>
</tbody>
</table>

† For information only—not included in Total.
* Includes salary of the commissioner at $45,500 per annum.

From the Medical Services line item above, $3,000,000 shall be expended as provided in Enrolled Committee Substitute for H. B. 1424, creating the indigent care fund, in order that the state may receive the maximum amount of corresponding federal funds, and all such state and federal funds shall be used, and may be transferred as required, for the purposes set forth in the aforesaid bill and in accordance with the provisions thereof.

### 52—State Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$309,851</td>
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### Appropriations

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>3,461</td>
<td></td>
</tr>
<tr>
<td>Current Expenses</td>
<td>214,361</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>9,000</td>
<td></td>
</tr>
<tr>
<td>Programs for Elderly</td>
<td>3,197,000</td>
<td></td>
</tr>
<tr>
<td>Golden Mountaineer Program</td>
<td>106,506</td>
<td></td>
</tr>
<tr>
<td>Personal Service</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Annual Increment</td>
<td>(47,822)</td>
<td></td>
</tr>
<tr>
<td>Other Expenses</td>
<td>(58,000)</td>
<td></td>
</tr>
<tr>
<td>Silver Haired Legislature</td>
<td>20,000</td>
<td></td>
</tr>
<tr>
<td>To Local Entities</td>
<td>8,277,155</td>
<td></td>
</tr>
<tr>
<td>Senior Citizens Centers—Land Acquisitions</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$8,813,828</td>
<td>$3,689,627</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Senior Citizen Centers—Land Acquisition, Construction, Repairs and Alterations, at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

Contained within line five, Programs for the Elderly, in this account, is the three percent salary increase deemed by the Legislature to be the maximum available for such purpose.

It is not intended that the local entity employer be required to provide any further or additional percentage increase.

53—State Health Department—Medical Facilities (Control)

(WV Code Chapter 16)

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$44,363,978</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>1,052,830</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>13,369,075</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>667,850</td>
</tr>
<tr>
<td>Equipment</td>
<td>385,593</td>
</tr>
<tr>
<td>Student Nurse Affiliation</td>
<td>—</td>
</tr>
<tr>
<td>Program (Huntington)</td>
<td>82,368</td>
</tr>
<tr>
<td>Psychiatric Training Center—</td>
<td>250,048</td>
</tr>
<tr>
<td>Student Nurses (Weston)</td>
<td>—</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 the lines 1, 2, 3, 4 and 5 above.

Funds appropriated on line 10 Annual Increment shall be transferred to lines 8-9, Psychiatric Training Center—Student Nurses (Weston), only as required.

54—State Board of Education—Rehabilitation Division
(WV Code Chapter 18)
Acct. No. 4405

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>2022</th>
<th>2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$9,900,221</td>
<td>$5,655,393</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>36,180</td>
<td>276,012</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>5,402,706</td>
<td>1,035,300</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>125,282</td>
<td>1,400</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>282,537</td>
<td>51,600</td>
</tr>
<tr>
<td>6</td>
<td>Case Services</td>
<td>3,164,090</td>
<td>2,302,500</td>
</tr>
<tr>
<td>7</td>
<td>Social Security</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Matching Fund</td>
<td>478,208</td>
<td>318,043</td>
</tr>
<tr>
<td>9</td>
<td>WVU-Reimbursement</td>
<td>692,799</td>
<td>50,900</td>
</tr>
<tr>
<td>10</td>
<td>Workshop Development</td>
<td></td>
<td>1,181,400</td>
</tr>
<tr>
<td>11</td>
<td>Blind Services Coordinating Unit</td>
<td></td>
<td>37,000</td>
</tr>
<tr>
<td>12</td>
<td>Disability Determination</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Medical Payments</td>
<td>6,918,450</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Total</td>
<td>$27,000,473</td>
<td>$10,909,548</td>
</tr>
</tbody>
</table>

BUSINESS AND INDUSTRIAL RELATIONS

55—Bureau of Labor and Department of Weights and Measures
(WV Code Chapter 21)
Acct. No. 4500

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>2022</th>
<th>2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$214,103</td>
<td>$1,140,835*</td>
</tr>
<tr>
<td>Line</td>
<td>Description</td>
<td>2023</td>
<td>2024</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>2,736</td>
<td>13,680</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>99,842</td>
<td>319,300</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>2,500</td>
<td>900</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>5,000</td>
<td>4,600</td>
</tr>
<tr>
<td>6</td>
<td>Labor Management Advisory Council</td>
<td>-</td>
<td>26,832</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td>$324,181</td>
<td>$1,506,147</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $34,000 per annum.

**56—Department of Employment Security**

Acct. No. 4510

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>2023</th>
<th>2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Interest Assessment—Total</td>
<td></td>
<td>$1,900,000</td>
</tr>
</tbody>
</table>

The above appropriation is intended to pay the federal government interest due on loan advances made to the state of West Virginia for payment of unemployment compensation benefits.

**57—Department of Mines**

(WV Code Chapters 20 and 22)

Acct. No. 4600

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>2023</th>
<th>2024</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
<td>$0</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>5</td>
<td>Miner Training, Education and Certification</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>6</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>7</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>8</td>
<td>Board of Coal Mine Health and Safety</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>9</td>
<td>Gas Well Certification</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>10</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>11</td>
<td>Development of Mine Safety Program</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>12</td>
<td>Annual Increment</td>
<td>-</td>
<td>-0-</td>
</tr>
<tr>
<td>13</td>
<td>Total</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

Funds appropriated on line 7 for Annual Increment shall be transferred to line 5-6, Miner Training, Education and
18 Certification, only as required.

19 Funds appropriated on line 11 for Annual Increment shall be transferred to line 10, Gas Well Certification, only as required.

20 Funds appropriated on line 14 for Annual Increment shall be transferred to line 12-13, Development of Mine Safety Program, only as required.

58—Department of Energy

(WV Code Chapter 22)

Acct. No. 4700

| Unclassified—Total | $ 59,928,780 | $ 8,367,497* |

*Includes within the above appropriation, the salary of the commissioner at $65,000 per annum and the deputy commissioner at $45,000 per annum as fixed by statute.

59—Interstate Commission on Potomac River Basin

Acct. No. 4730

| West Virginia’s contribution to Potomac River Basin | $ 20,300 |

60—Ohio River Valley Water Sanitation Commission

Acct. No. 4740

| West Virginia’s contribution to Ohio River Valley Water Sanitation Commission | $ 70,490 |

61—West Virginia Air Pollution Control Commission

(WV Code Chapter 16)

Acct. No. 4760

| Personal Services | $ 778,661 | $ 603,489 |
| Annual Increment | 5,760 | 6,444 |
### Appropriations

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fiscal Year 2018</th>
<th>Fiscal Year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000</td>
<td>Current Expenses</td>
<td>$386,870</td>
<td>$177,512</td>
</tr>
<tr>
<td>0001</td>
<td>Equipment</td>
<td>$17,500</td>
<td>$1,000</td>
</tr>
<tr>
<td>0002</td>
<td>Total</td>
<td>$1,188,791</td>
<td>$788,445</td>
</tr>
</tbody>
</table>

#### 62—State Athletic Commission

(WV Code Ch. 29)

Acct. No. 4790

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fiscal Year 2018</th>
<th>Fiscal Year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000</td>
<td>Unclassified—Total</td>
<td>$5,500</td>
<td></td>
</tr>
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</table>

#### 63—West Virginia State Aeronautics Commission

(WV Code Chapter 11)

Acct. No. 4850

<table>
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<tr>
<th>Account</th>
<th>Description</th>
<th>Fiscal Year 2018</th>
<th>Fiscal Year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000</td>
<td>Personal Services</td>
<td>$341,270*</td>
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</tr>
<tr>
<td>0001</td>
<td>Annual Increment</td>
<td></td>
<td>$4,428</td>
</tr>
<tr>
<td>0002</td>
<td>Current Expenses</td>
<td></td>
<td>$76,200</td>
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<tr>
<td>0003</td>
<td>Equipment</td>
<td></td>
<td>$300</td>
</tr>
<tr>
<td>0004</td>
<td>Total</td>
<td></td>
<td>$422,198</td>
</tr>
</tbody>
</table>

* Includes salary of the commissioner at $30,500 per annum.

#### 64—West Virginia Nonintoxicating Beer Commissioner

(WV Code Chapter 19)

Acct. No. 4900

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fiscal Year 2018</th>
<th>Fiscal Year 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>0000</td>
<td>Personal Services</td>
<td>$1,078,546</td>
<td></td>
</tr>
<tr>
<td>0001</td>
<td>Annual Increment</td>
<td></td>
<td>$8,028</td>
</tr>
<tr>
<td>0002</td>
<td>Current Expenses</td>
<td></td>
<td>$118,700</td>
</tr>
<tr>
<td>0003</td>
<td>Equipment</td>
<td></td>
<td>$10,000</td>
</tr>
<tr>
<td>0004</td>
<td>Total</td>
<td></td>
<td>$1,215,274</td>
</tr>
</tbody>
</table>
**AGRICULTURE**

66—*Department of Agriculture*  
(WV Code Chapter 19)  
Acct. No. 5100

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary of Commissioner</td>
<td>$46,800</td>
</tr>
<tr>
<td>Other Personal Services</td>
<td>$2,132,468</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$46,080</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,051,037</td>
</tr>
<tr>
<td>Equipment</td>
<td>$241,859</td>
</tr>
<tr>
<td>Multiflora Rose Eradication Program</td>
<td>$115,000</td>
</tr>
<tr>
<td>Gypsy Moth Program</td>
<td>$300,000</td>
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<tr>
<td>Forestry Division</td>
<td></td>
</tr>
<tr>
<td>(Unclassified)</td>
<td>$358,188</td>
</tr>
<tr>
<td>Total</td>
<td>$815,096</td>
</tr>
</tbody>
</table>

* Includes within the above appropriation on line 9-10, Forestry Division (unclassified) the salary of the director at $45,000 per annum, as fixed by statute.

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

67—*Farm Management Commission*  
(WV Code Chapter 19)  
Acct. No. 5110

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,077,133</td>
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<tr>
<td>Annual Increment</td>
<td>$19,584</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$987,200</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$265,000</td>
</tr>
<tr>
<td>Equipment</td>
<td>$293,000</td>
</tr>
<tr>
<td>Livestock Purchase</td>
<td>$273,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,914,917</td>
</tr>
</tbody>
</table>

68—*Department of Agriculture—Soil Conservation Committee*  
(WV Code Chapter 19)  
Acct. No. 5120

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$362,276</td>
</tr>
<tr>
<td>Item</td>
<td>Amount</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>2</td>
<td>7,776</td>
</tr>
<tr>
<td>3</td>
<td>122,699</td>
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<tr>
<td>4</td>
<td>150,000</td>
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<tr>
<td>5</td>
<td>500,000</td>
</tr>
<tr>
<td>6</td>
<td>85,000</td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>$1,227,751</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Watershed Program and Mud River Flood Control Project at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

69—Department of Agriculture—Division of Rural Resources

(Matching Fund)

(WV Code Chapter 19)

Acct. No. 5130

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$833,185</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>13,680</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>222,287</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>47,000</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>$1,116,152</td>
<td>Total</td>
</tr>
</tbody>
</table>

Any part or all of the appropriation may be transferred to special revenue fund for the purpose of matching federal funds for the above named program.

70—Department of Agriculture—Meat Inspection

(WV Code Chapter 19)

Acct. No. 5140

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$420,992</td>
<td>Personal Services</td>
</tr>
<tr>
<td>2</td>
<td>7,110</td>
<td>Annual Increment</td>
</tr>
<tr>
<td>3</td>
<td>294,161</td>
<td>Current Expenses</td>
</tr>
<tr>
<td>4</td>
<td>2,500</td>
<td>Equipment</td>
</tr>
<tr>
<td>5</td>
<td>$724,763</td>
<td>Total</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$414,252</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7,110</td>
<td></td>
</tr>
<tr>
<td></td>
<td>183,446</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2,395</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$607,203</td>
<td></td>
</tr>
</tbody>
</table>
Any part or all of the appropriation from general revenue may be transferred to special revenue fund for the purpose of matching federal funds for the above named program.

71—Department of Agriculture—Agricultural Awards
(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Acct. No. 5150</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Agricultural Awards</td>
<td>$</td>
<td>$70,000</td>
</tr>
<tr>
<td>2 Fairs and Festivals</td>
<td>—</td>
<td>$168,950</td>
</tr>
<tr>
<td>3 Total</td>
<td>$</td>
<td>$238,950</td>
</tr>
</tbody>
</table>

CONSERVATION AND DEVELOPMENT

72—Geological and Economic Survey

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$127,549</td>
<td>$1,388,095</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>1,044</td>
<td>15,192</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>68,581</td>
<td>304,612</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>1,500</td>
<td>20,888</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>2,500</td>
<td>14,000</td>
</tr>
<tr>
<td>6 Special Studies</td>
<td>—</td>
<td>61,197</td>
</tr>
<tr>
<td>7 To Secure Federal and Other Contracts</td>
<td>—</td>
<td>$50,000</td>
</tr>
<tr>
<td>9 Total</td>
<td>$201,174</td>
<td>$1,853,984</td>
</tr>
</tbody>
</table>

The appropriation on line 7-8, To Secure Federal and Other Contracts, may be transferred to a special revenue account for the purpose of providing advance funding for such contracts.

73—Water Resources Board

<table>
<thead>
<tr>
<th>Acct. No. 5640</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total</td>
<td>$</td>
<td>$116,276</td>
</tr>
</tbody>
</table>

74—Department of Natural Resources
(WV Code Chapter 20)

<table>
<thead>
<tr>
<th>Acct. No. 5650</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$3,868,923</td>
<td>$4,131,358*</td>
<td></td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>52,884</td>
<td>64,350</td>
<td></td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>2,051,730</td>
<td>983,830</td>
<td></td>
</tr>
</tbody>
</table>
Repairs and Alterations           126,869  97,400  
Equipment                        880,745  89,500  
Fire Prevention Control          —       —  
  Personal Services                —       —  
  Annual Increment                 —       —  
  Other Expenses                   —       —  
Reclamation Board                —       —  
  of Review                        —       —  
Annual Increment                  —       —  
Debt Service                      —       —  
Grave Creek Mound State Park      —       —  
To Local Entities                 —       —  
Transfer To State                 —       —  
  Spending Units                   301,386 —  
  Land and Buildings               300,000 —  
Total                            $ 7,582,537 $ 5,366,438  

* Includes salary of the director at $45,500 per annum.
* Includes salary of the director at $45,500 per annum.

Any revenue derived from mineral extraction at any state park shall be deposited in the special revenue account of the department of natural resources.

75—Public Land Corporation
(WV Code Chapter 20)

* Acct. No. 5660

Personal Services                $       $ 180,183
Annual Increment                  —       — 1,080
Current Expenses                  —       — 73,400
Repairs and Alterations           —       — 20,000
Equipment                         —       — 5,000
Total                            $       $ 279,555

Any unexpended balance remaining in the appropriations for Chief Logan State Park and Blennerhassett Island at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

* Clerk’s Note: The Governor reduced Current Expenses from $156,400.
### 76—Water Development Authority

*(WV Code Chapter 20)*

**Acct. No. 5670**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Outlay</td>
<td>$237,790</td>
</tr>
<tr>
<td>2</td>
<td>Flatwoods-Canoe run PSD (Water)</td>
<td>$68,000</td>
</tr>
<tr>
<td>3</td>
<td>Marshall County PSD No. 1 (Sewer)</td>
<td>$50,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$355,790</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Phase III Hardship Grants, Construction Grants Phase III, Hardship Grants, Bolair PSD, McMechen Water Project, Loan and Grant Program, Capital Outlay—Sewer and Capital Outlay—Water, at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

### 77—West Virginia Railroad Maintenance Authority

*(WV Code Chapter 29)*

**Acct. No. 5690**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$547,401</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$3,924</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$150,000</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$100,000</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>$100,000</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td>$971,325</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Current Expenses and Repairs and Alterations at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

The above appropriation for unclassified is to be spent to purchase the Chester-Newell spur line.

### PROTECTION

### 78—Department of Public Safety

*(WV Code Chapter 15)*

**Acct. No. 5700**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$14,561</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$16,126,394*</td>
</tr>
</tbody>
</table>
2. Annual Increment ........................................ 252 82,404
3. Current Expenses ................................. 93,617 7,531,486
4. Repairs and Alterations ........................... — 300,000
5. Equipment ............................................. 8,700 2,100,000
6. Emergency Fund ...................................... — 10,000
7. Total ................................................. $ 117,130 $ 26,150,284

* Includes salary of the superintendent at $42,500 per annum.

79—Adjutant General—State Militia
(WV Code Chapter 15)

Acct. No. 5800

1. Personal Services .................................... $ 180,408 $ 273,140*
2. Annual Increment .................................... 2,412 5,472
3. Current Expenses .................................... 299,400 730,000
4. Repairs and Alterations ............................ 295,700 62,000
5. Equipment ............................................. 5,000 20,000
6. Compensation of Commanding
   Officers, Clerical Allowances
   and Uniform Allowances ........................... — 124,000
7. Property Maintenance ............................... — 1,128,812
8. Annual Increment .................................... — 13,572
9. State Armory Board ................................. — 2,465,766
10. Annual Increment .................................... — 13,248
11. College Education Fund ............................ — 200,000
12. Total ................................................. $ 782,920 $ 5,036,010

* Includes salary of the adjutant general at $34,000 per annum.

Funds appropriated on line 10 for Annual Increment shall be transferred to line 9, Property Maintenance, only as required.

Funds appropriated under line 12 for Annual Increment shall be transferred to line 11, State Armory Board, only as required.

BOARDS AND COMMISSIONS

80—West Virginia Civil Service System
(WV Code Chapter 29)

Acct. No. 5840

1. Personal Services .................................... $ — $ 908,321*
Ch. 27] Appropriations 95

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$15,372</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$264,500</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$64,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>$1,252,193</td>
</tr>
</tbody>
</table>

* Includes salary of the director at $36,500 per annum.

The director shall maintain accurate records reflecting the cost of administering the provisions of this appropriation. At the close of each quarter-year period, the director 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 pro rata share of the administrative cost based on the relationship between the quarterly-average number of employees in the service of such department, commission, board or agency and the quarterly-average number of employees in the service of all the departments, commissions, boards and agencies of the state for the appropriate calendar quarter.

This reimbursement is to be deposited in the general revenue fund.

81—West Virginia Public Legal Services Council

(WV Code Chapter 29)

Acct. No. 5900

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Council and Central office</td>
<td>$195,201</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$558</td>
</tr>
<tr>
<td>3</td>
<td>Appointed Counsel Fees</td>
<td>$3,748,881</td>
</tr>
<tr>
<td>4</td>
<td>Public Defender Operations</td>
<td>$427,300</td>
</tr>
<tr>
<td>5</td>
<td>Criminal Law Research Center</td>
<td>$130,178</td>
</tr>
<tr>
<td>6</td>
<td>Appellate Division</td>
<td>$130,178</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$4,502,118</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation Appointed Counsel Fees at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.
Funds appropriated on line 2 for Annual Increment shall be transferred to line 1, Council and Central Office, only as required.

82—*Human Rights Commission*

*(WV Code Chapter 5)*

Acct. No. 5980

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$195,285</td>
<td>$451,787</td>
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<tr>
<td>Annual Increment</td>
<td>144</td>
<td>5,292</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>65,999</td>
<td>233,948</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>11,708</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$261,428</strong></td>
<td><strong>$702,735</strong></td>
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</tbody>
</table>

83—*Women's Commission*

*(WV Code Chapter 29)*

Acct. No. 6000

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>—</td>
<td>$52,374</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>—</td>
<td>527</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>—</td>
<td>22,300</td>
</tr>
<tr>
<td>Equipment</td>
<td>—</td>
<td>3,700</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>—</strong></td>
<td><strong>$78,901</strong></td>
</tr>
</tbody>
</table>

84—*West Virginia Public Employees Retirement Board*

*(WV Code Chapter 5)*

*Acct. No. 6140*

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers Accumulation Fund</td>
<td>—</td>
<td>$12,561,966</td>
</tr>
<tr>
<td>Expense Fund</td>
<td>—</td>
<td>70,000</td>
</tr>
<tr>
<td>Supplemental Benefits For Annuity</td>
<td>—</td>
<td>2,232,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>—</strong></td>
<td><strong>$14,863,966</strong></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 the general revenue fund. The state department of highways, department of motor vehicles, workers' compensation commissioner, public service

*Clerk's Note: The Governor reduced Employers Accumulation Fund from $14,423,966.*
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.

85—West Virginia Public Employees Insurance Board

(WV Code Chapter 5)

Acct. No. 6150

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$351,380</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$5,868</td>
</tr>
<tr>
<td>Public Employees Health Insurance State Contributions</td>
<td>$78,442,568</td>
</tr>
<tr>
<td>Total</td>
<td>$78,799,816</td>
</tr>
</tbody>
</table>

The above appropriation is intended to cover the state's share of public employees health insurance costs for those spending units operating from the general revenue fund. The state department of highways, department of motor vehicles, workers' compensation commissioner, 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 appropriations are not made, such payments may be made from the balances in the various special revenue fund in excess of specific appropriations.

Any unexpended balance remaining in the appropriation Public Employees Health Insurance State Contributions at the close of the fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

86—Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 6160

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$692,495*</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$7,812</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$225,400</td>
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</tbody>
</table>
### Appropriations

**State Fire Commission**

(WV Code Chapter 29)

Acct. No. 6170

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Fiscal Year 1985-86</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$655,974</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$9,540</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$295,175</td>
</tr>
<tr>
<td>Repairs and Alterations</td>
<td>$3,151</td>
</tr>
<tr>
<td>Equipment</td>
<td>$36,374</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,000,214</strong></td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $35,000 per annum.

### State Department of Highways

(WV Code Chapters 17 and 17C)

Acct. No. 6700

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Federal Funds Fiscal Year 1985-86</th>
<th>Other Funds Fiscal Year 1985-86</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maintenance Expressway</td>
<td>$51,480,000</td>
<td></td>
</tr>
<tr>
<td>Line</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>3</td>
<td>Maintenance, State Local Services</td>
<td>$69,586,000</td>
</tr>
<tr>
<td>4</td>
<td>Maintenance, Contract Paving and</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Secondary Road Maintenance</td>
<td>$10,754,000</td>
</tr>
<tr>
<td>6</td>
<td>Inventory Revolving</td>
<td>$1,510,000</td>
</tr>
<tr>
<td>7</td>
<td>Toll Road Examination</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Equipment Revolving</td>
<td>$4,597,000</td>
</tr>
<tr>
<td>9</td>
<td>General Operations</td>
<td>$18,555,656</td>
</tr>
<tr>
<td>10</td>
<td>Annual Increment</td>
<td>$178,344</td>
</tr>
<tr>
<td>11</td>
<td>Debt Service</td>
<td>$76,750,000</td>
</tr>
<tr>
<td>12</td>
<td>Interstate Construction</td>
<td>$139,739,000</td>
</tr>
<tr>
<td>13</td>
<td>Other Federal Aid Programs</td>
<td>$125,159,000</td>
</tr>
<tr>
<td>14</td>
<td>Appalachian Program</td>
<td>$28,440,000</td>
</tr>
<tr>
<td>15</td>
<td>Nonfederal Aid Construction</td>
<td>$4,257,000</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
<td>$532,006,000</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $47,500 per annum.

The above appropriation line items are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

The above commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with sections seventeen and eighteen, article two, chapter fourteen of the code.

Funds appropriated on Line 10 Annual Increment shall be transferred to line 9, General Operations, only as required.

### 89—Department of Motor Vehicles

**Acct. No. 6710**

**TO BE PAID FROM STATE ROAD FUND**

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$2,590,841*</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$44,316</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------------</td>
<td>--------------</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>3,590,457</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>73,900</td>
</tr>
<tr>
<td>5</td>
<td>Purchase of License Plates</td>
<td>567,180</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching</td>
<td>184,848</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees Retirement Matching</td>
<td>247,332</td>
</tr>
<tr>
<td>8</td>
<td>Public Employees Health Insurance</td>
<td>349,237</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td>7,648,111</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $36,500 per annum.

**90—Department of Education—Veterans Education**

Acct. No. 7979

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>72,083</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>1,620</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>50,793</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>500</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>124,996</td>
</tr>
</tbody>
</table>

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

Federal funds in excess of the amounts hereby appropriated may be made available by budget amendment upon request of the state superintendent of schools and approval of the governor for any emergency which might arise in the operation of this division during the fiscal year.

**91—Treasurer’s Office—Abandoned and Unclaimed Property**

*Acct. No. 8000

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>58,821</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>576</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>48,795</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>108,192</td>
</tr>
</tbody>
</table>

*The Governor reduced Personal Services from $138,821 and Current Expenses from $68,795.
### Ch. 27] APPROPRIATIONS

#### 92—Real Estate Commission

**Acct. No. 8010**

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>$163,295</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,836</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$161,665</td>
</tr>
<tr>
<td>Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$331,796</strong></td>
</tr>
</tbody>
</table>

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

#### 93—West Virginia Racing Commission

**Acct. No. 8080**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Expenses</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from Special Revenue Fund out of collections of license fees and fines as provided by law. No expenditures shall be made from this amount except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

#### 94—Auditor’s Office—Land Department Operating Fund

**Acct. No. 8120**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified—Total</td>
<td>$12,000</td>
</tr>
</tbody>
</table>

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

#### 95—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>Personal Services</td>
<td>$858,359</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Increment</td>
<td>14,616</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>490,300</td>
</tr>
<tr>
<td>Equipment</td>
<td>60,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>61,377</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>82,124</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>97,700</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,664,476</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund as provided by article two, chapter five-a of the code.

The above appropriation includes salaries and operating expenses.

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

---

### 96—Department of Finance and Administration—
Information Systems Services Division Fund

Acct. No. 8151

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$2,973,543</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>46,908</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>5,596,344</td>
</tr>
<tr>
<td>Equipment</td>
<td>207,000</td>
</tr>
<tr>
<td>Social Security Matching</td>
<td>213,661</td>
</tr>
<tr>
<td>Public Employees Retirement Matching</td>
<td>285,885</td>
</tr>
<tr>
<td>Public Employees Health Insurance</td>
<td>358,300</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$9,681,641</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund out of collections made by the department of finance and administration as provided by law.
97—Department of Agriculture

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............... $              $ 434,694
2 Annual Increment ...............          —              7,128
3 Current Expenses ...............          —              23,390
4 Social Security Matching .......          —              31,315
5 Public Employees Retirement Matching ...........          —              41,901
6 Public Employees Health Insurance ...............          —              31,000
9 Total ................................ $              $ 569,428

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.

98—General John McCausland Memorial Farm

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total ............... $              $ 80,000
2 Funds for the above appropriation shall be disbursed in accordance with article twenty-six, chapter nineteen of the code.

99—State Committee of Barbers and Beauticians

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1 Personal Services ............... $              $ 141,849
2 Annual Increment ...............          —              2,844
3 Current Expenses ...............          —              108,700
4 Equipment ............... ...........          —              1,600
5 Total ................................ $              $ 254,993

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.
104  

**APPROPRIATIONS**  

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### 100—Public Service Commission

**Acct. No. 8280**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$54,180</td>
<td>$3,499,856*</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>37,620</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$22,127</td>
<td>1,287,700</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>—</td>
<td>70,500</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
<td>—</td>
<td>250,887</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement</td>
<td>—</td>
<td>335,694</td>
</tr>
<tr>
<td>7</td>
<td>Matching</td>
<td>—</td>
<td>296,200</td>
</tr>
<tr>
<td>8</td>
<td>Public Employees Health</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Insurance</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$76,307</td>
<td>$5,778,457*</td>
</tr>
</tbody>
</table>

* Includes salaries of the commissioners: Chairman at $33,710 and two members at $30,210 each per annum.

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.

Any unexpended balance remaining in the appropriation for Headquarters Building Development at the close of fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

### 101—Public Service Commission—Gas Pipeline Division

**Acct. No. 8285**

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$28,219</td>
<td>$162,950*</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
<td>973</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$15,841</td>
<td>68,600</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>—</td>
<td>1,500</td>
</tr>
<tr>
<td>5</td>
<td>Social Security Matching</td>
<td>—</td>
<td>11,636</td>
</tr>
<tr>
<td>6</td>
<td>Public Employees Retirement</td>
<td>—</td>
<td>15,569</td>
</tr>
<tr>
<td>7</td>
<td>Matching</td>
<td>—</td>
<td>14,000</td>
</tr>
<tr>
<td>8</td>
<td>Public Employees Health</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Insurance</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Total</td>
<td>$44,060</td>
<td>$275,228</td>
</tr>
</tbody>
</table>

* Includes salaries of three members at $1,505 per annum each.
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.

Any unexpended balance remaining in the appropriation for Headquarters Building Development at the close of fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

102—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>$1,070,964*</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$12,312</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$348,000</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$5,000</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$76,755</td>
</tr>
<tr>
<td>6 Public Employees Retirement Matching</td>
<td>$102,701</td>
</tr>
<tr>
<td>7 Social Security Health Insurance</td>
<td>$94,000</td>
</tr>
</tbody>
</table>

Total $1,709,732

* Includes salaries of three members at $7,525 each per annum.

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.

Any unexpended balance remaining in the appropriation for Headquarters Building Development at the close of fiscal year 1984-85 is hereby reappropriated for expenditure during the fiscal year 1985-86.

103—Public Service Commission—Consumer Advocate

Acct. No. 8295
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Salary of Consumer Advocate</td>
<td>$38,000</td>
</tr>
<tr>
<td>2 Other Personal Services</td>
<td>$241,784</td>
</tr>
<tr>
<td>3 Annual Increment</td>
<td>$756</td>
</tr>
<tr>
<td>4 Current Expenses</td>
<td>$289,000</td>
</tr>
</tbody>
</table>
### Appropriations

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$6,800</td>
</tr>
<tr>
<td>6</td>
<td>Social Security Matching</td>
<td>$20,186</td>
</tr>
<tr>
<td>7</td>
<td>Public Employees</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Retirement Matching</td>
<td>$27,010</td>
</tr>
<tr>
<td>9</td>
<td>Public Employees Health</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Insurance</td>
<td>$26,400</td>
</tr>
<tr>
<td>11</td>
<td>Total</td>
<td>$649,936</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund out of collections made by the public service commission.

#### 104—Department of Natural Resources

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$3,822,485</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>$102,852</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>$2,955,794</td>
</tr>
<tr>
<td>4</td>
<td>Repairs and Alterations</td>
<td>$242,630</td>
</tr>
<tr>
<td>5</td>
<td>Equipment</td>
<td>$451,046</td>
</tr>
<tr>
<td>6</td>
<td>Land Purchase and Buildings</td>
<td>$710,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$8,284,807</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund out of fees collected by the department of natural resources. Expenditures shall be limited to the amounts appropriated except for federal funds received and special funds collected.

Any unexpended balances remaining in the prior appropriation item Land Purchase and Buildings at the close of fiscal year 1984-85 and available for capital improvement and land purchase purposes are hereby reappropriated for expenditure in fiscal year 1985-86, all in accordance with section thirty-four, article two, chapter twenty of the code.

#### 105—Department of Public Safety—Inspection Fees

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$434,516</td>
</tr>
</tbody>
</table>
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>—</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue fund out of fees collected for inspection stickers as provided by law.

106—Department of Public Safety—
Drunk Driving Prevention Fund

*Acct. No. 8355*

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Current Expenses</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Equipment</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td>—</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from special revenue funds out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

107—Department of Banking

*Acct. No. 8395*

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>—</td>
</tr>
<tr>
<td>3</td>
<td>Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>—</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td>—</td>
</tr>
</tbody>
</table>

*Includes salary of the commissioner at $36,500 per annum.

108—Crime Victim Reparation

*Acct. No. 8412*

**TO BE PAID FROM SPECIAL REVENUE FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>—</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>---------</td>
</tr>
<tr>
<td>3</td>
<td>Equipment</td>
<td>$8,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td>$155,750</td>
</tr>
</tbody>
</table>

These funds are intended to be expended for court costs and administrative costs.

109—State Health Department—Hospital Services
Revenue Account (Special Fund)
(Capital Improvement, Renovation and Operation)

Acct. No. 8500

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Administrative</td>
<td>$109,500</td>
</tr>
<tr>
<td></td>
<td>Personal Services</td>
<td>$(71,650)</td>
</tr>
<tr>
<td></td>
<td>Current Expenses</td>
<td>$(37,850)</td>
</tr>
<tr>
<td>2</td>
<td>Colin Anderson Center</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>West Virginia Behavioral Health Care Delivery System</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Plan Capital Outlay and Renovations</td>
<td>$400,000</td>
</tr>
<tr>
<td>5</td>
<td>Contingency for Repairs and Alterations, Equipment, Emergency Services and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Miscellaneous</td>
<td>$500,000</td>
</tr>
<tr>
<td>6</td>
<td>Adolescent Group Home</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Greenbrier Center—Capital Outlay and Renovations for Certification, Life</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Safety, and Energy Conservation</td>
<td>$660,000</td>
</tr>
<tr>
<td>8</td>
<td>DD and Chronic Mentally Ill Group Homes—</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Welch Emergency Hospital—Contingency for Operating and Miscellaneous</td>
<td>$1,111,000</td>
</tr>
<tr>
<td>10</td>
<td></td>
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<td>26</td>
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<tr>
<td>27</td>
<td></td>
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</tr>
<tr>
<td>28</td>
<td></td>
<td>$2,000,000</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---</td>
<td>-----------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>29</td>
<td>Contingency for Repairs and Alterations, Equipment, Emergency</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td>500,000</td>
</tr>
<tr>
<td>31</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Services and Miscellaneous</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>DD and Chronic Mentally Ill Group Homes—</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>West Virginia Behavioral Health Care Delivery</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>System Plan Capital</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>Outlay and Renovations</td>
<td>2,000,000</td>
</tr>
<tr>
<td>39</td>
<td>Hopemont Hospital—</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Capital Outlay and Renovations for Certification, Life Safety</td>
<td></td>
</tr>
<tr>
<td>41</td>
<td></td>
<td>577,000</td>
</tr>
<tr>
<td>42</td>
<td>and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Lakin Hospital—Capital</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Outlay and Renovation for Certification, Life Safety</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td></td>
<td>30,000</td>
</tr>
<tr>
<td>46</td>
<td>and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>47</td>
<td>Denmar Hospital—Capital</td>
<td></td>
</tr>
<tr>
<td>48</td>
<td>Outlay and Renovations for Certification, Life Safety, and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td></td>
<td>185,000</td>
</tr>
<tr>
<td>50</td>
<td>Pinecrest Hospital—Capital</td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Outlay and Renovations for Certification, Life Safety, and Energy Conservation</td>
<td></td>
</tr>
<tr>
<td>52</td>
<td></td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Huntington Hospital—Capital</td>
<td></td>
</tr>
<tr>
<td>54</td>
<td>Outlay and Renovations</td>
<td>75,000</td>
</tr>
<tr>
<td>55</td>
<td></td>
<td></td>
</tr>
<tr>
<td>56</td>
<td>Fairmont Emergency Hospital—</td>
<td></td>
</tr>
<tr>
<td>57</td>
<td>Capital Outlay and Renovations</td>
<td>37,000</td>
</tr>
<tr>
<td>58</td>
<td></td>
<td></td>
</tr>
<tr>
<td>59</td>
<td>Huntington Hospital— West Virginia Behavioral</td>
<td></td>
</tr>
<tr>
<td>60</td>
<td>Health Care Delivery</td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>System Plan Capital</td>
<td></td>
</tr>
<tr>
<td>62</td>
<td></td>
<td></td>
</tr>
<tr>
<td>63</td>
<td>Outlay and Renovations</td>
<td>1,300,000</td>
</tr>
<tr>
<td>64</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65</td>
<td>Total</td>
<td>9,839,500</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created in section fifteen-a, article one, chapter sixteen of the code.
Projects are to be paid on a cash basis and made available from the date of passage. Items and projects of this appropriation are to begin as funds become available in the special fund. Projects are to begin in the listed order of priority herein, except implementation costs, not to exceed ten percent of each appropriation, and shall be made available from the date of passage.

Any unexpended balances remaining at the close of the fiscal year 1984-85 for the prior-appropriated and brought-forward items of this accounts are hereby reappropriated for expenditure in the fiscal year 1985-86 except for the following: Acct. No. 8500-05 (fiscal year 1982), 8500-14 (fiscal year 1982), 8500-15 (fiscal year 1982) and 8500-20 (fiscal year 1984).

110—Health Care Cost Review Authority

Acct. No. 8510

TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$96,695</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$756</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$166,730</td>
</tr>
<tr>
<td>Equipment</td>
<td>$25,143</td>
</tr>
<tr>
<td>Total</td>
<td>$264,181</td>
</tr>
</tbody>
</table>

The above appropriation items are to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

111—West Virginia Hospital Finance Authority

Acct. No. 8525

TO BE PAID FROM SPECIAL REVENUE FUND

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

The total amount of this appropriation shall be paid from special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

Special funds in excess of the amount herein appropriated
may be made available by budget amendments upon request of the commissioner of finance and administration and the approval of the governor.

112—Geological and Economic Survey

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1 Unclassified—Total ............... $ — $ 40,000

2 The above appropriation shall be used in accordance with section four, article two, chapter twenty-nine of the code.

113—Board of Regents—Special Capital Improvement Fund

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ...................... $ — $ 545,000

2 The total amount of this appropriation shall be paid from the special capital improvement fund created in section four, article twenty-four, chapter eighteen of the code.

114—Board of Regents—State System Registration Fee—Special Capital Improvement Fund (Capital Improvement and Bond Retirement Fund)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ...................... $ — $ 2,385,000
2 Capital Building Repairs
3 and Alterations ..................... — $ 4,500,000
4 (Supplements Operating Budget at Colleges and Universities)
5 Miscellaneous Campus
6 Development Projects ............. — $ 1,400,000
8 Total ........................... $ — $ 8,285,000

9 The total amount of this appropriation shall be paid from the special capital improvement fund created by section four, article twenty-four, chapter eighteen of the code. Projects are
12 to be paid on a cash basis and made available from the date
13 of passage.
14 Any unexpended balances remaining in prior years and
15 1984-85 appropriations at the close of the fiscal year 1984-85
16 are hereby reappropriated for expenditure during the fiscal
17 year 1985-86.

115—Board or Regents—Special Capital Improvement Fund

Acct. No. 8840

TO BE PAID FROM SPECIAL REVENUE FUND

1 Debt Service ...................... $ — $ 1,640,000
2 The total amount of this appropriation shall be paid from
3 the nonrevolving special capital improvement fund created by
4 section four, article twenty-four, chapter eighteen of the code.

116—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 years and
2 1984-85 appropriations are hereby reappropriated for expen-
3 diture during fiscal year 1985-86.

117—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 ...................... $ — $ 3,830,000
2 Building and Campus Renewal... — 9,000,000
3 Planning Fund ..................... — 1,000,000
4 (To be used for project
5 planning and design)
6 West Virginia University
7 Campus Development ............ — 3,700,000
8 (Medical Center Chiller Replacement)  
10 Marshall University ............ — 2,000,000  
11 (Fine Arts Center Experimental Theatre)  
13 Marshall University  
14 Campus Development ........ — 4,500,000  
15 (Science Building Renovation-Phase III)  
17 Fairmont State College  
18 Campus Development ........ — 750,000  
19 (Colebank Hall Renovation-Supplement)  
21 Concord College  
22 Campus Development ........ — 750,000  
23 (Administration/Science Building Renovation-Supplement)  
26 West Virginia Northern Community College  
28 Campus Development ........ — 500,000  
29 (Hazel Atlas Building Renovation—Supplement)  
31 Glenville State College  
32 Campus Development ........ — 200,000  
33 (Gas Well)  
34 Bluefield State College  
35 Campus Development ........ — 800,000  
36 (Dickinson Hall/Greenbrier Center Renovations)  
38 Jacksons Mill—  
39 Capital Outlay ............... — 200,000  
40 (Building Repairs and Renovations)  
42 Total ......................... $ — $ 27,230,000  

The total amount of this appropriation shall be paid from the special capital improvement fund created by article twelve-b, chapter eighteen of the code. Projects are to be paid on a cash basis and made available from the date of passage.

Any unexpended balances remaining in prior years' and in
the 1984-85 appropriations are hereby reappropriated for expenditure during the fiscal year 1985-86.

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

Acct. No. 8860
TO BE PAID FROM SPECIAL REVENUE FUND

<table>
<thead>
<tr>
<th>Institution</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>West Virginia University</td>
<td>Engineering Research Center (Phase I)</td>
<td>$9,000,000</td>
</tr>
<tr>
<td>College of Mineral and Energy Resources Building</td>
<td></td>
<td>$10,200,000</td>
</tr>
<tr>
<td>College of Business and Economics</td>
<td></td>
<td>$8,250,000</td>
</tr>
<tr>
<td>Marshall University</td>
<td>Fine Arts Facility</td>
<td>$10,400,000</td>
</tr>
<tr>
<td>Glenville State College</td>
<td>Art and Music Building</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Shepherd College</td>
<td>Health and Physical</td>
<td></td>
</tr>
<tr>
<td>WV Institute of Technology</td>
<td>Science Laboratory</td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
<td>$8,500,000</td>
<td></td>
</tr>
<tr>
<td>West Virginia State College</td>
<td>Science Laboratory</td>
<td>$7,000,000</td>
</tr>
<tr>
<td>Facilities</td>
<td>$1,000,000</td>
<td></td>
</tr>
<tr>
<td>Parkersburg Community</td>
<td>College Building Addition</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>Southern WV Community</td>
<td>College Logan Building</td>
<td></td>
</tr>
<tr>
<td>Addition</td>
<td>$2,500,000</td>
<td></td>
</tr>
<tr>
<td>WV College of Graduate</td>
<td>Studies Instructional</td>
<td></td>
</tr>
<tr>
<td>Telecommunications System</td>
<td>$650,000</td>
<td></td>
</tr>
<tr>
<td>Potomac State College</td>
<td>Physical Education</td>
<td></td>
</tr>
<tr>
<td>Building</td>
<td>$1,000,000</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>$73,000,000</td>
<td></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the sale of revenue bonds pursuant to the provisions of article twelve-b, chapter eighteen of the code.
### Workers' Compensation Commissioner

**Acct. No. 9000**

**TO BE PAID FROM WORKERS' COMPENSATION FUND**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$8,188,343</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$102,636</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$5,148,689</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$234,450</td>
</tr>
<tr>
<td>5 Social Security Matching</td>
<td>$585,353</td>
</tr>
<tr>
<td>6 Public Employees Retirement</td>
<td>$783,219</td>
</tr>
<tr>
<td>7 Equipment</td>
<td></td>
</tr>
<tr>
<td>8 Public Employees Health</td>
<td></td>
</tr>
<tr>
<td>9 Social Security Matching</td>
<td></td>
</tr>
<tr>
<td>10 Employees Excess Liability Fund</td>
<td></td>
</tr>
<tr>
<td>11 Total</td>
<td>$16,376,022</td>
</tr>
</tbody>
</table>

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 workers' compensation fund. This sum shall be transferred to the board of insurance.

### West Virginia Alcohol Beverage Control Commissioner

**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 Personal Services</td>
<td>$9,283,283</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$200,556</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$5,771,157</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$72,800</td>
</tr>
<tr>
<td>5 Equipment</td>
<td>$109,000</td>
</tr>
<tr>
<td>6 Social Security Matching</td>
<td>$667,402</td>
</tr>
</tbody>
</table>
Public Employees Retirement Matching ................. $893,002
Public Employees Health Insurance ......................... 1,220,000
Total ........................................ $18,217,200

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

The above appropriations include the salary of the commissioner, salaries of store personnel and 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.

121—West Virginia University—Medical School
(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM MEDICAL SCHOOL FUND

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>$8,071,000</td>
</tr>
<tr>
<td>2</td>
<td>Current Expenses</td>
<td>$3,837,000</td>
</tr>
<tr>
<td>3</td>
<td>Repairs and Alterations</td>
<td>$774,000</td>
</tr>
<tr>
<td>4</td>
<td>Equipment</td>
<td>$797,000</td>
</tr>
<tr>
<td>5</td>
<td>WVU Family Practice Program</td>
<td>$432,000</td>
</tr>
<tr>
<td>6</td>
<td>Capital Outlay</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td>$14,911,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for Capital Outlay and in the 1984-85 appropriation for the West Virginia University—Medical Center at the close of the fiscal year 1984-85 are hereby reappropriated for expenditure during the fiscal year 1985-86.

Sec. 5. Awards for claims against the state.—There is hereby appropriated, for the remainder of the fiscal year 1984-85 and to remain in effect until June 30, 1986, from the fund as designated, in the amounts as specified, and for the claimants as named in Enrolled Committee Substitute for House Bill No. 1567, acts, Legislature, regular session, 1985—
crime victim reparation fund of $182,656.60 for payment of claims against the state.

There are hereby appropriated, for the remainder of the fiscal year 1984-85 and to remain in effect until June 30, 1986, from the funds as designated, in the amounts as specified, and for the claimants as named in Enrolled Committee Substitute for House Bill No. 1568 and No. 1569, acts, Legislature, regular session, 1985—total general revenue funds of $213,065.76, state road funds of $1,794,209.71, special revenue funds of $15,935.28 and federal funds of $5,904.35 for payments of claims against the state. The total of general revenue funds above does not include payment from the Supreme Court—General Judicial, Acct. No. 1110, specifically made payable from the appropriation for the current fiscal year 1984-85.

Sec. 7. Supplemental and deficiency appropriation.—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-five to supplement the 1984-85 appropriations, and to be available for expenditure upon date of passage.

* Clerk's Note: The Governor struck out all language which appeared as Sec. 6 and reduced Salary Equalization from $7,000,000.
<table>
<thead>
<tr>
<th>123</th>
<th>Office of Economic and Community Development</th>
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</thead>
<tbody>
<tr>
<td>Acct. No. 1210</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>National Youth Science Camp</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>124</th>
<th>State Lottery Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 1216</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>125</th>
<th>Governor’s Office—Civil Contingent Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 1240</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified—Total</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>126</th>
<th>State Board of Insurance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 2250</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Premiums, Claims and Other Expenses—Total</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>127</th>
<th>Department of Corrections—Correctional Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 3770</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Capital Outlay—Industrial Home for Youth—Total</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>128</th>
<th>Department of Human Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 4050</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Public Assistance Grants</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>129</th>
<th>State Board of Education—Rehabilitation Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 4405</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Capital Outlay—Roof Replacement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>130</th>
<th>Department of Employment Security</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acct. No. 4510</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>Interest Assessment—Total</td>
</tr>
</tbody>
</table>
The above appropriation is intended to pay the federal government interest due on loan advances made to the state of West Virginia, for payment of unemployment compensation benefits.

131—West Virginia Public Legal Services Council
Acct. No. 5900
1 Appointed Council Fees ........ $ — $ 627,000

Sec. 8. Appropriations from revenue sharing trust fund.—The following items are hereby appropriated from the revenue sharing trust fund to be available for expenditure from date of passage.

132—Department of Culture and History
Acct. No. 9750
1 Oglebay Park—Lights .................. $ 75,000
2 Farm Museum .......................... 50,000
3 Delf Norona ............................ 50,000

133—Department of Agriculture
Acct. No. 9771
1 General John McCausland Farm ........ $ 10,000

134—Department of Human Services
Acct. No. 9777
1 Juvenile Detention Center—Wheeling ...... $ 350,000

135—Office of Economic and Community Development
Acct. No. 9792
1 Airport Matching ........................ $ —0—
2 Milton Volunteer Fire Station ............ 40,000

136—Department of Finance and Administration
Acct. No. 9793
1 Building Repairs—Total ................ $ 587,329
Sec. 9. Reappropriations.—Any unexpended balances under Title II, Section I, remaining at the close of the fiscal year 1984-85 in Acct. No. 4201-18, Reimbursement to Community Mental Health and Mental Retardation Centers, are hereby reappropriated for expenditure during fiscal year 1985-86.


Sec. 11. Appropriation from federal block grants—The following items are hereby appropriated from federal block grants and to be available for expenditure during the fiscal year 1985-86.

137—Office of Economic and Community Development—Community Development

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$129,255</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$1,287</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$198,172</td>
</tr>
<tr>
<td>Equipment</td>
<td>$3,277</td>
</tr>
<tr>
<td>To Local Entities</td>
<td>$16,772,700</td>
</tr>
<tr>
<td>Total</td>
<td>$17,104,691</td>
</tr>
</tbody>
</table>

138—Office of Economic and Community Development—Job Partnership Training Act

Acct. No. 8030

TO BE PAID FROM FEDERAL FUNDS

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,169,918</td>
</tr>
</tbody>
</table>
2 Annual Increment .................. — $ 15,912
3 Current Expenses ................. — $ 1,150,114
4 Equipment ........................ — $ 20,000
5 To Local Entities ................ — $ 25,509,853
6 Transfer to State
7 Spending Units ................... — $ 8,238,264
8 Total ............................. $ — $ 36,104,061

139—Office of Economic and Community Development—Community Service

Acct. No. 8031

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 102,161</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$ 972</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$ 102,093</td>
</tr>
<tr>
<td>4 Equipment</td>
<td>$ 2,000</td>
</tr>
<tr>
<td>5 To Local Entities</td>
<td>$ 3,834,023</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 4,041,249</td>
</tr>
</tbody>
</table>

140—Office of Economic and Community Development—Justice Assistance

Acct. No. 8032

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 To Local Entities—Total</td>
<td>$ 600,000</td>
</tr>
</tbody>
</table>

141—State Department of Education—Education Grant

Acct. No. 8242

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>$ 900,872</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>$ 15,084</td>
</tr>
<tr>
<td>3 Current Expenses</td>
<td>$ 351,997</td>
</tr>
<tr>
<td>4 Repairs and Alterations</td>
<td>$ 100</td>
</tr>
<tr>
<td>5 To Local Entities</td>
<td>$ 34,987,520</td>
</tr>
<tr>
<td>6 Total</td>
<td>$ 36,255,573</td>
</tr>
</tbody>
</table>
### 142—State Health Department—Maternal and Child Health

Acct. No. 8502

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$716,041</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$8,604</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$6,260,046</td>
</tr>
<tr>
<td>Equipment</td>
<td>$62,007</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,046,698</strong></td>
</tr>
</tbody>
</table>

### 143—State Health Department—Alcohol, Drug Abuse and Mental Health

Acct. No. 8503

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$381,899</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$2,736</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$5,006,287</td>
</tr>
<tr>
<td>Equipment</td>
<td>$30,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$5,420,922</strong></td>
</tr>
</tbody>
</table>

### 144—State Health Department—Preventive Health

Acct. No. 8506

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$335,840</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$3,060</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$1,070,784</td>
</tr>
<tr>
<td>Equipment</td>
<td>$16,340</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,426,024</strong></td>
</tr>
</tbody>
</table>

### 145—Department of Human Services—Energy Assistance

Acct. No. 9147

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$1,154,914</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$45,086</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$20,500,000</td>
</tr>
<tr>
<td>Transfer to State Spending Units</td>
<td>0-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$21,700,000</strong></td>
</tr>
</tbody>
</table>
### appropriations

**146—Department of Human Services—Social Services**

Acct. No. 9161

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$8,970,295</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>$202,205</td>
</tr>
<tr>
<td>Current Expenses</td>
<td>$13,727,500</td>
</tr>
<tr>
<td>Equipment</td>
<td>$100,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$23,000,000</td>
</tr>
</tbody>
</table>

1. **Sec. 12. Special revenue appropriations.**—There is hereby appropriated for expenditure during the fiscal year one thousand nine hundred eighty-six, appropriations made by general law from special revenue which are not paid into the state fund as general revenue under the provisions of section two, article twelve of the code: Provided, 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 articles two and three, chapter twelve and article two, chapter five-a of the code, 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 funds;

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

2. **Sec. 13. 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-six, 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 is hereby appropriated all moneys so deposited during the fiscal year one thousand nine hundred eighty-six, 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. 14. 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 article three, chapter twelve of the code.

Sec. 15. Appropriations for refunding erroneous payment.—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. 16. Sinking fund deficiencies.—There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia Housing Development Fund which is under the supervision and control of the state municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the state municipal bond commission because of the failure of any state agency for either general obligations or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The governor is authorized to transfer from time to time such amounts to the state municipal bond commission as may be necessary for these purposes.

The state municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the
rate carried by the bonds for security or payment of which
the advance was made.

Sec. 17. Appropriations to pay costs of publication of
delinquent corporations.—There is hereby appropriated out of
state fund, general revenue, out of funds not otherwise
appropriated, to be paid upon requisition of the auditor
and/or the governor, as the case may be, a sum sufficient to
pay the cost of publication of delinquent corporations as
provided by sections eighty-four and eighty-six, article twelve,
chapter eleven of the code.

Sec. 18. Appropriations for local governments.—There is
hereby appropriated for payment to counties, districts and
municipal corporations such amounts as will be necessary to
pay taxes due 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. 19. 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 Sec. 3, TITLE I.

Sec. 20. 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 approp-
riated for expenditure in accordance with section sixteen,
article nine-a, chapter eighteen of the code.

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 article two, chapter
five-a of the code.

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

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

CHAPTER 28
(S. B. 697—By Senators Tucker and Palumbo)

[Passed April 3, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the commissioner of banking’s qualifications and salary; reducing to nine years the experience required for the position of commissioner and including all experience as an active bank officer or examiner as an eligibility factor; providing that the commissioner’s annual salary shall be set by appropriation in accord with general law.

Be it enacted by the Legislature of West Virginia:

That section two, 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-2-2. Commissioner’s appointment, term, qualifications, salary, oath and bond.

1 The commissioner of banking shall be appointed by the governor, by and with the advice and consent of the Senate. He shall serve at the will and pleasure of the governor for the term for which the governor was elected
and until his successor is appointed and qualified, unless
earlier removed from office for cause as provided by law.
Any person appointed as commissioner shall have had
within the fifteen years next preceding his first appoint-
ment at least five years' experience as an active officer of
a bank in this state or a minimum of nine years' experience
in a bank examining or supervisory capacity for this state,
for other states or for the federal government, or a com-
bineation thereof, or a minimum of nine years' combined
experience as such active bank officer and in such examin-
ing or supervisory capacity. The commissioner's salary
shall be set by appropriation in accord with general law.
Before entering upon the discharge of his duties as
commissioner, he shall take and subscribe to the oath of
office prescribed in section five, article four of the
constitution of West Virginia and shall enter into a bond
in the penal sum of one hundred thousand dollars, with a
corporate surety authorized to engage in business in this
state, conditioned upon the faithful discharge and per-
formance of the duties of his office. The premium of
such bond shall be payable from the state treasury out of
funds allocated to the department of banking. The exe-
cuted oath and bond shall be filed in the office of the
secretary of state.

CHAPTER 29
(S. B. 498—By Senator Tucker)
[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article three,
chapter thirty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to
allowing the entry of an order without notice or hearing
which approves or disapproves an application by a bank
holding company if its financial condition imminently
imperils its customers or depositors.

Be it enacted by the Legislature of West Virginia:
That section three, article three, 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 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-3. Hearings and orders; entry of order without notice and hearing.

(a) Subject to the provisions of subsections (e), (f), (g) and (h) of this section, notice and hearing shall be provided in advance of the entry of any order by the board.

(1) Such notice shall be given to the financial institution or person with respect to whom the hearing is to be conducted in accordance with the provisions of section two, article seven, chapter twenty-nine-a of this code, and such hearing and the administrative procedures in connection therewith shall be governed by all of the provisions of article five, chapter twenty-nine-a of this code, and shall be held at a time and place set by the board, but shall not be held less than ten nor more than thirty days after such notice is given. A hearing may be continued by the board on its own motion or for good cause shown.

(2) At any such hearing a party may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state.

(b) After any such hearing and consideration of all of the testimony and evidence, the board shall make and enter an order deciding the matters with respect to which such hearing was conducted, which order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all parties to such hearing, and their attorneys of record, if any.

(c) In the case of an application for the board's approval to incorporate and organize a banking institution in this state, as provided in subdivision (3), subsection (b), section two of this article, the board shall, upon receipt of any such application, provide notice to all banking institutions, which in the manner hereinafter provided, have requested notice of any such action. The request by any such banking institution to receive such notice shall be in writing and shall request the board to notify it of the receipt by the
board of any application to incorporate and organize a
banking institution in this state. A banking institution may,
within ten days after receipt of such notice, file a petition to
intervene and shall, if it so files such petition, thereupon
become a party to any hearing relating thereto before the
board.
(d) The board shall have the power and authority to
issue subpoenas and subpoenas duces tecum, administer
oaths and examine any person under oath in connection
with any subject relating to duties imposed upon or powers
vested in the board.
(e) Whenever the board shall find that extraordinary
circumstances exist which require immediate action, it may
forthwith without notice or hearing enter an order taking
any action permitted by subdivisions (1), (2), (4) and (5),
subsection (b), section two of this article. Immediately upon
the entry of such order, certified copies thereof shall be
served upon all persons affected thereby and upon demand
such persons shall be entitled to a hearing thereon at the
earliest practicable time.
(f) Whenever the board shall find that the financial
condition of a state banking institution or a national
banking association constitutes an imminent peril to its
depositors, savings account holders, other customers or
creditors, it may forthwith without notice or hearing enter
an order taking any action permitted by subdivisions (7)
and (8), subsection (b), section two of this article.
Immediately upon entry of such order, certified copies
thereof shall be served upon all persons affected thereby and
upon demand such persons shall be entitled to a hearing
thereon at the earliest practicable time.
(g) Whenever the board shall find that the financial
condition of a state banking institution or national banking
association constitutes an imminent peril to its depositors,
savings account holders, other customers or creditors, it
may forthwith without compliance with the provisions of
section six or seven, article four of this chapter and without
notice or hearing enter an order approving or disapproving
an application to incorporate a state banking institution
which is being formed to purchase the business and assets
or assume the liabilities of, or both, or merge or consolidate
with, such state banking institution or national banking
institution the financial condition of which constitutes an
imminent peril to its depositors, savings account holders,
other customers or creditors. Immediately upon the entry of
such order, certified copies thereof shall be served upon all
persons affected thereby and upon demand such persons
shall be entitled to a hearing thereon at the earliest
practicable time.

(h) Whenever the board shall find that the financial
condition of a state banking institution, national
association or bank holding company constitutes an
imminent peril to its depositors, savings account holders,
other customers or creditors, it may forthwith without
compliance with the provisions of section four, article
eight-a of this chapter and without notice of hearing enter
an order approving or disapproving an application by an
existing bank holding company or by an organizing bank
holding company to acquire in whole or in part, directly or
indirectly, such state banking institution, national
association or bank holding company. Immediately upon
the entry of such order, certified copies thereof shall be
served upon all persons affected thereby at the earliest
practicable time.

(i) Definitions:

(1) The term “imminent peril” means that, because the
banking institution or bank holding company is insolvent
or about to be insolvent, or there is a probability that the
banking institution will not be able to pay its debts when
they become due.

(2) A banking institution or bank holding company is
“about to be insolvent” when it would be unable to meet the
demands of its depositors or is clearly unable, without
impairment of capital, by sale of assets or lawful
borrowings or otherwise, to realize sufficient liquid assets
to pay such debts for which payment is likely, in the
immediate future, to be due and demanded in the ordinary
course of business.

(3) A banking institution or bank holding company is
“insolvent” when it is unable to pay its debts to its
depositors and other creditors in the ordinary and usual
course of business.
AN ACT to amend and reenact section twelve-b, article eight, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the installation and operation of customer bank communication terminals permitted; limitation removed for employee assistance of customers using off-premises terminals.

Be it enacted by the Legislature of West Virginia:

That section twelve-b, article eight, 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 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.

§31A-8-12b. Installation and operation of customer bank communication terminals permitted.

1 (a) Any banking institution as defined in section two, article one of this chapter, individually or jointly with one or more other banking institutions or other federally insured financial institutions having their principal offices in this state, or any combination thereof, may upon thirty days prior written notice filed with the commissioner, install, operate and engage in banking business by means of one or more customer bank communication terminals. Any banking institution which installs and operates a customer bank communication terminal:

11 (1) Shall make such customer bank communication terminal available for use by other banking institutions; and

14 (2) May make such customer bank communication terminal available for use by other federally insured financial institutions, all in accordance with regulations promulgated by the commissioner. Such customer bank communication terminals shall not be considered to be
branch banks or branch offices, agencies or places of
business or off-premises walk-in or drive-in banking
facilities; nor shall the operation of such customer bank
communication terminals to communicate with and permit
financial transactions to be carried out through a
nonexclusive access interchange system be considered to
make any banking institution which is part of such a
nonexclusive access interchange system to have illegal
branch banks or branch offices, agencies or places of
business or off-premises walk-in or drive-in banking
facilities.
(b) Notwithstanding the provisions of subdivision (1),
subsection (a) of this section, a customer bank
communication terminal located on the premises of the
principal office or branch bank of a banking institution or
on the premises of an authorized off-premises facility need
not be made available for use by any other banking
institution or its customers.
(c) For the purposes of this section, “customer bank
communication terminal” means any electronic device or
machine, together with all associated equipment,
structures and systems, including, without limitation, point
of sale terminals, through or by means of which a customer
and a banking institution may engage in any banking
transactions, whether transmitted to the banking
institution instantaneously or otherwise, including,
without limitation, the receipt of deposits of every kind, the
receipt and dispensing of cash, requests to withdraw money
from an account or pursuant to a previously authorized line
of credit, receiving payments payable at the bank or
otherwise transmitting instructions to receive, transfer or
pay funds for a customer's benefit. All transactions
initiated through a customer bank communication terminal
shall be subject to verification by the banking institution.
(d) For the purposes of this section, “point of sale
terminal” means a customer bank communication terminal
used for the primary purpose of either transferring funds to
or from one or more deposit accounts in a banking
institution or segregating funds in one or more deposit
accounts in a banking institution for future transfer, or
both, in order to execute transactions between a person and
his customers incident to sales, including, without
limitation, devices and machines which may be used to
implement and facilitate check guaranty and check
authorization programs.
(e) Except for customer bank communication terminals
located on the premises of the principal office or a branch
bank of the banking institution or on the premises of an
authorized off-premises walk-in or drive-in banking
facility, a customer bank communication terminal shall be
unattended or attended by persons not employed by any
banking institution utilizing the terminal: Provided, That
(1) Employees of the banking institution may be present
at such terminal not located on the premises of an
authorized off-premises facility solely for the purposes of
installing, maintaining, repairing and servicing same; and
(2) A banking institution may provide an employee to
instruct and assist customers in the operation thereof:
Provided, That such employee shall not engage in any other
banking activity.
(f) The commissioner shall prescribe by regulation the
procedures and standards regarding the installation and
operation of customer bank communication terminals,
including, without limitation, the procedure for the sharing
thereof.

CHAPTER 31
(H. B. 1706—By Delegate Flanigan and Delegate Phillips)
[Passed March 27, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight-a, chapter
thirty-one-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to acquisition by a
bank holding company, or any other company, of any banking
institution located in the state of West Virginia that does not
both accept deposits that the depositor has a legal right to
withdraw on demand and engage in the business of making
commercial loans.

Be it enacted by the Legislature of West Virginia:
That section four, article eight-a, 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 8A. ACQUISITION OF BANK SHARES.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

(a) It shall be unlawful, prior to ninety days following the date of the submission to the board of complete, true and accurate copies of the reports required under federal laws or regulations pursuant to Title 12, United States Code, §§1841-1850 (being the act of Congress entitled the Bank Holding Company Act of 1956, as amended), and the payment of an examination and investigation fee to the board of two thousand five hundred dollars:

(1) For any action to be taken that causes any company to become a bank holding company;

(2) For any action to be taken that causes any bank to become a subsidiary of a bank holding company;

(3) For any bank holding company to acquire direct or indirect ownership or control of any shares of any bank if, after such acquisition, such company will directly or indirectly own or control more than five percent of the voting shares of such bank;

(4) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(5) For any bank holding company to merge or consolidate with any other bank holding company; or

(6) For any bank holding company to take any action which would violate the Federal Bank Holding Company Act.

(b) The provisions of subsection (a) of this section shall not apply to:

(1) Shares acquired by a bank:

(A) In good faith in a fiduciary capacity, except where shares are held under a trust that constitutes a company as defined in section two of this article and except as provided
in subdivisions (2) and (3), subsection (b), section three of this
article; or

(B) In the regular course of securing or collecting a debt
previously contracted in good faith, but any shares acquired
after the effective date of this section in securing or collecting
any such previously contracted debt shall be disposed of within
a period of five years from the date on which they were
acquired; or

(2) Additional shares acquired by a bank holding company
in a bank in which such bank holding company owned or
controlled a majority of the voting shares prior to such
acquisition. For the purpose of the preceding sentence, bank
shares acquired after the effective date of this section shall not
be deemed to have been acquired in good faith in a fiduciary
capacity if the acquiring bank or company has sole discretion­
ary authority to exercise voting rights with respect thereto, but
in such instances acquisitions may be made without prior
notice to the board if the board, upon notice and submission
of information in form and content as it shall approve, filed
within ninety days after the shares are acquired, approved
retention or, if retention is disapproved, the acquiring bank
disposes of the shares or its sole discretionary voting rights
within five years after issuance of the order of disapproval.

(c) If, within ninety days from the date of submission
pursuant to subsection (a) of this section, after notice and a
hearing pursuant to the provisions of section three, article
three of this chapter, the board enters an order disapproving
the proposed action described in subdivision (1), (2), (3), (4),
(5) or (6), subsection (a) of this section, it shall be unlawful
to take such action. The board shall disapprove the proposed
action described in subdivision (1), (2), (3), (4), (5) or (6),
subsection (a) of this section on the following grounds:

(1) The action would result in a monopoly, or would be in
furtherance of any combination or conspiracy to monopolize
or to attempt to monopolize the business of banking in any
section of this state;

(2) The action would have the effect in any section of the
state of substantially lessening competition, or would tend to
create a monopoly or in any other manner would be in
restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the community to be served; or

(3) Taking into consideration the financial and managerial resources and further prospects of the company or companies and the banks concerned, the action would be contrary to the best interests of the shareholders or customers of the bank whose shares are affected by such action.

(d) Notwithstanding any other provisions of this section, no proposed action described in subdivision (1), (2), (3), (4), (5) or (6), subsection (a) of this section, shall be approved if such approval will permit any bank holding company or any subsidiary thereof to acquire, directly or indirectly, five percent or more of the interest in or assets of a bank or bank holding company located in this state if the operations of any banking subsidiary of such bank holding company are located outside this state.

(e) Notwithstanding any other provision of law, no bank holding company, or any other company, shall establish, acquire or control any banking institution as defined in section three of this article, when said banking institution does not both (i) accept deposits that the depositor has a legal right to withdraw on demand and (ii) engage in the business of making commercial loans.

(f) Nothing contained in this section shall affect the obligation of any person or company to comply with the provisions of any order of any court or the commissioner entered prior to the effective date of this section.

CHAPTER 32
(H. B. 1816—By Delegate Pritt)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen, chapter
sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to barbers and beauticians; and sale and demonstration of cosmetics and related products not within the practice of beauty culture.

Be it enacted by the Legislature of West Virginia:

That section two, article fourteen, 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 14. BARBERS AND BEAUTICIANS.

§16-14-2. Barbering, beauty culture and manicuring defined.

1 For the purpose of this article "barbering" shall mean any one or combination of the following acts, when done on the human body, and not for the treatment of disease, to wit:
2 Shaving, shaping and trimming the beard; cutting, singeing, shampooing or dyeing the hair, or applying tonics thereto; applications, treatment or massages of the face, neck or scalp with oils, creams, lotions, antiseptics, cosmetics, powders, clays or other preparations; and any such acts when done to encourage the use or sale of articles of trade, or for pay, rewards or other compensation, whether to be received directly or indirectly.

12 "Beauty culture" shall mean any one or combination of the following acts, when done on the human body, and not for the treatment of disease, to wit: The care, preservation and beautification of the hands and nails, commonly called manicuring; the cleansing, curling, waving, permanent waving, straightening, arranging, dressing, bleaching, tinting, coloring and shaping the hair, including such cutting of the hair as is necessary for the purposes mentioned in this paragraph; the application to, or treatment and massage of, the scalp, face, neck, arms, hands, or upper part of the body with oils, creams, lotions, powders, clays, cosmetics, antiseptics or other preparations; and any such acts when done to encourage the use or sale of articles of trade, or for pay, reward or other compensation, whether to be received directly or indirectly.

18 The retail sale or the trial demonstration by application to the skin for the purpose of making retail sale of cosmetics, preparations, tonics, antiseptics, creams or lotions shall not be considered the practice of beauty culture.
“Manicuring,” when done on the human body and not for the treatment of disease, shall mean the care, preservation and beautification of the hands and nails only.

The performance of any of the acts enumerated in this section shall not be deemed barbering, beauty culture or manicuring when done by duly licensed physicians, surgeons, nurses or morticians, in the proper discharge of their professional duties.

CHAPTER 33
(H. B. 1377—By Delegate Merow and Delegate Love)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article twenty, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the limit on prizes available at charitable bingo games.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. CHARITABLE BINGO.

§47-20-10. Limits on prizes awarded—General provisions.

1 Except as provided otherwise in section twenty-two of this article, during the period of a license, the total value of all prizes awarded by a licensee, shall not exceed in value seventy-five percent of the gross proceeds collected during such period or the sum of one hundred seventy-five thousand dollars as determined and assigned under this section whichever amount shall be less: Provided, That notwithstanding the foregoing limitation, the total prizes awarded by a licensee, or in the aggregate by two or more limited occasion licensees holding a joint bingo occasion, for any bingo occasion held pursuant to an annual or limited occasion license may not exceed in value seven thousand five hundred dollars.
Prizes may be money or merchandise other than beer, nonintoxicating beer, wine, spirits or alcoholic liquor as defined in section five, article one, chapter sixty of this code. If the prizes are merchandise, the value assigned to them is their fair market value at the time of purchase.

CHAPTER 34
(H. B. 1694—By Mr. Speaker, Mr. Albright and Delegate Farley)

[Passed March 29, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article eight, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing issuance of bonds by the Blennerhassett historical park commission; authorizing the commission to set the form and interest rate of bonds; fixing a mortgage lien upon acquired property; directing the commission to set rates and pledge use of revenues; creating a sinking fund; ensuring adequate funds for repair, depreciation and other expenses; declaring bonds to be negotiable instruments; and providing for method of execution.

Be it enacted by the Legislature of West Virginia:

That section seven, article eight, 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 8. BLENNERHASSETT HISTORICAL PARK COMMISSION.

§29-8-7. Issuance of revenue bonds.

The issuance of bonds under the provisions of this article shall be authorized by a resolution of the commission. The resolution shall recite an estimate by the commission of the cost of the proposed undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. Such bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the commission may by resolution specify. The bonds shall be
10 signed by the governor and by the chairman of the commis-
11 sion, under the great seal of the state and attested by the
12 secretary of state. All such bonds and the interest thereon, and
13 all properties and revenues and income derived from the
14 proposed undertaking, shall be exempt from all taxation by
15 this state or any county, municipality, political subdivision or
16 agency thereof. Such bonds shall bear interest at a rate per
17 annum set by the commission, payable at such times and shall
18 be payable as to principal at such times, not exceeding thirty
19 years from their date and at such place or places, within or
20 without the state, as shall be prescribed in the resolution
21 providing for their issuance. Such resolution shall also declare
22 that a statutory mortgage lien shall exist upon the property
23 so to be acquired, constructed, established, extended or
24 equipped, fix rates or charges for use of the undertaking prior
25 to the payment of all of said bonds and shall pledge the
26 revenues derived from the undertaking for the purpose of
27 paying such bonds and interest thereon, which pledge shall
28 definitely fix and determine the amount of revenues which
29 shall be necessary to be set apart and applied to the payment
30 of the principal of and interest upon the bonds and the
31 proportion of the balance of such revenues, which are to be
32 set aside as a proper and adequate depreciation account, and
33 the remainder shall be set aside for the reasonable and proper
34 maintenance and operation thereof. The rates or charges to
35 be charged for the services from such undertaking shall be
36 sufficient at all times to provide for the payment of interest
37 upon all bonds and to create a sinking fund to pay the
38 principal thereof as and when the same become due and
39 reasonable reserves therefor; and to provide for the repair,
40 maintenance and operation of the undertaking, to provide an
41 adequate depreciation fund and to make any other payments
42 which shall be required or provided for in the resolution
43 authorizing the issuance of said bonds.
44 Bonds herein provided for shall be issued in such amounts
45 as may be necessary to provide sufficient funds to pay all costs
46 of acquisition, construction, establishment, extension or
47 equipment, including engineering, legal and other expenses,
48 together with interest to a date six months subsequent to the
49 estimated date of completion. Bonds issued under the
50 provisions of this article are hereby declared to be negotiable
instruments, and the same shall be executed by the proper
legally constituted authorities of the commission, and be sealed
with the seal of the commission, 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. All signatures on the bonds or coupons and the seal
of the commission may be mechanically reproduced if
authorized in the resolution authorizing the issuance of the
bonds.

CHAPTER 35
(Com. Sub. for H. B. 1759—By Delegate Wooton)
[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two-c, chapter
thirteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to joint establishment
of industrial and commercial development bonds by two or
more governmental bodies; manner of signing and sealing
bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL AND COMMERCIAL DEVELOPMENT
BONDS.

§13-2C-6. Joint establishment by two or more governmental bodies.

Any two or more governmental bodies may jointly acquire
by construction and purchase, or by either, or finance one or
more industrial projects or commercial projects or additions
thereto by the issuance and delivery of revenue bonds in which
case such governmental bodies shall jointly exercise all the
rights, authority, power and duties herein conferred upon a
county commission or a municipality when acting singly and
they shall also be subject to the same limitations, restrictions
and conditions as are herein imposed on a single governmental
body in connection with the acquisition or financing of an
industrial project or commercial project: Provided, That
notwithstanding the signing and sealing requirements set forth
in section seven of this article, the respective governing bodies
may provide by agreement among themselves, approved by
resolution, that any one of such governing bodies may sign
and seal bonds issued pursuant to this article on both its own
behalf and on behalf of all other participating governing
bodies, and signature in the manner set forth in the said
section seven by one governing body shall be effective as to
all other participating governing bodies. The respective
governing bodies, acting jointly, may also provide by
agreement among themselves, any other terms and conditions
of such joint participation.

CHAPTER 36

(H. B. 1996—By Delegate Smith and Delegate Casey)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]
county allocation to the state allocation of unreserved funds after the first day of October in each year.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; establishing procedure for allocation and disbursements; reservation of funds; limitations; unused allocation; expirations and carry overs.

(a) Private activity bonds (as defined in section 103(n) of the United States Internal Revenue Code of 1954, as amended), issued pursuant to this article during any calendar year, shall not exceed the ceiling established by section 103(n) of the United States Internal Revenue Code of 1954, as amended, by the Deficit Reduction Act of 1984, as amended, for each year.

(b) On or before the first day of each calendar year, the director of the governor's office of economic and community development shall determine the state ceiling for such year based on the criteria of the deficit reduction act, which annual ceiling shall be allocated among the several issuers of bonds under this article as follows:

(1) One half the total ceiling for each year shall be allocated to the counties on a per capita basis and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the “county allocation.”

(2) One half of the total ceiling shall be retained by the state of West Virginia by the governor's office of economic and community development and, unless the context in which used requires otherwise, shall be hereinafter in this section referred to as the “state allocation.”

(c) The director of the governor's office of economic and community development shall notify each clerk of the county
commission of that county's apportionment from the county allocation. All apportionments made to any county from the county allocation shall be for issues of the county commission of that county and for issues of all municipalities within that county.

(d) Distribution of both the county and state allocations to lessees, purchasers or owners of proposed commercial or industrial projects shall be on a first come, first serve basis and shall not be distributed or allocated for any project until the governmental body seeking the same shall submit an application for reservation of funds as provided in subsection (e) of this section. The governmental body must first adopt an inducement resolution approving the prospective issuance of bonds and setting forth the amount of bonds to be issued. Within ten days of the inducement resolution, each governmental body must submit a notice of inducement signed by its clerk or recorder to the governor's office of economic and community development. Such notice shall include such information as may be required by the governor's office of economic and community development by rule or regulation.

(e) Following the submission of its notice of inducement, the governmental body at any time deemed expedient by it may submit its notice of reservation of funds which shall include the following information:

1. The date of the notice of reservation of funds;
2. The identity of the governmental body issuing the bonds;
3. The date of inducement and the prospective date of issuance;
4. The name of the entity for which the bonds are to be issued;
5. The amount of the bond issue;
6. The type of issue; and
7. A description of the project for which the bonds are to be issued.

(f) (1) Upon receipt of the notice of reservation of funds by the governor's office of economic and community development, such office shall immediately note upon the face of such
notice the date and time the same was so received and shall within ten days certify to the governmental body submitting the same (A) that the statewide ceiling has not been exceeded, if such be the case, and (B) that the amount of the bond issue has been allocated and reserved in the name of such governmental body for the project for which the bonds are to be issued and, thereafter, the amount of such bond issue shall be so allocated and reserved.

(2) In the event the amount requested in the notification of reservation of funds, as provided for in subdivision (I) of this subsection, exceeds the apportionment available to that county from the county allocation, the governor's office of economic and community development shall immediately notify the governmental body proposing to issue such bonds of that fact and such body may apply to such office for an apportionment to the extent of such excess from the state allocation.

(g) If the bond issue for which a reservation has been made has not been finally closed within one hundred twenty days of the date of the certification of reservation to be made by the governor's office of economic and community development, as required by the provisions of subsection (f) of this section, and a statement of bond closure which has been executed by the clerk or recorder of the governmental body reserving the same has not been received by such office within that time, then such reservation shall expire and be deemed to have been forfeited and the funds so reserved shall revert to the county and/or state allocation, as the case may be, from which the funds were originally reserved: Provided, That, as to any notice of reservation of funds received by the governor's office of economic and community development during the month of December in any calendar year with respect to any project qualifying as an elective carry forward pursuant to section 1.103(n)-4T of the rules and regulations of the internal revenue service of the United States department of the treasury, as published in the federal registry on the fifth day of October, one thousand nine hundred eighty-four, such reservation of funds and the allocation to which the same relates shall not expire or be subject to forfeiture.

(h) Any amount of the county allocation remaining unreserved on the first day of October in any calendar year
which amount shall be determined by the director of the governor’s office of economic and community development) shall revert to the state allocation for the remainder of that year.

CHAPTER 37
(Com. Sub. for S. B. 613—By Senator Boettner)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six, seven, nine, eleven, thirteen and fifteen, article nineteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to solicitation of charitable funds; definitions; reallocating powers and duties of commission on charitable organizations and secretary of state; registration of charitable organizations; filing of solicitation contracts; removing fifteen percent limitation on payments for solicitation activities; prohibited acts, enforcement and penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-3. Commission on charitable organizations; powers and duties.
§29-19-5. Registration of charitable organizations; fee.
§29-19-6. Certain persons and organizations exempt from registration.
§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.
§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

1. As used in this article:

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

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

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

5. (4) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists, receives funds from or advises one or more chapters, branches or affiliates in the state.
“Person” means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

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

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

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

“Commission” means the commission on charitable organizations herein created.

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

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

(b) The commission shall serve as body advisory to the
secretary of state and, as such, shall have the following
powers and duties:

(1) To hold hearings and make adjudications as
provided in section nine and section fifteen of this article;
(2) To advise and make recommendations to the
secretary of state on policies and practices to effect the
purposes of this article;
(3) To request that the attorney general, and, when
appropriate, the prosecuting attorney of any county, take
action to enforce this article or protect the public from any
fraudulent scheme or criminal act;
(4) To meet at the request of the secretary of state or
pursuant to regulations promulgated by him. Minutes of
each meeting shall be public records and filed with the
secretary of state.
(c) The secretary of state shall administer this article,
 prescribe forms for registration or other purposes, and
 promulgate rules and regulations in furtherance of this
article in accordance with the provisions of chapter twenty-
nine-a of this code.

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

(a) Every charitable organization which intends to
solicit contributions within this state or to have funds
solicited on its behalf shall, prior to any solicitation, file a
registration statement with the secretary of state upon
forms prescribed by him, which shall be good for one full
year and which shall be refiled in the next and each
following year in which such charitable organization is
engaged in solicitation activities. It shall be the duty of the
president, chairman or principal officer of such charitable
organization to file the statements required under this
article. Such statements shall be sworn to and shall contain
the following information:
(1) The name of the organization and the purpose for
which it was organized;
(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

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

(4) The place where and the date when the organization was legally established, the form of its organization;

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

(6) A copy of a balance sheet and income and expense statement for the organization's immediately preceding fiscal year, or a copy of a financial statement covering, in a consolidated report, complete information as to all the preceding year's fund-raising activities of the charitable organization, showing kind and amount of funds raised, costs and expenses incidental thereto, and allocation or disbursement of funds raised including the amounts raised in the state and the percentage of that amount that remains in the state: Provided, That for organizations raising more than fifty thousand dollars per year in contributions, the balance sheet and income and expense statement, or financial statement provided shall be audited by an independent public accountant;

(7) A copy of any determination of the organization's tax-exempt status under section 501 of the Internal Revenue Code and a copy of the last filed Internal Revenue Service form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions from the public directly or have such done on its behalf by others;

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

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

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

(12) The names of the individuals or officers of the organization who will have final responsibility for the
custody of the contributions; and
(13) The names of the individuals or officers of the
organization responsible for the final distribution of the
contributions.
(b) Each chapter, branch or affiliate, except an
independent member agency of a federated fund-raising
organization, may separately report the information
required by this subsection, or report the information to its
parent organization which shall then furnish such
information as to its West Virginia affiliates, chapters and
branches in a consolidated form to the secretary of state. An
independent member agency of a federated fund-raising
organization, as hereinbefore defined, shall comply with
the provisions of this article independently, unless
specifically exempted from doing so.
(c) The registration forms and any other documents
prescribed by the secretary of state shall be signed by an
authorized officer or by an independent public accountant
and by the chief fiscal officer of the charitable organization
and shall be verified under oath.
(d) Every charitable organization which submits an
independent registration to the secretary of state shall pay
an annual registration fee of ten dollars; a parent
organization filing on behalf of one or more chapters,
branches or affiliates and a federated fund-raising
organization filing on behalf of its member agencies shall
pay a single annual registration fee for itself and such
chapters, branches, affiliates or member agencies included
in the registration statement.

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

(a) The following charitable organizations shall not be
required to file an annual registration statement with the
secretary of state:
(1) Educational institutions, the curriculums of which
in whole or in part are registered or approved by the state
board of education, either directly or by acceptance of
accreditation by an accrediting body recognized by the
state board of education;
(2) Persons requesting contributions for the relief of any
individual specified by name at the time of the solicitation
when all of the contributions collected without any
deductions whatsoever are turned over to the named
beneficiary for his use;
(3) Charitable organizations which do not intend to
solicit and receive and do not actually raise or receive
contributions from the public in excess of seven thousand
five hundred dollars during a calendar year or do not
receive contributions from more than ten persons during a
calendar year, if all of their functions, including fund-
raising activities, are carried on by persons who are unpaid
for their services and if no part of their assets or income
inures to the benefit of or is paid to any officer or member.
Charitable organizations which do not intend to solicit and
receive in excess of seven thousand five hundred dollars,
but do receive in excess of that amount from the public,
shall file the annual registration statement within thirty
days after contributions in excess of seven thousand five
hundred dollars are received;
(4) Hospitals which are nonprofit and charitable;
(5) Organizations which solicit only within the
membership of the organization by the members thereof:
Provided, That the term "membership" shall not include
those persons who are granted a membership upon making
a contribution as the result of solicitation; or
(6) A local post, camp, chapter or similarly designated
element or a county unit of such elements of a bona fide
veterans' organization which issues charters to such local
elements throughout this state, a bona fide organization of
volunteer firemen, a bona fide ambulance association or
bona fide rescue squad association or a bona fide auxiliary
or affiliate of any such organization, provided all its fund-
raising activities are carried on by members of such an
organization or an affiliate thereof, and such members
receive no compensation directly or indirectly therefor.
(b) Any charitable organization claiming to be exempt
from the registration provisions of this section and which
is about to or does solicit charitable contributions shall
submit, annually, to the secretary of state on forms to be
prescribed by him the name, address and purpose of the
organization and a statement setting forth the reason for the
claim for exemption. If exempted, the secretary of state shall
issue, annually, a letter of exemption which may be exhibited

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

(b) Every written contract or agreement between a professional solicitor and a charitable organization shall be filed with the secretary of state within ten days after such agreement is concluded. In the absence of a written contract or agreement between a professional solicitor and a charitable organization, a written statement of the nature of the arrangement to prevail in lieu thereof shall be filed.

(c) Each statement must clearly provide the amount, percentage or other method of compensation to be received by the professional solicitor or professional fund-raising counsel as a result of the contract or arrangement. If it does not so provide, the secretary of state shall disapprove the contract or arrangement within ten days after its filing. No registered charitable organization or professional solicitor shall carry out or execute a disapproved contract or arrangement or perform services, or receive or make payments, pursuant to a disapproved contract or arrangement. Any party to a disapproved contract or arrangement shall, upon written request made within thirty days of disapproval, be given a hearing before the commission within thirty days after such request is filed.

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

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

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

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

c) Each registration shall be valid throughout the state for a period of one year and may be renewed for additional one-year periods upon written application under oath in the form prescribed by the secretary of state and the payment of the fee prescribed herein.

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

§29-19-11. Records to be kept by charitable organizations, professional fund-raising counsel and professional solicitors.

Every charitable organization subject to the provisions of this article shall, in accordance with the rules and regulations prescribed by the secretary of state, keep true fiscal records as to its activities in this state as may be covered by this article in such form as will enable it accurately to provide the information required by this article. Upon demand, such records shall be made available to the secretary of state, the commission or the attorney general for inspection. Such records shall be retained for a period of at least three years after the end of the period of registration to which they relate.


(a) No charitable organization, professional fund-raising counsel or professional solicitor subject to the provisions of this article who is required to register with the secretary of state pursuant to the provisions of this article whose registration has been cancelled, suspended or refused may solicit contributions from the public.

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

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

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

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

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

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

(2) Carries such authorization on his person when
making solicitations and exhibits the same on request to
persons solicited or police officers or agents of the secretary
of state.

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

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

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

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

(e) In addition to the foregoing, any person who willfully and knowingly violates any provisions of this article, or who shall willfully and knowingly give false or incorrect information to the secretary of state in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined upon first conviction thereof in an amount not less than one hundred dollars nor more than five hundred dollars, or be imprisoned in the county jail for not more than six months, or be both fined and imprisoned, and for the second and any subsequent offense to pay a fine of not less than five hundred dollars nor more than one thousand dollars, or be imprisoned for not more than one year, or be both fined and imprisoned.

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

(g) In addition to the foregoing, any charitable
organization, professional fund-raising counsel or
professional solicitor who willfully and knowingly violates
any provisions of this article by employing any device,
scheme, artifice, false representation or promise with intent
to defraud or obtain money or other property shall be guilty
of a misdemeanor, and, upon conviction thereof, for a first
offense, shall be fined not less than one hundred dollars nor
more than five hundred dollars, or be confined in the county
jail not more than six months, or be both fined and
imprisoned; and for a second and any subsequent offense,
shall be fined not less than five hundred dollars nor more
than one thousand dollars, or confined in the county jail not
more than one year, or be both fined and imprisoned.

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

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

If the court finds that: (1) It is impossible to obtain the
names of over one half the persons who were solicited and in
violation of this article, or (2) if the majority of individual
ccontributions was of an amount less than five dollars, or (3)
if the cost to the state of returning these contributions is
equal to or more than the total sum to be refunded, the court
shall order the money to be placed in the custody and
control of a general receiver appointed pursuant to the
provisions of article six, chapter fifty-one of this code. The
general receiver shall maintain this money pursuant to the
provisions of article eight, chapter thirty-six of this code.

CHAPTER 38
(Com. Sub. for H. B. 1567—By Delegate Murensky and Delegate Wells)
[Passed April 11, 1985; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for reparations of
innocent victims of crimes occurring in West Virginia to be
moral obligations of the state and directing the auditor to issue
warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

REPARATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for
reparation to be moral obligations of the state and directing
payment thereof.

The Legislature has duly considered the findings of fact and
recommendations for awards reported to it by the court of
claims in respect to the following named claimants who were
innocent victims of crime within this state and entitled to
reparations; and in respect to each of such named claims the
Legislature adopts those findings of fact as its own, hereby
declares it to be the moral obligation of the state to pay each
such claimant in the amount specified below, and directs the
auditor to issue warrants for the payment thereof out of any
fund appropriated and available for the purpose.
Claims for crime victims reparation awards:

(TO BE PAID FROM CRIME VICTIMS REPARATION FUND)

1. Atwell, Malinda A. ........................................ $ 300.75
2. Baker, Ricky E. ........................................ $ 8,070.20
3. Basham, Fred, as administrator of the estate of Fred
   Arthur Basham ........................................ $ 693.17
4. Bess, Jan E. ........................................ $ 1,017.65
5. Broyles, Chester A., III .................................. $ 4,979.90
6. Carkin, Maria A. ........................................ $ 7,573.73
7. Carter, Kenneth W. ..................................... $ 7,884.05
8. Clinebell, Thomas S. ................................... $ 3,889.80
9. DeBrular, Eileen M. ................................... $ 5,711.50
10. DeBrular, Eileen M., as guardian of Michael Lee West .... $ 9,288.50
11. DeFoe, Kevin Todd ..................................... $ 1,809.15
12. Dempsey, Brenda J. ..................................... $ 1,203.20
13. Eccleston, Eugene C., Jr. ................................ $ 11,433.58
14. Elliott, Donald L. ...................................... $ 371.50
15. Gill, Margaret J. ....................................... $ 1,355.65
16. Haley, G. Richard F. ................................... $ 2,532.15
17. Hitt, Thelma E. ......................................... $ 1,477.25
18. Holcomb, James M. ...................................... $ 20,000.00
19. Kegley, Donald B. ....................................... $ 520.08
20. Kelley, Randall L. ...................................... $ 246.87
21. Lavin, Gene A. .......................................... $ 20,000.00
22. Logston, Brenda K. ..................................... $ 20,000.00
23. Maione, Garnet M. ...................................... $ 7,924.80
24. Martin, Phillip G. ...................................... $ 63.50
25. McNeal, Otis M. L., Jr. ................................ $ 107.50
26. Miller, James B. ......................................... $ 20,000.00
27. Moore, Harold R. ....................................... $ 143.20
28. Moore, Linda Elaine ...................................... $ 1,283.00
29. Sellards, Danny C. ...................................... $ 97.00
30. Shear, Dorothy I. ....................................... $ 361.00
31. Sweat, Gwendolyn Y. .................................... $ 243.65
32. Taylor, Keith W. ....................................... $ 14,746.52
33. Thacker, Katherine Kaye, as guardian of Kathy Ann
   Thacker, a minor ....................................... $ 1,643.00
CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the department of corrections; the farm management commission; and the state fire marshal, to be moral obligations of the state and directing payment thereof.

1 The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities and
services rendered by certain claimants herein and has
considered claims against the state, the department of
corrections, the farm management commission and the state
fire marshal, agencies thereof, which have arisen due to over-
expenditures of the departmental appropriations by officers of
such state spending unit, such claims having been previously
considered by the court of claims which also found that the
state has received the benefit of the commodities and services
rendered by each claimant, but were denied by the court of
claims on the purely statutory grounds that to allow such
claims would be condoning illegal acts contrary to the laws
of the state. The Legislature pursuant to its findings of fact
and also by the adoption of the findings of fact by the court
of claims as its own, and, while not condoning such illegal acts,
hereby declares it to be the moral obligation of the state to
pay each such claim in the amount specified below, and directs
the auditor to issue warrants upon receipt of a properly
executed requisition supported by an itemized invoice,
statement or other satisfactory document as required by
section ten, article three, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
for the payment thereof out of any fund appropriated and
available for the purpose.

(a) Claims against the Department of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) FCI Alderson $118,352.21
(2) Raleigh Orthopedic Association, Inc. $ 250.00
(3) Wheeling Hospital $ 1,385.10

(b) Claims against the Farm Management Commission:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bush Industries Feed & Grain $ 2,805.00

(c) Claims against the State Fire Marshal:

(TO BE PAID FROM SPECIAL REVENUE FUND NO. 8002-24)

(1) Dunlow Volunteer
Fire Department $ 2,744.39
CHAPTER 40

(Com. Sub. for H. B. 1569—By Delegate Murensky and Delegate Wells)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the alcohol beverage control commissioner; attorney general; beer commission; board of regents; department of corrections; department of education; department of health; department of highways; department of mines; department of motor vehicles; department of natural resources; department of public safety; division of vocational rehabilitation; governor's office of economic and community development; human rights commission; supreme court of appeals; and treasurer, to be moral obligations of the state and directing payment thereof.

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

10 (a) Claims against the Alcohol Beverage Control Commissioner:

11 (TO BE PAID FROM SPECIAL REVENUE FUND)

13 (1) Appalachian Power Company .............. $ 229.17
14 (2) Central Beverage Distributors, Inc. ...... $ 7,659.76
(b) **Claim against the Attorney General:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

| (1) Norval D. Goe, Executor of the Estate of William Robert Goe, dec. | $ 7,569.42 |

(c) **Claim against the Beer Commission:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

| (1) Central Distributing Co., Inc. | $ 505.10 |

(d) **Claims against the Board of Regents:**

**(TO BE PAID FROM GENERAL REVENUE FUND)**

| (1) Mary Ann Babich | $ 540.00 |
| (2) Elliott A. Bigelow | $ 497.90 |
| (3) Department of Employment Security | $ 436.53 |
| (4) Janet Dooley | $ 7,886.00 |
| (5) Karl Van Hildebrand | $ 287.20 |
| (6) Terry A. Johnson | $ 120.54 |
| (7) Richard D. Koval | $ 65.44 |
| (8) John Vincent Lacey, Jr. | $ 459.36 |
| (9) Elizabeth D. Morgan | $ 766.00 |
| (10) Danny R. Sinclair | $ 696.57 |
| (11) Timothy E. Smith | $ 239.52 |
| (12) Alfred D. Yoppi, Jr. | $ 231.48 |
| (13) Nickolas F. Zara | $ 207.90 |

**(TO BE PAID FROM SPECIAL REVENUE FUND)**

| (1) Chapman Printing Company | $ 205.00 |

from Acct. No. 8623-11

| (2) The Lawhead Press, Inc. | $ 576.00 |

from Acct. No. 8600-40

| (3) Barbara Ann McCabe | $ 269.47 |

from Acct. No. 9280-00

| (4) Moore Business Forms, Inc. | $ 490.07 |

from Acct. No. 8641-11

| (5) Steven Gerard Noonan | $ 60.00 |

from Acct. No. 8610-13

| (6) Anita Faye Wickline | $ 98.85 |

from Acct. No. 8627-32

| (7) Beverly Pisegna Fulmer | $ 228.00 |

from Acct. No. 9280-00
52  (e) Claims against the Department of Corrections:

53  (TO BE PAID FROM GENERAL REVENUE FUND)

54  (1) Baysal & Associates, Inc. .................. $ 130.00
55  (2) W. Auvil Godwin .......................... $ 2,700.00
56  (3) Grafton Sanitary Sewer Board ......... $ 1,725.00
57  (4) D. Verne McConnell ...................... $ 22.00
58  (5) Medical Dental Bureau, Inc. (Agent for
59      Ohio Valley Medical Center, Inc.) .... $ 186.76
60  (6) Richard F. Terry, M.D., Inc. .......... $ 735.00
61  (7) Virginia Electric and
62      Power Company .......................... $ 110.00
63  (8) Wheeling Electric Company ............. $ 4,602.64

64  (f) Claim against the Department of Education:

65  (TO BE PAID FROM GENERAL REVENUE FUND)

66  (1) AM International Inc., Debtor in
67      Possession Varityper Division ......... $ 524.00

68  (g) Claims against the Department of Health:

69  (TO BE PAID FROM GENERAL REVENUE FUND)

70  (1) Dental Arts Laboratory, Inc............. $ 135.20
71  (2) Leonard J. Gwiazdowsky ............... $ 502.50
72  (3) Holzer Clinic ........................... $ 105.00
73  (4) Holzer Hospital Foundation, d/b/a/
74      Holzer Medical Center ................. $ 476.25
75  (5) Kellogg Sales Company .................. $ 137.50
76  (6) Parke-Davis ............................. $ 6,864.00
77  (7) Pfizer, Inc. ............................. $ 3,748.56
78  (8) St. Joseph's Hospital ................... $ 317.27
79  (9) Stonewall Jackson Memorial Hospital .. $ 1,085.79
80  (10) 3M Company ............................ $ 565.09
81  (11) Xerox Corporation ...................... $ 5,006.13
82  (12) Sophia Clark ............................ $ 2,613.00

83  (h) Claim against the Department of Health—

84      Office of the Chief Medical Examiner:

85  (TO BE PAID FROM GENERAL REVENUE FUND)

86  (1) Jeffry S. Life ......................... $ 35.00
### Claims against the Department of Highways:

*(TO BE PAID FROM STATE ROAD FUND)*

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<tr>
<th>Claimant Name</th>
<th>Description</th>
<th>Amount ($)</th>
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<tbody>
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<td>American Bridge Division of United States Steel Corporation</td>
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<td>American National Property &amp; Casualty, Subrogee of Charles R. Hart</td>
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<td>Anderson Equipment Company</td>
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168 CLAIMS

127 (32) Barbara M. Neri .................................. $ 11,040.00
128 (33) Fred Staffilino, Jr. and
129 Linda Staffilino ........................................ $ 14,000.00
130 (34) Tucker’s Used Cars, Inc. .......................... $ 10,778.82

131 (j) Claim against the Department of Mines:

132 (TO BE PAID FROM GENERAL REVENUE FUND)
133 (1) Xerox Corporation ................................. $ 913.98

134 (k) Claim against the Department of Mines—
Office of Oil & Gas:

135 (TO BE PAID FROM GENERAL REVENUE FUND)
136 (1) Xerox Corporation ................................. $ 1,691.83

137 (l) Claims against the Department
138 of Motor Vehicles:

139 (TO BE PAID FROM STATE ROAD FUND)
140 (1) Hamilton Business Systems ....................... $ 39.43
141 (2) Xerox Corporation .................................. $ 848.25

142 (m) Claims against the Department
143 of Natural Resources:

144 (TO BE PAID FROM GENERAL REVENUE FUND)
145 (1) Johnson Controls, Inc. .......................... $ 15,326.67
146 (2) Xerox Corporation ................................. $ 8,500.00

147 (TO BE PAID FROM FEDERAL REVENUE FUND)
148 (1) The Goodyear Tire & Rubber Company  .......... $ 401.00
149 from Acct. No. 7930-79
150 (2) Keizer Saw & Mower ............................... $ 309.95
151 from Acct. No. 7930-79

152 (n) Claims against the Department of
153 Public Safety:

154 (TO BE PAID FROM GENERAL REVENUE FUND)
155 (1) Aarom Boonsue, M.D., Inc. ....................... $ 290.00
156 (2) AM International Inc., Debtor in
157 Possession Varityper Division ....................... $ 600.00
158 (3) City of Wellsburg ................................. $ 22.50
### Claims

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<th>Claim Number</th>
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<td>160</td>
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<td>Eagle Aviation, Inc.</td>
<td>$3,577.00</td>
</tr>
<tr>
<td>163</td>
<td>The Goodyear Tire &amp; Rubber Co.</td>
<td>$2,764.50</td>
</tr>
<tr>
<td>164</td>
<td>Greenbrier Physicians, Inc.</td>
<td>$50.00</td>
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<td>165</td>
<td>The James &amp; Law Company</td>
<td>$182.90</td>
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<tr>
<td>166</td>
<td>Jordan Chiropractic Clinic, Inc.</td>
<td>$130.00</td>
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<tr>
<td>167</td>
<td>Kanawha Valley Radiologist, Inc.</td>
<td>$100.00</td>
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<tr>
<td>168</td>
<td>Marjorie Garden Associates</td>
<td>$210.00</td>
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<tr>
<td>169</td>
<td>Means Charleston Center</td>
<td>$137.84</td>
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<tr>
<td>170</td>
<td>Putnam General Hospital</td>
<td>$1,533.40</td>
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<tr>
<td>171</td>
<td>Roentgen Diagnostics, Inc.</td>
<td>$39.00</td>
</tr>
<tr>
<td>172</td>
<td>St. Joseph's Hospital</td>
<td>$6.00</td>
</tr>
<tr>
<td>173</td>
<td>Three Community Cable TV</td>
<td>$164.00</td>
</tr>
<tr>
<td>174</td>
<td>3M Company</td>
<td>$246.16</td>
</tr>
<tr>
<td>175</td>
<td>Claims against the Division of Vocational Rehabilitation:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(TO BE PAID FROM FEDERAL REVENUE FUND)</td>
<td></td>
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<tr>
<td>178</td>
<td>Krown Research, Inc.</td>
<td>$194.00</td>
</tr>
<tr>
<td></td>
<td>from Acct. No. 7873-79</td>
<td></td>
</tr>
<tr>
<td>180</td>
<td>St. Joseph's Hospital</td>
<td>$4,999.40</td>
</tr>
<tr>
<td></td>
<td>from Acct. No. 7873-79</td>
<td></td>
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<tr>
<td>182</td>
<td>Claim against the Governor's Office of Economic and Community Development:</td>
<td></td>
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<tr>
<td></td>
<td>(TO BE PAID FROM SPECIAL REVENUE FUND)</td>
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<tr>
<td>185</td>
<td>West Virginia Utility Contractors' Association</td>
<td>$3,374.57</td>
</tr>
<tr>
<td></td>
<td>from Acct. No. 8024-26</td>
<td></td>
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<tr>
<td>188</td>
<td>Claim against the Human Rights Commission:</td>
<td></td>
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<tr>
<td></td>
<td>(TO BE PAID FROM GENERAL REVENUE FUND)</td>
<td></td>
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<tr>
<td>190</td>
<td>Department of Employment Security</td>
<td>$424.00</td>
</tr>
<tr>
<td>192</td>
<td>Claim against the Supreme Court of Appeals:</td>
<td></td>
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<tr>
<td></td>
<td>(TO BE PAID FROM SUPREME COURT GENERAL JUDICIAL FUND,</td>
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<td></td>
<td>ACCOUNT NO. 1110-00, FROM APPROPRIATION</td>
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<td></td>
<td>FOR CURRENT FISCAL YEAR 1984-85)</td>
<td></td>
</tr>
<tr>
<td>196</td>
<td>The Sheriff and Treasurer of Kanawha County</td>
<td>$200,016.15</td>
</tr>
</tbody>
</table>

**Claim totals:**

- Consolidated Business Forms Company: $178.49
- Doctor's Urgent Care, Inc.: $55.00
- Eagle Aviation, Inc.: $3,577.00
- The Goodyear Tire & Rubber Co.: $2,764.50
- Greenbrier Physicians, Inc.: $50.00
- The James & Law Company: $182.90
- Jordan Chiropractic Clinic, Inc.: $130.00
- Kanawha Valley Radiologist, Inc.: $100.00
- Marjorie Garden Associates: $210.00
- Means Charleston Center: $137.84
- Putnam General Hospital: $1,533.40
- Roentgen Diagnostics, Inc.: $39.00
- St. Joseph's Hospital: $6.00
- Three Community Cable TV: $164.00
- 3M Company: $246.16
- Krown Research, Inc.: $194.00
- St. Joseph's Hospital: $4,999.40
- West Virginia Utility Contractors' Association: $3,374.57
- Department of Employment Security: $424.00
- The Sheriff and Treasurer of Kanawha County: $200,016.15
(s) Claim against the Treasurer:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Bob Dalton Investigations, Inc. ........ $ 294.53

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

CHAPTER 41
(Com. Sub. for S. B. 196—By Mr. Tonkovich, Mr. President, et al.)

[Passed April 16, 1985; in effect July 1, 1985. Approved by the Governor.]
seven-k, seven-m, seven-n, seven-o, seven-p, seven-q and seven-r, all relating to economic development generally; establishing "The Economic Development Act of 1985"; setting forth legislative findings; construction of chapter; creating the department of commerce; providing for a commissioner of commerce, division directors and deputy commissioners; setting forth general powers of the department; creating the various divisions within said department; authorizing the commissioner to establish additional divisions; authorizing the governor to transfer divisions, duties, functions and appropriations between the department of commerce and the office of community and industrial development; providing for an expiration date of such authority; assigning or transferring certain employees to the department of commerce or the office of community and industrial development; protecting the employment, employment classification and other employment conditions of certain persons; providing for exceptions; requiring the department to submit an annual program and policy action statement to the joint committee on government and finance; providing for the division of tourism and setting forth its purpose, powers and general duties; providing for the division of advertising and promotion and setting forth its purpose, powers and general duties; providing for the division of research and strategic planning and setting forth its purpose, powers and general duties; providing for the division of product marketing and setting forth its purpose, powers and general duties; providing for the division of small business development and setting forth its purpose, powers and general duties; establishing small business innovation centers; creating the state small business innovation network center board; setting forth the functions and duties of regional small business innovation centers; confidentiality of certain information; mandating the director to adopt certain rules and regulations; transferring the duties, powers, functions and all documents and equipment of the division of parks and recreation within the department of natural resources to the department of commerce; retaining legal title to such properties within the department of natural resources; transferring existing contractual obligations and remaining appropriations to the department of commerce; requiring
the commissioner of commerce and the director of natural resources to cooperate in effectuating such transfer; providing for the division of parks and recreation and setting forth its purpose, powers and general duties; law enforcement duties to remain the responsibility and function of the department of natural resources; continuing the Berkeley Springs sanitarium as a state recreational facility within the department of commerce; transferring the Washington Carver camp to the jurisdiction of the commissioner of commerce; requirements of commissioner; providing definitions; providing for the issuance of park development revenue bonds; duties and authority of commissioner; authorizing the commissioner to promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a, to control uses of the parks and recreation system; prohibiting public hunting, the exploitation of minerals or harvesting of timber for commercial purposes in any state park; preserving the authority of the director of the department of natural resources with respect to public lands; limitations on expenditure of revenues; authorizing the commissioner to issue park development revenue bonds and setting forth other powers of the commissioner; exempting park development projects, certain properties and income from taxation, except inheritance taxation; providing for the investment in notes, bonds and security interests; disclaimer of state liability; providing for a trustee for bondholders; proceeds of park development revenue bonds, grants and gifts; authorizing the commissioner to pledge revenue as security for any bonds issued; setting forth duties of the department with respect to the maintenance and control of projects; requiring observation of the constitution and other laws; authorizing the commissioner to operate commissaries, restaurants and other facilities; authorizing the commissioner to enter into certain contracts; providing for the acquisition, development, protection, operation and maintenance of the Greenbrier river trail; providing certain limitations thereof; requiring the correlation of projects and services; sunset provision; abolishing the office of economic and community development; mandating the governor to transfer the functions, personnel, property and relative liens thereto, from said office to the office of community and
industrial development or to the department of commerce; creating the office of community and industrial development; providing for a director thereof; authorizing the director to promulgate rules and regulations; exempting such rules and regulations from the provisions of chapter twenty-nine-a; creating divisions within said office; authorizing the governor to transfer duties, functions or appropriations to the department of commerce; authorizing the governor, at the director’s request, to create additional or abolish existing divisions; providing for a limit on such gubernatorial authority; requiring the office to conduct certain feasibility studies and report to the Legislature; defining certain terms; providing for the West Virginia export development authority; setting forth legislative findings; definitions; creating the said authority and setting forth its purpose; providing for a board of directors; qualifications and duties of board members; setting forth general powers of the authority; empowering the authority to provide guaranteed funding for eligible export loans; setting forth qualifications for such loans; providing for participating banking organizations and setting forth qualifications thereof; requiring the submission of an annual report and an annual audit; interpretation of powers; exempting authority from taxation; setting forth when conflict of interest exists with respect to members, officers, agents or employees of the authority; consequences of any such conflicts; exempting members or any persons acting on behalf of the authority from personal liability; authorizing the authority to issue bonds; such bonds to be payable solely from revenues; providing for the execution, form, delivery, conditions and sale of such bonds; exempting such bonds from certain taxation; exempting security agreements and financing agreements from stamp and transfer taxes; authorizing the authority to create an insurance fund; setting forth requirements of such funds; permitting the authority to use bond funds to purchase such insurance; when insurance may be pledged as security; providing that bonds, debenture, notes or other evidence of indebtedness of the authority are securities which may be invested or deposited by the appropriate persons or entities; exempting certain confidential information from disclosure; provisions
to be cumulative; severability of provisions; continuing the West Virginia labor-management advisory council; renaming said council; increasing the membership of said council; present members to complete terms of office; providing that additional organizations should submit recommendations for membership to the governor; increasing the minimum number of meetings each year and the number of members constituting a quorum; setting forth objectives of the council; enumerating the powers, duties and functions thereof; requiring the council to submit an annual report to the joint committee on government and finance; setting forth authorizations and restrictions with respect to appropriations, gifts, bequests or grants; funds to be deposited with state treasurer; requiring the council to designate regions and to establish regional advisory councils therein; setting forth duties and requirements of such councils; providing for the compensation of members and employment of staff; duration of council; creating the "West Virginia Basic Assistance for Industry and Trade Act"; setting forth legislative purpose and intent; definitions; severability; creating the West Virginia automobile industry assistance corporation; powers and duties generally; providing for a board of directors of such corporation; setting forth qualifications and duties of the board; requiring the board to manage and control the corporation; exempting directors and officers from personal liability; authorizing the board to employ certain persons; restricting the salary of employees; requiring all contracts of employment to contain prevailing rate of wages; how prevailing rate of wages determined; specifying powers of the corporation; authorizing the governor to provide for the transfer of the use, possession and control of real or personal property of the state to the corporation; providing for a principal office; requiring the maintenance of records; requiring board members to take oath of office; providing that the board of investments shall be ex officio a board of investments for public employees retirement system funds for purposes of article; authorizing the board of investments to invest moneys, securities and other assets of such system in the form of interest bearing loans; setting forth restrictions on such loan authority; specifying requirements of such loans; setting forth limitation on loan authority;
specifying terms and conditions of loans; requiring an annual audit of a borrower's account; authorizing the board to request a report of an independent audit; prohibiting the making of loans without a written agreement of the borrower to provide the board with such reports; authorizing the board to take necessary action to enforce rights; providing certain tax credits to borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such reports; providing a termination date for the board's authority to make such loans; creating the West Virginia industrial and trade jobs development corporation; definitions; purposes of corporation; providing for a board of directors; number, appointment, terms of office, qualifications and compensation of members; prohibiting members from having certain financial interests; providing for criminal penalties; specifying the duties of the board; exempting corporate directors and officers from personal liability; authorizing the board to employ staff personnel; limitation on salaries; requiring all contracts to contain minimum wage provisions; determination of minimum wage; specifying the powers of such corporation; creating an investment fund; providing how such fund must be administered by the board; setting forth sources of the fund; authorizing the corporation to invest in qualified securities; setting forth requirements for such investment; limiting the amount of total investment; exceptions; exempting such transactions from the provisions of the uniform securities act; authorizing the corporation to finance development projects; setting forth restrictions on such financing; limiting the amount of financing; exceptions; requiring security for such investments; exempting such transactions from the provisions of the uniform securities act; authorizing the governor to transfer to the corporation the use, possession and control of real or personal property of the state; providing the location of a principal office; maintaining records; requiring board members to subscribe to an oath of office; authorizing the board of investments to be ex officio a board of investments for public employees retirement system funds for investment in accordance with the provisions of this article; setting forth the authority of the
board of investments to invest moneys; requirements of loans; limitations on such loan authority; setting forth terms and conditions of loans; authorizing the board of investments to take necessary action to enforce certain rights; permitting a tax credit for borrowers; limitations thereof; requiring the board of investments to make an annual report to the Legislature; setting forth requirements of such report; providing for the termination of the board’s authority to make such loans; authorizing certain inspections, audits and investigations; creating the public energy authority; providing for a short title; setting forth purposes and intent; legislative findings; definitions; creating the West Virginia public energy authority board; providing for the appointment, terms of office, qualifications, compensation, duties and expenses of board members; providing for a director; requiring the board to report annually to the governor and the Legislature; audit; setting forth powers of the authority; providing for general powers, duties, authority and responsibilities of authority; expenses of authority; restrictions on use of funds; authorizing the board to invest funds in specified securities; providing for the maintenance, operation and repair of projects; providing that bonds shall be lawful investments; exempting the operation and maintenance of projects from taxation; empowering the authority to acquire property; authorizing other governmental agencies to lease, lend, grant or convey property to the authority; setting forth terms thereof; authorizing the authority to acquire property or property rights of other property owners; authorizing governmental agencies to lease, lend, grant or convey property to the authority; authority not to be deemed a public utility; authority exempted from jurisdiction of the public service commission; authority subject to provisions governing gas pipeline safety; providing for the transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers; prohibiting officers, members or employees of the authority from having financial interests; exceptions; criminal penalty; exempting directors or other persons acting on behalf of the authority from personal liability; requiring meetings and records of authority to be public; exceptions; liberal construction to be given; severability; creating a
linked deposit program: definitions; legislative findings; limitations on investments in linked deposits; applications for loan priority; loan package to be submitted to state treasurer; authorizing the state treasurer to accept or reject such loan package; requiring a deposit agreement between the lending institution and state treasurer; specifications of the deposit agreement; providing for the loan rate; certification of compliance; monitoring of compliance by the state treasurer; setting forth duties of the state treasurer and the industrial development authority; requiring the state treasurer to report quarterly to the governor and the joint committee on government and finance; contents of reports; exempting the state and the state treasurer from liability; division of forestry; legislative findings: purposes; transferring the division of forestry from the department of natural resources to the department of agriculture: division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account; additional duties of director; creating a forestry commission; qualifications and appointment of director: powers and duties generally; providing for the fiscal management of the department of natural resources; removing the requirements that the director of natural resources establish and maintain bookkeeping and internal auditing systems for all state parks; removing specifications thereof; setting forth divisions within the department of natural resources; removing the division of parks and recreation as a division within said department; authorizing the chief conservation officer of the department of natural resources to supervise and direct the department's law-enforcement policies, practices and programs; duties and authorities of such chief conservation officer; providing for other conservation officers, including emergency conservation officers; selection of such officers; authorizing the chief conservation officer to select and appoint full-time civil service employees as special conservation officers; removing requirement that such officers be chosen from among employees of the department of natural resources; setting forth powers and duties of special conservation officers; limitation on jurisdiction; specifying other authorities and jurisdiction of the chief conservation officer; setting forth the general
powers of the economic development authority; providing the authority with additional power to issue bonds, at the request of the governor or an appropriate state agency or authority, for the construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, or for export development, farm development, jobs development or forest development, or for the West Virginia automobile assistance corporation or the West Virginia industrial and trade jobs development corporation; requiring that any such bonds issued for the construction of electrical power generating facilities, natural gas transmission lines or other energy projects be first approved by an act of general law, after public notice and hearing; loans for construction of facilities and projects; issuance of bonds and notes; trustee for bondholders; contents of trust agreement; relating to bonds issued; use of funds by authority; restrictions; relating to certain projects; security for bonds and notes issued; enforcement of payment and validity of bonds and notes issued; pledges; time; liens; recordation; refunding; bond; purchase and cancellation of notes or bonds; vested rights; impairment; providing that bonds shall not be debts; expenses; negotiability of bonds and notes; legal investments; exemption from taxation; exemption from personal liability; cumulative authority; applicability of other statutes and charters; authorizing the authority to make equipment loans; qualifications of such loans; permitting the authority to make such loans based on an unconditional letter of credit; real estate as a security interest; permitting the authority to determine the necessity, terms and amount of additional security; and increasing the economic development authority's authorized limit on borrowing and the board of investment's authorized limit on investments.

Be it enacted by the Legislature of West Virginia:

That section twenty-seven, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one and all of article four, chapter twenty of said code be repealed; that article one-c, chapter twenty-one of said code be repealed; and that article seven, chapter twenty-six of said code be repealed;
that said code be amended by adding thereto three new chapters, designated chapters five-b, five-c and five-d; that chapter twelve of said code be amended by adding thereto a new article, designated article one-a; that chapter nineteen of said code be amended by adding thereto a new article, designated article one-a; that sections nine and fourteen, article one and section one, article seven, chapter twenty be amended and reenacted; that sections six, nine and twenty-one, article fifteen, chapter thirty-one be amended and reenacted; and that said article fifteen be further amended by adding thereto sixteen new sections, designated sections seven-b, seven-c, seven-d, seven-e, seven-f, seven-g, seven-h, seven-i, seven-j, seven-k, seven-m, seven-n, seven-o, seven-p, seven-q and seven-r, all to read as follows:

Chapter
5C. Basic Assistance for Industry and Trade.
5D. Public Energy Authority Act.
19. Agriculture.
20. Natural Resources.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article.
1. Short title.
2. Office of Community and Industrial Development.
3. West Virginia Export Development Authority.

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1. Short title.
§5B-1-2. Legislative findings.
§5B-1-3. Construction of chapter.
§5B-1-4. Department created; appointment, compensation and qualifications of commissioner.
§5B-1-5. General powers of the department.
§5B-1-6. Divisions created; continuation of civil service coverage for persons employed in the former office of economic and community development and the department of natural resources.
§5B-1-6a. Program and policy action statement; submission to joint committee on government and finance.
§5B-1-7. Division of tourism; purpose; powers and duties generally.
§5B-1-8. Division of advertising and promotion; purpose; powers and duties generally.
§5B-1-9. Division of research and strategic planning; purpose; powers and duties generally.

§5B-1-10. Division of product marketing; purpose; powers and duties generally.

§5B-1-11. Division of small business development; purpose; powers and duties generally.

§5B-1-11a. Regional small business innovation centers; locations; authority.

§5B-1-11b. State small business innovation center board created; membership; regional center directors.

§5B-1-11c. Functions and duties of regional centers.

§5B-1-11d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

§5B-1-11e. Rules and regulations.

§5B-1-12. Division of parks and recreation created; duties, records and equipment transferred from the department of natural resources; funds.

§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

§5B-1-13a. Definitions; state parks and recreation system.

§5B-1-13b. Authority of commissioner to issue park development revenue bonds; grants and gifts.

§5B-1-13c. Tax exemption.

§5B-1-13d. Investment in notes, bonds and security interests.

§5B-1-13e. Disclaimer of any liability of state of West Virginia.

§5B-1-13f. Trustee for holders of park development revenue bonds.

§5B-1-13g. Proceeds of park development revenue bonds, grants and gifts.

§5B-1-13h. Authority of commissioner to pledge revenue from recreational facilities as security.

§5B-1-13i. Management and control of project.

§5B-1-13j. Provisions of construction and law observed; what approval required.

§5B-1-14. Restaurants and other facilities.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal option of commissioner; termination of contract by the commissioner.

§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.

§5B-1-17. Correlation of projects and services.

§5B-1-18. Sunset provision.

§5B-1-1. Short title.

1 This chapter shall be known and may be cited as "The Economic Development Act of 1985."

§5B-1-2. Legislative findings.

1 It is hereby determined and declared as a matter of legislative finding:
(a) That seriously high unemployment exists in many areas of the state;
(b) That economic insecurity due to unemployment undermines the health, safety and general welfare of the people of the entire state;
(c) That the absence of employment and business opportunities for youth is a serious threat and has resulted in families leaving the state to find opportunities elsewhere, adversely affecting the tax base of the state, counties and municipalities;
(d) That the present and future welfare of the people of the state require as a public purpose a renewed effort toward the promotion and development of business enterprises with potential to help;
(e) That the legislative and executive branches of state government must seek out and recruit exceptionally qualified individuals and organizations to administer, advise and manage the state's economic development programs;
(f) That the state's leaders of business, labor, education and government must cooperate and advance together on common ground, with the common purpose of the economic revitalization of our state; and
(g) That the industrial products and natural resources of the state need to be more thoroughly managed, developed and promoted and the various industries better coordinated and developed to provide a healthy industry environment that will decrease unemployment, promote the use of, while also protecting the renewable natural resources of West Virginia, and otherwise provide for the economic revitalization of our state.

In recognition of these findings, it is in the best interest of the citizens of this state to transfer the management and responsibility of the division of parks and recreation to the department of commerce and to unite the management and responsibility for renewable forest resources by transferring the division of forestry from the department of natural resources to the department of agriculture. These transfers of divisions' management and responsibility will unite and realign the various governmental activities in the areas of commercial, industrial, recreational and forestry management and development so as to promote the
expansion of industry and the use of renewable forestry
resources and enhance the development of nonrenewable
resources to assure the greatest benefit to the people of West
Virginia.

§5B-1-3. Construction of chapter.

1 The provisions of this chapter being remedial in nature
2 and designed for the benefit and well being of the people of
3 the state, such provisions shall be given a liberal
4 construction to ensure the fulfillment of the purposes and
5 intent of this chapter.

§5B-1-4. Department created; appointment, compensation
and qualifications of commissioner.

1 Effective the first day of July, one thousand nine hundred
2 eighty-five, there is hereby created in the executive branch
3 of state government a department of commerce and the
4 office of commissioner of commerce. The commissioner
5 shall be the chief executive officer of the department with
6 control and supervision of its operations and shall be
7 appointed by the governor with the advice and consent of
8 the Senate and shall be paid a salary of sixty-five thousand
9 dollars a year. The commissioner of commerce shall have
10 control and supervision of the department of commerce and
11 shall be responsible for the work of each of its divisions.
12 Under the control and supervision of the commissioner of
13 commerce, each division director shall be responsible for
14 the work of his division. The commissioner of commerce
15 shall have the authority to employ such assistants as may be
16 necessary for the efficient operation of the department.
17 The commissioner may appoint such deputy
18 commissioners and assign them such duties as may be
19 necessary for the efficient management and operation of the
20 department.

§5B-1-5. General powers of the department.

1 (a) The department of commerce shall have the
2 authority and the duty to:
3 (1) Promote, encourage and facilitate the expansion and
4 development of markets for West Virginia products and
5 services and the state's national and international image
and prestige by any and all reasonable methods;
(2) Promote and encourage the location and development of new business in the state and the maintenance and expansion of existing business;
(3) Investigate and study conditions affecting West Virginia business, industry and commerce; collect and disseminate information, and engage in technical studies, scientific investigations, statistical research and educational activities necessary or useful for the proper execution of the powers and duties of the department;
(4) Plan and develop an effective economic information service that will directly assist business, education and labor and also encourage businesses outside the state to use industrial office facilities, professional, labor, financial and recreational facilities, services and products from within the state;
(5) Encourage and develop commerce with other states and nations and devise methods of removing trade barriers that hamper the free flow of commerce between this and other states and nations and for these purposes cooperate with governmental, quasi-public and private organizations in formulating and promoting the adoption of compacts and agreements helpful to commerce and labor;
(6) Conduct or encourage research designed to further new and more extensive uses of the natural, human, professional, technical and other resources of the state with a view to the development of new products, industrial processes, services and markets;
(7) Compile periodically a census of business and industry in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;
(8) Compile periodically a census of the crafts, trades, skills and occupations of all adult persons in the state, in cooperation with other agencies, and analyze and publish the information in such form as to be most valuable to business and industry;
(9) Study long-range trends and developments in the industries, commerce and economic health of the state, and analyze the reasons underlying such trends; study costs and other factors affecting successful operation and location of businesses within the state;
(10) Advertise and publicize the material, economic quality of life, recreational and other advantages of the state which render it a desirable place for commerce and residence;

(11) Collect, compile and distribute information and literature concerning the advantages and attractions of the state, its historic and scenic points of interest and the highway, transportation and other facilities of the state;

(12) Plan and carry out a program of information and publicity designed to attract to West Virginia tourists, visitors and other interested persons from outside the state;

(13) Initiate, promote and conduct, or cause to be conducted, research designed to further new and more extensive uses and consumption of natural and other resources and their by-products; and for such purposes, to enter into contracts and agreements with research laboratories maintained by educational or endowed institutions in this state;

(14) Manage the state's park and recreation system for the benefit of the people of this state, and effectively promote and advertise the same to increase public knowledge and use thereof;

(15) Make recommendations to the governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties, and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the department and the effective discharge of the duties of the department; and

(16) To cooperate and assist in the production of motion pictures and television and other communications.

§5B-1-6. Divisions created; continuation of civil service coverage for persons employed in the former office of economic and community development and the department of natural resources.

There is hereby created within the department of commerce:

(1) The division of tourism;
(2) The division of advertising and promotion;
(3) The division of research and strategic planning;
(4) The division of product marketing;
7 (5) The division of small business development; and
8 (6) The division of parks and recreation.
9 Each said division shall be under the control of a director
to be appointed by the commissioner who shall be qualified
by reason of exceptional training and experience in the field
of activities of his respective division and shall serve at the
will and pleasure of the commissioner. The commissioner
shall have authority to establish such additional divisions
as may be determined necessary to carry out the purposes of
this chapter.
17 The governor may, by executive order, transfer any of the
divisions, duties, functions or appropriations of the
department of commerce to the office of community and
industrial development created by article two of this
chapter; and, he may, by executive order, transfer any of the
divisions, duties, functions or appropriations of the office of
community and industrial development to the department
of commerce, as he, from time to time, deems necessary to
carry out the purposes of this chapter. The authority to
make such transfers, as provided by this section, shall
expire on January first, one thousand nine hundred eighty-
six.
29 All persons employed on the effective date of this chapter
in the governor's office of economic and community
development and the division of parks and recreation in the
department of natural resources, the duties and functions of
which have been transferred either to the department of
commerce or the office of community and industrial
development created by virtue of the provisions of the
economic development act of one thousand nine hundred
eighty-five, are hereby assigned and transferred to either
the department of commerce or the office of community and
industrial development, as the case may be, and no person's
employment shall be eliminated, nor shall any person's
salary, benefits or position classification be reduced or
diminished by reason of the provisions of this chapter. All
persons affected shall retain their coverage under the civil
service system and all matters relating to job classification,
job tenure, salary and conditions of employment shall
remain in force and effect from and after the effective date
of this chapter: Provided, That nothing herein shall
prohibit the disciplining or dismissal of any employee for
cause, or the dismissal of any nonclassified supervising
employees appointed by the governor and serving at the will
and pleasure of the governor.

§5B-1-6a. Program and policy action statement; submission to
joint committee on government and finance.

1 The department of commerce shall prepare and submit to
2 the joint committee on government and finance on/or
3 before the first day of December, one thousand nine
4 hundred eighty-five, and each year thereafter, a program
5 and policy action statement which shall outline in specific
detail according to the purpose, powers and duties of the
office or division, its procedure, plan and program to be
used in accomplishing its goals and duties as required under
this article.

10 The joint committee on government and finance shall
11 prescribe the content and the form of such statements
12 required under this section.

§5B-1-7. Division of tourism; purpose; powers and duties
generally.

1 It shall be the duty of the division of tourism:
2 (a) To promote and enhance the tourist industry and
3 improve tourist facilities and attractions;
4 (b) To compile a listing of all tourist facilities in this
5 state, whether public or private, including, but not limited
6 to, state parks and forests, camping grounds, back-packing
7 and hiking trails, public and private hunting areas
8 (including the game or fowl indigenous thereto), fishing
9 lakes, ponds, rivers and streams (including the type of fish
10 indigenous thereto; and the dates of the stocking thereof),
11 ski resorts and areas, ice skating rinks or facilities, rifle and
12 pistol target practice areas, skeet and other shooting
13 facilities, archery ranges, swimming pools, lakes, ponds,
14 rivers and streams, hotels, motels, resorts and lodges
15 (including any attendant restaurant, banquet, meeting or
16 convention facilities or services), health spas or mineral
17 water or spring water health facilities, museums, cultural
18 centers, live-performance theaters, colleges, schools,
19 universities, technical centers, airports, railroad stations,
20 bus stations, river docks, boating areas, government or
21 military installations (which are not restricted to public
access), historical places, markers or places of events, birthplaces of famous West Virginians, or any other thing of like kind and nature, and to develop relative thereto a series of films, videotapes, pamphlets, brochures and other advertising or promotional media, and to distribute the same in such a manner as to enhance the public's knowledge about West Virginia and its many attractions;

(c) Develop a plan for tourist facility expansion and new development, including financing;

(d) To develop a system, means and mechanism to distribute the promotional media described in subdivision (b) of this section, both nationally and internationally; and to make the same available to travel agents, tour groups, senior citizen organizations, airlines, railroads, bus companies, newspapers, magazines, radio and television stations, and the travel editors thereof; to develop, in cooperation with the department of highways, a series of information stations along interstate and other major highways of this state, utilizing existing rest stop areas and other areas at or near the main points of egress and ingress of this state for the purpose of making said information available to the public at large;

(e) To develop and implement a marketing strategy, employing radio, television, magazine and newspaper advertising, or any combination thereof, in those major metropolitan areas of the nation, in order to attract the residents thereof to visit and enjoy the tourist facilities of this state;

(f) To encourage, cooperate with and participate in, any group or organization, including regional travel councils, the purpose of which is to promote and advertise, or encourage the use of, tourist facilities in West Virginia;

(g) To provide professional assistance, technical advice or marketing strategies to any privately owned facility or attraction, as described in subdivision (b) of this section, which is open and available to the general public, which has developed or is attempting to develop its own advertising program;

(h) To employ, train and supervise a corps of information specialists or tour guides who possess, or through their employment and training will possess, specific knowledge and information about the historic,
scenic, cultural, industrial, educational, governmental, recreational and geographical significance of the state and the various facilities or attractions described in subdivision (b) of this section. In hiring the information specialists herein provided, special preference shall be given to senior citizens (those over sixty-two years of age) and college students who are bona fide residents of the state and enrolled in any college or university of this state, whether public or private, all of whom shall be hired on a part-time basis and whose periods of employment may be seasonable; (i) To provide to any tour group, travel agency, public carrier or other entity of like kind or nature, who is or which is offering tours, visits or vacations in West Virginia the services of the information specialists provided for in subdivision (g) of this section, without cost or fee to said entity requesting said service; (j) To assist tour groups, travel agencies, public carriers or other entities of like kind or nature in developing a program of preplanned tours, visits or vacations in West Virginia; and, in conjunction therewith, to coordinate the activities of said tour groups, travel agencies, public carriers or other entities with the services offered by any of the facilities set forth in subdivision (b) of this section; and to encourage said facilities to offer special or discount rates to any party traveling with said tour groups, travel agencies, public carriers or other entities of like kind or nature; and (k) To cooperate with the department of highways, in developing a system of informational highway signing relating to the recreational, scenic, historic and transportational facilities and attractions of the state that comply with the current federal and state regulations as related to outdoor advertising and signing as required by the Manual of Uniform Traffic Control Devices.

§5B-1-8. Division of advertising and promotion; purpose; powers and duties generally.

1 It shall be the duty of the division of advertising and promotion:
2 (a) Based upon the information, statistics, facts, studies and conclusions produced by or for the division of strategic planning, to develop a program of advertising strategies
and plans to inform the public at large and specific target groups about various aspects of the state of West Virginia, including, but not limited to, agriculture, natural resources, timber and timber byproducts, coal, oil, gas and their byproducts, existing industries and existing and proposed industrial sites, educational, research and technical institutions, the labor force, transportation, public utilities, navigable waterways, rivers, lakes and streams, taxation, revenue bonding availability and assistance, governmental rules and regulations relative to business and industry, and any other fact, statistic or item of information which is or may be helpful to or of interest to any corporation, partnership, association, individual or individuals who or which is or may be interested in engaging in business in the state of West Virginia;

(b) To develop such films, videotapes, computer software, phonograph records, tape recordings, pamphlets, brochures, booklets, information sheets, radio, television or newspaper advertising, magazine inserts, advertisements or supplements, billboards or any other thing of like kind or nature which is, or may be, likely to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the state of West Virginia or any business, industry, agency, institution or other entity therein;

(c) To employ or contract with such professional or technical experts or consultants as may be necessary to create and produce the items set forth in subdivision (b) of this section;

(d) To spend such sums of money as may be necessary, within legislative appropriation therefor, to purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to distribute or disseminate the items of advertising described in subdivision (b) of this section;

(e) To provide professional assistance, technical advice or marketing strategies to any privately owned business or industry in this state which has developed or is attempting to develop its own advertising program;

(f) To cooperate with, or participate in, any group or organization, whether public or private, the purpose of
which is to promote, enhance or develop a positive image of
the state of West Virginia or any business, industry,
institution or facility therein;
(g) To use such resources as are available to it to
distribute the items of advertising and promotion described
in subdivision (b) of this section, to such group or groups,
audience or audiences, corporations, partnerships,
associations, including public and private colleges and
universities, and to individuals, who or which are, or may
be, interested in some aspect of the state of West Virginia;
(h) To engage in, participate in, promote or sponsor,
such trade shows, fairs, information seminars or
symposiums, or other event or events of like kind and
nature, including privately funded trade shows, fairs,
information seminars or symposiums, or other event or
events of like kind and nature, whether located within or
without this state, or beyond the borders of the United
States, to promote generally the state of West Virginia or to
assist any business, industry or other entity, whether public
or private, in promoting, advertising or advancing the
reputation of the state of West Virginia or any corporation,
association, partnership, institution, business, industry or
other entity which is, or may be, likely to produce
additional employment or employment opportunities,
business or business opportunities in the state of West
Virginia; and
(i) To perform such other duties or functions, or to
engage in such other activities, as the commissioner may
from time to time direct.

§5B-1-9. Division of research and strategic planning; purpose;
powers and duties generally.

(a) The division of research and strategic planning shall
have the following powers and duties with respect to
research:
(1) To establish, in cooperation with the appropriate
college or colleges, school or schools, of West Virginia
University, a center for economic analysis and statistics.
The center shall be under the control and supervision of a
director, who shall be appointed by the president of West
Virginia University. The center shall employ such staff
economists or statisticians, such research assistants and
secretaries, each of whom shall serve on a part-time basis and may be members of the faculty or staff of West Virginia University. In addition, the center may employ student interns.

(2) The center shall provide the commissioner of commerce, the director of the division of strategic planning, and the Legislature, with an analysis of the quality of economic data pertaining to West Virginia. The center shall recommend ways to obtain additional information necessary to better understand the state's economy and to devise better economic development strategies. The center shall publish results of its research, maintain a comprehensive library with supporting computer data bases and shall, upon request, provide a review of the economy and major policy issues to the joint committee on government and finance.

(3) During its first year of operation, the center shall include in its research topics the desirability of establishing a detailed gross state product series, modeled after the national income and products accounts and the desirability of constructing a periodic input/output table for the state. It shall review the quality of current statistics relating to employment and prices and statistics relating to poverty and the distribution of income and wealth. The center may study the feasibility of, and based upon such study establish, a West Virginia econometric model project.

(4) Where deficiencies are found in existing data sources, the center shall publish conclusions regarding the benefits to be derived from gathering additional or better information and shall make operational recommendations on the best possible methods for obtaining the desired information.

(5) The director of the center or members of its staff shall meet on a regular basis with the commissioner of the department of commerce, other officials of the department and members of the Legislature to provide the results of its research and to provide policy advice and analysis.

(6) The center shall cooperate with and maintain an inventory of research efforts of universities and colleges and other institutions or businesses within the state and a register of scientific and technological research facilities in the state.
(b) The division of research and strategic planning shall develop a strategic plan for the economic development of the state, its regions and specific industries including tourism, manufacturing, timber, agriculture and other rural development, coal, oil, gas and other extractive resources, retail, service, distribution and small businesses. Such a plan shall emphasize a coordinated effort of the public and private sector toward balanced growth for the state. Such plan shall include, but is not limited to, the following:

1. Assessing the state's economic strengths and weaknesses;
2. Developing and recommending short, intermediate and long-term economic goals and plans, together with options;
3. Identifying barriers to economic growth and diversification in the state;
4. Recommending implementation procedures and options utilizing and maximizing existing public and private mechanism;
5. Fostering and supporting scientific and technological research in this state in cooperation with the federal government, the various offices and divisions of the department of commerce and other state and local government agencies, educational institutions, nonprofit institutions and organizations, business enterprises and others concerned with scientific and technological research development;
6. Developing a program to attract investment in research and development in high technology industries;
7. Conducting a series of studies to determine the feasibility of constructing natural gas transmission lines, electric power generating facilities and coal processing plants to be owned, either in whole or in part, or to be operated, either in whole or in part, by the state of West Virginia; and
8. Maintaining a library of research materials, including computer data bases, to accomplish the goals of the division.

The division shall, based upon the data it collects and analyzes as set forth in subdivisions (1) through (8) of this section, and in cooperation with the other divisions of the
95 department, develop a set of specific plans and programs,
96 and recommend to the Legislature, on an annual basis,
97 appropriate legislation to implement and carry out such
98 plans, for the purpose of effectuating the purposes of this
99 article.

§5B-1-10. Division of product marketing; purpose; powers and
duties generally.

1 It shall be the duty of the division of product marketing:

2 (a) To develop such programs as are necessary for the
3 promotion and marketing of West Virginia arts, crafts and
4 products, and to implement said program in this state, in
5 the United States and in other countries;
6 (b) To design, develop and create, or to provide for the
7 design, development and creation of, such films,
8 videotapes, pamphlets, brochures, and other advertising
9 and promotional media, and to distribute the same in such a
10 manner as to enhance the public’s knowledge of West
11 Virginia arts, crafts and products;
12 (c) To sponsor or participate in trade shows, trade fairs
13 or other events the purpose of which is to display, sell or
14 increase public awareness of, West Virginia arts, crafts and
15 products;
16 (d) To design and implement a program of direct sales of
17 West Virginia arts, crafts and products; and to provide for
18 the publication and distribution of a catalog which
19 adequately displays and describes the arts, crafts and
20 products being offered for sale, employing such direct mail
21 or other means of distribution as the director deems
22 appropriate;
23 (e) To cooperate with artists, craftsmen, guilds,
24 cooperatives and other organizations, the purposes of
25 which are to enhance or promote West Virginia arts, crafts
26 and products, and to assist said artists, craftsmen, guilds,
27 cooperatives and organizations in the development of their
28 own marketing programs;
29 (f) To develop markets in West Virginia, other states and
30 other nations for said arts, crafts and products by
31 employing persons who shall act as sales agents for said
32 arts, crafts and products;
33 (g) To cooperate with other governmental departments,
and with other groups, guilds, cooperatives or other
entities, whether public or private, the purpose of which is
to further enhance and promote the sale, use, distribution or
public knowledge of West Virginia arts, crafts and
products; and
(h) To perform such other duties or functions, or to
engage in such other activities, as the director may from
time to time direct.

§5B-1-11. Division of small business development; purposes;
powers and duties generally.

It shall be the duty of the division of small business
development to establish a statewide small business
innovation center network to be located on the campuses or
operated in conjunction with the colleges and universities
of West Virginia.
The director shall be responsible for the management and
operation of the center network, subject to the program
policies adopted by the center network board of directors.
The center network shall:
(a) Serve as a liaison between the department of
commerce and the state regional small business innovation
center board;
(b) Provide direction, guidance and assistance to
regional small business innovation centers;
(c) Conduct feasibility studies regarding the
establishment or certification of new regional small
business innovation centers;
(d) Conduct conferences and seminars for regional
small business innovation centers to promote and
encourage the utilization of sound and innovative
approaches to the discharge of the functions and duties of
the regional small business innovation centers; and
(e) Prepare and submit such reports, plans, suggestions
and recommendations to the department on jobs and
economic development as may from time to time be
required.
To the extent practicable, the director shall utilize
student interns and qualified new and innovative business
vendors, including, but not limited to, private management
consultants, private consulting engineers and private
testing laboratories, to provide services described in this section.

The director is further authorized and empowered to apply for and receive appropriations, gifts, bequests or grants of money, services, material, real estate or other things of value from any agency of the United States government, any agency of the state of West Virginia, any municipality or county within this state, any school board or college or university supported in whole, or in part, by this state or any other person, firm, partnership, association or corporation, within or without this state, and any agency of the state of West Virginia, any municipality or county within this state, or any school board or college or university supported in whole, or in part, by this state and is hereby authorized and empowered to make appropriations or grants to the regional small business innovation centers, to assist in achieving the public purpose of this section. All funds received by the director to carry out the provisions herein shall be deposited with the state treasurer and disbursed by the director to be used exclusively for carrying out the provisions herein. Any appropriations, gifts, bequests or grants received by the director with any restriction or restrictions on the use thereof shall be expended by the director in accordance with such restriction or restrictions.

The director of the state business innovation center in addition to such reports as may be required by the department of commerce shall publish an annual report by the first day of December of each year for distribution to the governor, the Legislature, the department and the general public. Such report shall describe the activities undertaken by the state center and the regional centers pursuant to these provisions in the preceding year.

§5B-1-11a. Regional small business innovation centers; locations; authority.

(a) Upon the recommendation of the state director and a demonstration for the need thereof, the state board of directors may certify and provide funding for such number of regional small business innovation centers as it may consider necessary or desirable and within available appropriations. Such regional small business innovation
centers shall be affiliated with institutions of higher education, either public or private, and may be located at such places where need exists for such centers.

(b) It is recognized that there exists at the present time programs for the development of and assistance to small businesses in the statewide network of the West Virginia small business development center with regional centers operating at the University of Charleston, West Virginia University, West Virginia Northern Community College, Parkersburg Community College, Southern Community College of West Virginia, Concord College, Salem College, Alderson-Broaddus College, College of Graduate Studies and West Virginia Institute of Technology. These existing programs are hereby established as regional small business innovation centers.

(c) Each regional business innovation center shall be authorized and permitted to employ such strategies, techniques and innovations as it shall deem desirable in accomplishing the purposes of sections eleven through eleven-e of this article.

(d) The president of each institution of higher education shall appoint a director for such center who shall serve at the will and pleasure of such president.

§5B-1-11b. State small business innovation center board created; membership; regional center directors.

There is hereby created the state small business innovation network board which shall be composed of one member representing each of the regional centers to be named by the president of the respective colleges or universities, and the state director of the small business innovation center network who shall serve as chairman of the board.

§5B-1-11c. Functions and duties of regional centers.

It shall be the function of regional small business innovation centers to:

(a) Establish programs to identify entrepreneurs with marketable ideas and to support the organization and development of new business and innovative businesses, including technologically oriented enterprises;
(b) Conduct conferences and seminars to provide new and innovative businesses with access to individuals and organizations with specialized expertise;

(c) Develop and maintain a source file and an information program to establish a statewide network of public, private and educational resources to assist the organization and development of new and innovative businesses, and to furnish centralized services with regard to public services and governmental programs;

(d) Provide new and innovative businesses with access to managerial and technical expertise and to provide assistance in resolving problems encountered by such businesses;

(e) Conduct planning and research, including feasibility studies and market research in cooperation with the department;

(f) Assist in the identification and development of new and innovative business opportunities;

(g) Foster the establishment and strengthening of business service agencies, including trade associations and cooperatives, which provide services to new and innovative businesses;

(h) Implement the furnishing of business counseling, management training and other related services, with special emphasis on the development of management training programs using the resources of the business community, the state labor-management council and state and private colleges and universities, and with emphasis upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the new and innovative businesses served;

(i) Provide access to business analysts who can refer new and innovative businesses to available experts;

(j) Conduct studies, research and counseling concerning the managing, financing and operation of new and innovative businesses;

(k) Foster and support scientific and technological research for the development and application of new technologies identified as having significant potential for economic growth in the state or designed to further new and more extensive uses of the natural and other resources of
the state, and to assist in technology transfer, research and
coupling from existing sources to new and innovative
businesses;

(l) Organize, conduct, sponsor or cooperate in and assist
the conducting of institutes, conferences, demonstrations
and studies relating to the stimulation and formulation of
new and innovative businesses;

(m) Assist new and innovative businesses in solving
problems concerning operations, manufacturing,
engineering, technology exchange and development,
personnel administration, marketing, sales,
merchandising, finance, accounting, business strategy
development and other disciplines required for business
growth and expansion, increased productivity and
management improvement;

(n) Provide access to professional specialists to conduct
research or to provide counseling assistance to new and
innovative businesses whenever the need arises;

(o) Determine the availability of financial resources and
recommend methods for delivery of financial assistance to
new and innovative businesses, including methods of
securing equity capital;

(p) Cooperate with other regional business innovation
centers for the purpose of coordinating efforts;

(q) Provide, whenever practicable, feasible and
desirable, housing for new and innovative businesses in
order to better accomplish the purposes set forth herein;

(r) Assist businesses participating in the program to
develop comprehensive business plans with specific
business targets, objectives and goals;

(s) Provide for such other nonfinancial services as
deemed necessary for the establishment, preservation and
growth of participating businesses, including, but not
limited to, loan packaging, financial counseling,
accounting and bookkeeping assistance, marketing
assistance and management assistance;

(t) Assist participating businesses in obtaining equity
and debt financing;

(u) Establish regular performance monitoring and
reporting systems for participating businesses to assure
compliance with their business plans;
(v) Analyze and report the causes of success and failure of new and innovative businesses participating in the program;
(w) Provide counseling and assist with technology development when necessary to help new and innovative businesses find solutions for complying with environmental, energy, health, safety and other federal, state and local laws and regulations;
(x) Apply for and receive gifts or grants in money or in kind from any person, organization, governmental agency or entity whatsoever which shall be exclusively utilized by the regional business innovation center receiving such gifts or grants; and
(y) Prepare an annual report by the first day of September of each year detailing the operation of the center for the previous year and submit the same to the director of the state business innovation center, and, as to regional business innovation centers existing and incorporated by virtue of these provisions, prepare and submit by the first day of September, one thousand nine hundred eighty-five, a report to the same authorities detailing a preliminary plan for the implementation of the program, including coordination and expansion of the various original programs.

§5B-1-11d. Documentary materials concerning trade secrets; commercial or financial information; confidentiality.

Any documentary material or data made or received by any public body for the purpose of furnishing assistance to a new and innovative business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such businesses, shall not be considered public records, and shall be exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the public body in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.
§5B-1-11e. Rules and regulations.

1 The director of the state small business innovation center shall make and adopt rules and regulations for the establishment, operation and maintenance of any regional business innovation center established including such rules, regulations and standards as may be necessary for compliance with any federal statute pertaining to grants-in-aid, and such other rules and regulations as may be necessary to effectuate the purposes set forth herein, including regulations establishing any fee to be charged for services provided pursuant hereto.

§5B-1-12. Division of parks and recreation created; duties, records and equipment transferred from the department of natural resources; funds.

1 (a) The duties, powers and functions of the division of parks and recreation within the department of natural resources are hereby transferred to the department of commerce.

2 (b) All books, papers, maps, charts, plans, literature and other records, and all equipment in the possession of the division of parks and recreation within the department of natural resources shall be delivered or turned over to the department of commerce.

3 (c) The department of commerce shall have the duty and authority to administer those properties which are a part of the state parks and public recreation system, but the legal title to such properties shall remain with the department of natural resources.

4 (d) All existing contracts and obligations of the division of parks and recreation shall remain in full force and effect and any existing contracts and obligations relating to parks and recreation shall be performed by the department of commerce.

5 (e) The unexpended balance existing on the effective date of this chapter in any appropriation made to the division of parks and recreation within the department of natural resources is hereby transferred and appropriated to the department of commerce for the use of the division of parks and recreation for the fiscal period ending the
The director of the department of natural resources and the commissioner of commerce shall cooperate fully and exercise their powers to facilitate the development of new or the expansion of existing park facilities, including, but not limited to, the authorities as set forth in this chapter relating to the department of commerce, and as set forth in section twenty, article one, chapter twenty of this code, relating to the department of natural resources, as amended from time to time.

§5B-1-13. Division of parks and recreation; purpose; powers and duties generally.

It shall be the duty of the division of parks and recreation to have within its jurisdiction and supervision:

(a) All state parks and state recreation areas, including all lodges, cabins, swimming pools, motorboating and all other recreational facilities therein, except the roads therein which, by reason of section one, article four, chapter seventeen, are transferred to the state road system and to the responsibility of the commissioner of highways with respect to the construction, reconstruction and maintenance of the roads or any future roads for public usage on publicly owned lands in future state parks, state forests and public hunting and fishing areas;

(b) The authority and responsibility to do the necessary cutting and planting of vegetation along road rights-of-way in state parks and recreational areas;

(c) The administration of all laws and regulations relating to the establishment, development, protection, use and enjoyment of all state parks and state recreational facilities consistent with the provisions of this article: Provided, That nothing herein shall be construed to assign to the division of parks and recreation of the department of commerce the law-enforcement duties set forth in article seven, chapter twenty of this code, which duties shall remain the responsibility of the department of natural resources.

(d) The Berkeley Springs sanitarium in Morgan County shall be continued as a state recreational facility under the
jurisdiction and supervision of the department of commerce and shall be managed, directed and controlled as prescribed here in this article and in article one, chapter twenty of the code.

The commissioner shall have and is hereby granted all of the powers and authority and shall perform all of the functions and duties with regard to Berkeley Springs sanitarium that were previously vested in and performed by the director of the department of natural resources, who shall no longer have such power and authority and whose power and authority with regard to Berkeley Springs sanitarium is hereby abolished;

(e) The Washington Carver camp in Fayette County is hereby transferred from the department of natural resources to the commissioner who shall have the jurisdiction and supervision of the camp subject to the jurisdiction and authority of the department of culture and history as provided under section thirteen, article one, chapter twenty-nine of this code. The commissioner shall manage the Washington Carver camp as a state recreational facility and a component of the state park system; and

(f) The commissioner of the department of commerce shall be primarily responsible for the execution and administration of the provisions herein as an integral part of the parks and recreation program of the state and shall organize and staff his division for the orderly, efficient and economical accomplishment of these ends.

§5B-1-13a. Definitions; state parks and recreation system.

As used in this article, unless the context clearly requires otherwise:

“Bonds” shall mean bonds issued by the commissioner. “Cost of project” shall embrace the cost of construction, the cost of all land, property, material and labor which are deemed essential thereto, cost of improvements, financing charges, interest during construction, and all other expenses, including legal fees, trustees’, engineers’ and architects’ fees which are necessarily or properly incidental to the project. “Project” shall be deemed to mean collectively the acquisition of land, the construction of any buildings or
other works, together with incidental approaches, structures and facilities, reasonably necessary and useful in order to provide new or improved recreational facilities. "Recreational facilities" shall mean and embrace cabins, lodges, swimming pools, golf courses, restaurants, commissaries and other revenue producing facilities in any state park. "Rent or rental" shall include all moneys received for the use of any recreational facility.

In addition to the powers and duties vested in the commissioner elsewhere in this chapter, he shall have the power and duty to establish and maintain a state park and public recreation system, and to do all things necessary and incident to the development and administration thereof. Individual projects of such system may be financed from any moneys of the department available for such purposes, or by the issuance of park development revenue bonds as provided in this section.

The purposes of such system shall be to promote conservation by preserving and protecting natural areas of unique or exceptional scenic, scientific, cultural, archaeological or historic significance, and to provide outdoor recreational opportunities for the citizens of this state and its visitors. In accomplishing such purposes the commissioner shall, insofar as is practical, maintain in their natural condition lands that are acquired for and designated as state parks. The commissioner may promulgate rules and regulations to control such uses, subject to the provisions of chapter twenty-nine-a of this code, and may further provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational and service facilities. The commissioner shall not permit public hunting, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park: Provided, That nothing herein shall be construed so as to limit the authority of the director of the department of natural resources with respect to public lands, including state parks, the title to which is vested in him by virtue of the provisions of chapter twenty of this code.

All revenue derived from the operation of the state park
and public recreation system shall be expended by the
director solely for operating, maintaining and improving the
system, or for the retirement of park development revenue
bonds.

§5B-1-13b. Authority of commissioner to issue park
development revenue bonds; grants and gifts.

The commissioner, with the approval of the governor, is
hereby empowered to raise the cost of any project, as
defined hereinabove, by the issuance of park development
revenue bonds of the state, the principal of and interest on
which bonds shall be payable solely from the special fund
herein provided for such payment. Such bonds shall be
authorized by order of the commissioner, approved by the
governor, which shall recite an estimate by the
commissioner of the cost of the project, and shall provide
for the issuance of bonds in an amount sufficient, when sold
as hereinafter provided, to produce such cost, less the
amount of any grant or grants, gift or gifts received, or in the
opinion of the commissioner expected to be received from
the United States of America or from any other source. The
acceptance by the commissioner of any and all such grants
and gifts, whether in money or in land, labor or materials, is
hereby expressly authorized. All such bonds shall have and
are hereby declared to have all the qualities of negotiable
instruments under the provisions of article eight, chapter
forty-six of this code. The commissioner shall have the
power:

(a) To issue negotiable bonds, security interests or notes
and to provide for and secure the payment thereof, and to
provide for the rights of the holders thereof, and to
purchase, hold and dispose of any of its bonds, security
interests or notes.

(b) To sell, at public or private sale, any bond or other
negotiable instrument, security interests or obligation of
the commissioner in any manner and upon such terms as the
commissioner deems would best serve the purposes set forth
herein.

(c) To issue its bonds, security interests and notes
payable solely from the revenues or funds available to the
commissioner therefor; and the commissioner may issue its
bonds, security interests or notes in such principal amounts
as it shall deem necessary to provide funds for any purposes herein, including:

(i) The payment, funding or refunding of the principal of, interest on, or redemption premiums on any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the commissioner incident to and necessary or convenient to carry out its purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the special fund herein provided.

(d) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes 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 twenty-five years from the date of issuance.

(e) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase, redemption or payment of the notes, security interests or bonds to be refunded.

(f) To accept gifts or grants or property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(g) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note or
contract or agreement of any kind to which the
commissioner is a party.

(h) The commissioner shall determine the form of such
bonds, including coupons to be attached thereto to evidence
the right of interest payments, which bonds shall be signed
by the commissioner, 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
commissioner. In case any of the officers whose signatures
appear on the 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.

(i) The commissioner shall fix the denominations of the
bonds, the principal and interest of which shall be payable
at the office of the treasurer of the state of West Virginia, at
the capitol of the state, or, at the option of the holder, at
some bank or trust company in the city of New York to be
named in the bonds in such medium as may be determined
by the commissioner.

(j) The commissioner may provide for the registration of
such bonds in the name of the owner as to principal alone,
and as to both principal and interest under such terms and
conditions as the commissioner may determine, and shall
sell such bonds in such manner as he may determine to be
for the best interest of the state, taking into consideration
the financial responsibility of the purchaser, and the terms
and conditions of the purchase, and especially the
availability of the proceeds of the bonds when required for
payment of the cost of the project.

(k) The proceeds of such bonds shall be used solely for
the payment of the cost of the project, and shall be deposited
and checked out as provided by section thirteen-g of this
article, and under such further restrictions, if any, as the
commissioner may provide.

(l) If the proceeds of such bonds, by error in 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 the deficiency, and unless otherwise provided
for in the trust agreement hereinafter mentioned, shall be
deemed to be of the same issue, and shall be entitled to
payment from the same fund, without preference or priority as the bonds before issued.

(m) If the proceeds of bonds issued for the project shall exceed the cost thereof, the surplus shall be paid into a special fund to be established for payment of the principal and interest of such bonds as specified in the trust agreement provided for in the following section. Such fund may be used for the purchase of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price, if any, at which such bonds shall in the same year be redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. Prior to the preparation of definitive bonds, the commissioner may, under like restrictions, issue temporary bonds with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such revenue 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 herein or by the constitution of the state.

§5B-1-13c. Tax exemption.

1 The exercise of the powers granted to the commissioner herein will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their recreational opportunities and is a public purpose. As the operation and maintenance of park development projects will constitute the performance of essential government functions, the commissioner shall not be required to pay any taxes or assessments upon any park development projects or upon any property acquired or used by the commissioner or upon the income therefrom. Such bonds and notes and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§5B-1-13d. Investment in notes, bonds and security interests.

1 The notes, bonds and security interests of the commissioner are hereby made securities in which the state board of investments, all insurance businesses, all banking
institutions, trust companies, building and loan
associations, savings and loan associations upon which the
notes, security interests or bonds become subject to
redemption plus accrued interest to such date. Upon such
purchase such notes, security interests or bonds shall be
cancelled.

§5B-1-13e. Disclaimer of any liability of state of West Virginia.

The state of West Virginia shall not be liable on notes,
security interests or bonds or other evidences of
indebtedness of the commissioner and such notes, security
interests or bonds or other evidence of indebtedness shall
not be a debt of the state of West Virginia, and such notes,
security interests or bonds or other evidence of indebtedness
shall contain on the face thereof a statement to such effect.

§5B-1-13f. Trustee for holders of park development revenue
bonds.

The commissioner may enter into an agreement or
agreements with any trust company, or with any bank
having the powers of a trust company, either within or
outside the state, as trustee for the holders of bonds issued
hereunder, setting forth therein such duties of the state and
of the commissioner in respect to acquisition, construction,
improvement, maintenance, operation, repair and
insurance of the project, the conservation and application
of all moneys, the insurance of moneys on hand or on
deposit, and the rights and remedies of the trustee and the
holders of the bonds, as may be agreed upon with the
original purchasers of such bonds, and including therein
provisions restricting the individual right of action of
bondholders as is customary in trust agreements respecting
bonds and debentures of corporations, protecting and
enforcing the rights and remedies of the trustee and the
bondholders, and providing for approval by the original
purchaser of the bonds of the appointment of consulting
architects, and of the security given by those who contract
to construct the project, and by any bank or trust company
in which the proceeds of bonds or rentals shall be deposited,
and for approval by the consulting architects of all
contracts for construction. All expenses incurred in
carrying out such agreement may be treated as a part of the
cost of maintenance, operation and repair of the project.

§5B-1-13g. Proceeds of park development revenue bonds,
grants and gifts.

1 The proceeds of all bonds sold for any park development
project and the proceeds of any grant or gift received by the
commissioner for any project financed by the issuance of
park development revenue bonds shall be paid to the
treasurer of the state of West Virginia, who shall not
commingle such funds with any other moneys, but shall
deposit them in a separate bank account or accounts. The
moneys in such accounts shall be paid out on check of the
treasurer on requisition of the commissioner, or of such
other person as the commissioner may authorize to make
such requisition. All deposits of such moneys shall, if
required by the treasurer or the commissioner, be secured
by obligation of the United States, of the state of West
Virginia, or of the commissioner, of a market value equal at
times to the amount of the deposit, and all banking
institutions are authorized to give such deposits.

§5B-1-13h. Authority of commissioner to pledge revenue from
recreational facilities as security.

1 The commissioner, with the approval of the governor,
shall have authority to pledge all revenue derived from any
project as security for any bonds issued to defray the cost of
such project. In any case in which the commissioner may
deem it advisable, he shall also have the authority to pledge
the revenue derived from any existing recreational facilities
under his control, or any state park or forest, as additional
security for the payment of any bonds issued under the
provisions of this article to pay the cost of any park
development project.

§5B-1-13i. Management and control of project.

1 The department shall properly maintain, repair, operate,
manage and control the project, fix the rates of rental, and
establish bylaws and rules and regulations for the use and
operation of the project, and may make and enter into all
contracts or agreements necessary and incidental to the
§5B-1-13j. Provisions of constitution and law observed; what approval required.

It shall not be necessary to secure from any officer or board not named in this article any approval or consent, or any certificate or finding, or to hold an election, or to take any proceedings whatever, either for the construction of any project, or the improvement, maintenance, operation or repair thereof, or for the issuance of bonds hereunder, except such as are prescribed by these provisions or are required by the constitution of this state.

Nothing contained herein shall be so construed or interpreted as to authorize or permit the incurring of state debt of any kind or nature as contemplated by the provisions of the constitution of the state in relation to state debt.

§5B-1-14. Restaurants and other facilities.

The commissioner may, on all areas under his jurisdiction and control, operate commissaries, restaurants and other establishments for the convenience of the public. For these purposes the commissioner may purchase equipment, foodstuffs, supplies and commodities, according to law.

§5B-1-15. Contracts for operation of commissaries, restaurants, recreational facilities and other establishments limited to five years' duration; renewal at option of commissioner; termination of contract by the commissioner.

When it is deemed necessary by the commissioner to enter into a contract with a person, firm or corporation for the operation of a commissary, restaurant, recreational facility or other such establishment within the state parks and public recreation system, such contract shall be for a duration not to exceed five years, but a contract so made may provide for an option to renew at the commissioner's discretion for an additional term or terms not to exceed five years at the time of renewal.

Any contract entered into by the commissioner shall provide an obligation upon the part of the operator that he
maintain a level of performance satisfactory to the commissioner, and shall further provide that any such contract may be terminated by the commissioner in the event he determines that such performance is unsatisfactory and has given the operator reasonable notice thereof.

§5B-1-16. Acquisition of former railroad subdivision for establishment of Greenbrier River Trail; development, protection, operation and maintenance of trail.

(a) The commissioner 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 operated under the authority of the department of commerce and 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; and

(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 commissioner.

§5B-1-17. Correlation of projects and services.

The commissioner of the department of commerce shall correlate and coordinate his park and recreation programs, projects and developments with the functions and services of other offices and divisions of the department and other agencies of the state government so as to provide, consistent with the provisions of this chapter, suitable and adequate facilities, landscaping, personnel and other services at and about all state parks and public recreation facilities under his jurisdiction.

§5B-1-18. Sunset provision.

Unless sooner terminated by law, the department of
commerce shall terminate on the first day of July, one thousand nine hundred ninety-one, in accordance with the provisions of article ten, chapter four of this code.

ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL DEVELOPMENT.

§5B-2-1. Office of economic and community development abolished; records and property of the office of economic and community development transferred to the office of community and industrial development and department of commerce.

§5B-2-2. Office of community and industrial development created; appointment of director; compensation; rules and regulations.

§5B-2-3. Divisions created.

§5B-2-4. Office to conduct certain feasibility studies; reports to the Legislature; definitions.

§5B-2-1. Office of economic and community development abolished; records and property of the office of economic and community development transferred to the office of community and industrial development and department of commerce.

The office of economic and community development is hereby abolished and the governor shall, by executive order, transfer to the office of community and industrial development or the department of commerce, the functions, personnel and property, with any liens relative thereto, of the office of economic and community development, as he may deem necessary.

All books, papers, maps, charts, plans, literature and other records of all equipment and property in the possession of the office of economic and community development or of any officer or employee thereof, upon the effective date of this chapter, shall be turned over or delivered to the office of the governor.

All existing contracts and obligations of the office of economic and community development shall remain in full force and effect and shall be performed by the governor.

§5B-2-2. Office of community and industrial development created; appointment of director; compensation; rules and regulations.

There is hereby created within the office of the governor the office of community and industrial development. A
3 director of the office shall be appointed by, and shall serve
4 at the will and pleasure of, the governor and shall be paid a
5 salary as fixed by the governor within legislative
6 appropriation. The director shall have administrative
7 control and supervision of the office.
8 The director shall promulgate rules and regulations to
9 carry out the purposes and programs of the office, to include
10 generally the programs available, and the procedure and
11 eligibility of application relating to assistance under such
12 programs; these rules and regulations shall not be subject to
13 the provisions of chapter twenty-nine-a of this code, but
14 shall be filed with the secretary of state.

§5B-2-3. Divisions created.

1 There are hereby created within the office of community
2 and industrial development:
3 (1) The division of community development;
4 (2) The division of financial and technical assistance;
5 (3) The division of administration;
6 (4) The division of industrial development;
7 (5) The division of small business; and
8 (6) The division of employment and training.
9 Each said division shall be under the control of a director
10 to be appointed by the director of the office of community
11 and industrial development and who shall be qualified by
12 reason of exceptional training and experience in the field of
13 activities of his respective division and shall serve at the
14 will and pleasure of the director.
15 In accordance with the provisions of section six, article
16 one of this chapter, the governor may, by executive order,
17 transfer any of the duties or functions of, or appropriations
18 made to, the office of the department of commerce; and, he
19 may, by executive order, and at the request of the director,
20 create such additional divisions or abolish such existing
21 divisions as he deems necessary to carry out the provisions
22 of this chapter. The authority hereby vested in the governor
23 shall expire on January one, one thousand nine hundred
24 eighty-six.

§5B-2-4. Office to conduct certain feasibility studies; reports
to the Legislature; definitions.

1 The director shall assign to an appropriate division of the
office the duty and responsibility to conduct studies to
determine the feasibility of establishing programs or
recommending legislation for the establishment of
programs relative to coal processing, farm development,
enterprise zones, forest resources and jobs development.
Such division may conduct inquiries and hold hearings
regarding such programs in order to provide interested
persons the opportunity to comment, and shall report to the
Legislature regarding its findings and policies with respect
to each of these areas not later than the first day of the
regular session of the Legislature in the year one thousand
nine hundred eighty-six, and every two years thereafter.

For the purposes of this section:
(a) The term “coal processing” means the process by
which coal is converted to coke of the non-by-product
variety;
(b) The term “farm development” means the promotion,
encouragement and development of farming and farm-
lands;
(c) The term “enterprise zones” means any area of a city
or county which has a continuous boundary; is an area of
pervasive poverty, unemployment and economic distress;
the average rate of unemployment in such area for the most
recent eighteen-month period for which data are available
was at least one and one-half times the average national
rate of unemployment for such eighteen-month period; at
least seventy percent of the residents living in the area have
incomes below eighty percent of the median income of the
residents of the city or county in which it is located; the
population of all census tracts in the area decreased by ten
percent or more between the two most recent decennial
United States census and the city or county in which said
area is located establishes that either: (i) Chronic
abandonment or demolition of commercial or residential
structures exist in the area; or (ii) substantial tax
delinquencies relating to ad valorem real property taxes of
commercial or residential structures exist in the area;
(d) The term “forest resources development” means a
program to: (i) Improve the business climate for forest
industries and the general awareness of forestry potential;
(ii) develop a strong state forestry agency; (iii) improve
forest resources data; (iv) improve the transportation
system for wood products; and (v) improve forestry
knowledge and practices of private landowners; and
(e) The term "jobs development" means a program to
maintain existing employment, and to promote new
employment opportunities for the people of this state,
particularly in areas of high unemployment.

ARTICLE 3. WEST VIRGINIA EXPORT DEVELOPMENT AUTHORITY.

§5B-3-1. Legislative findings.
§5B-3-2. Definitions.
§5B-3-3. West Virginia export development authority—Creation and purposes.
§5B-3-4. Board of directors—Members, officers, qualifications, terms, oath,
compensation, quorum and delegation of power.
§5B-3-5. General powers.
§5B-3-6. Stimulation and facilitation of funding for West Virginia exports.
§5B-3-7. Annual report and audits.
§5B-3-8. Powers to be interpreted broadly.
§5B-3-9. Tax exemption.
§5B-3-10. Conflict of interests.
§5B-3-11. Personal liability of members or persons acting on behalf of the
authority.
§5B-3-12. Financing of the authority; bonds payable solely from revenues;
bonds not state debt; execution, form, delivery, conditions and sale
of bonds.
§5B-3-13. Bonds, income therefrom, security agreements, financing agreements
are exempt from certain taxes.
§5B-3-14. Insurance fund; purchase of insurance by authority.
§5B-3-15. Bonds and notes of the authority legal investments for fiduciaries.
§5B-3-16. Exemption from disclosures of confidential information.
§5B-3-17. Provisions as cumulative.
§5B-3-18. Severability.

§5B-3-1. Legislative findings.

1 It is hereby found and declared that:
2 (a) The economy of the state of West Virginia and
3 opportunities for employment within the state are
4 increasingly dependent upon the international exports of
5 West Virginia manufactured goods and services and the
6 growth of international export markets for those
7 manufactured goods and services;
8 (b) Other states have utilized, or are preparing to utilize,
9 the resources of their state governments to stimulate,
10 facilitate and promote international exports;
11 (c) One in seven manufacturing jobs in the state of West
12 Virginia are attributable to exporting;
(d) The export of services has become vital to the growth and stability of the state of West Virginia's economy;
(e) The position of West Virginia as an exporting state is threatened by aggressive government supported export development policies of foreign countries;
(f) Competition among businesses and countries will endure and intensify as more countries seek to expand their international export capacities;
(g) Financial assistance offered by the federal government to exporters is insufficient to meet the competition offered by foreign countries;
(h) West Virginia exporters find it increasingly difficult to compete with foreign exporters which benefit from their governmentally supported financing programs;
(i) Companies seeking to enter foreign markets face severe problems financing and insuring their transactions;
(j) Expanding international export markets is essential in order to maintain a vigorous and growing economy and to provide adequate job opportunities for citizens of this state;
(k) The state of West Virginia has a responsibility to create employment opportunities by encouraging and stimulating the development of international export sales and markets by West Virginia companies; and
(l) Increased export sales may best be stimulated by making financial assistance available to West Virginia businesses to develop and expand international export markets and to ensure the competitiveness of West Virginia products and services in foreign markets, thereby increasing employment opportunities available to the citizens of the state of West Virginia.

It is hereby declared to be the policy of the state of West Virginia, in the interest of promoting the general welfare of all of the people of the state, to increase job opportunities through stimulating the expansion of international export markets of West Virginia products and services, by providing financial assistance through the authority hereinafter created for that purpose.

§5B-3-2. Definitions.

The following words, as used in this article, shall have the meanings set forth below, unless the context clearly requires otherwise:
(a) "Authority" means "The West Virginia Export Development Authority" created by this article;

(b) "Board" means the board of directors of the authority;

(c) "Bond" means any type of interest bearing obligation, including, without limitation, any bond, note, bond anticipation note, or other evidence of indebtedness whether general or special, whether negotiable or nonnegotiable in form, whether in bearer or registered form, whether in temporary or permanent form, whether with or without interest coupons, and regardless of the source of payment;

(d) "Director" means a member of the board;

(e) "Commercial loss" means the failure of the buyer to pay to the West Virginia exporter when due all or part of the gross invoice value as denominated in United States currency of an eligible export loan due to the insolvency of the buyer or failure of the buyer to pay to the West Virginia exporter all or part of the gross invoice value as denominated in United States currency of an eligible export loan on the due date; and

(f) "Political loss" means the losses incurred by a West Virginia exporter on an eligible export loan from dollar transfer delays, war, revolution, license revocation, diversion of goods and similar politically related incidents occurring in the buyer's country that cause a loss to the West Virginia exporter.

§5B-3-3. West Virginia export development authority—Creation and purposes.

There is hereby created "The West Virginia Export Development Authority," a body politic and corporate, hereinafter referred to as the "Authority."

The purpose of this authority shall be to:

(a) Assist, promote, encourage, develop and advance economic prosperity and employment throughout this state by fostering the expansion of exports of manufactured goods and services to foreign purchasers;

(b) Cooperate and act in conjunction with other organizations, public and private, the objects of which are the promotion and advancement of export trade activities in the state of West Virginia;
(c) Establish a source of funding credit guarantees and insurance to support export development not otherwise available to West Virginia and medium sized businesses; and

(d) Provide financial counseling to potential and existing exports.

§ 5 B - 3 - 4. Board of directors—Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

(a) The governing and administrative powers of the authority shall be vested in a board of directors consisting of nine members who shall be appointed by the governor with the advice and consent of the Senate. The governor or his designated representative shall be the chairman of the authority. No more than five members appointed by the governor may be of the same political party.

All directors of the authority shall be residents of the state of West Virginia. The directors shall annually elect one of their members as vice chairman, one as secretary and one as treasurer. The board may elect such other officers as it deems proper. Appointments to fill a vacancy of one of the appointed members shall be made in the same manner as the original appointment.

(b) Each member of the board shall be a person of recognized ability and experience in one of the following areas: Finance; international trade; business management; and economics.

(c) The governor shall appoint three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-six; three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-seven; three members of the board whose term shall expire on the third Monday in June, one thousand nine hundred eighty-eight. Their respective successors shall be appointed for terms of three years from the third Monday in June of the year of appointment. Each member shall serve until his successor is appointed and qualified.

(d) Each director before entering upon his duties shall take and subscribe to the oath or affirmation required by the West Virginia Constitution. A record of each such oath
or affirmation shall be filed in the office of the secretary of state.

(e) Members of the board shall not be entitled to compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members.

(f) Five members of the board shall constitute a quorum and the affirmative vote of the majority of members present at a meeting of the board shall be necessary and sufficient for any action taken by the board, except that the affirmative vote of at least five members shall be required for the approval of any resolution authorizing the issuance of any bonds pursuant to this article.

(g) No vacancy in the membership of the board shall impair the right of a quorum to exercise all rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect upon the date the chairman certifies the action of the authority by affixing his signature to the resolution unless some other date is otherwise provided in the resolution.

(h) The board may delegate to one or more of its members or to its officials, agents or employees such powers and duties as it may deem proper.

§5B-3-5. General powers.

1 The authority shall possess all the powers of a body politic and corporate necessary and convenient to accomplish the purposes of this article, including, without any intended limitation upon the other powers hereby conferred, the following:
2 (a) To borrow money and otherwise incur indebtedness for any of its purposes; to issue bonds, debentures, notes or other evidence of indebtedness, whether secured or unsecured, therefor;
3 (b) To purchase, discount, sell, negotiate with or without guaranty notes, other evidence of indebtedness, and to sell and guarantee securities;
4 (c) To procure insurance to guarantee, insure, coinsure and reinsure against political and commercial risk of loss,
and such other insurance as the authority may deem necessary;
(d) To provide financial counseling services to West Virginia businesses;
(e) To procure insurance to secure the payment of principal and interest on any bonds, notes or other obligations of the authority;
(f) To accept gifts, grants or loans from and enter into contracts or other transactions with any federal or state agency, any municipality, any private organization or any other source;
(g) To adopt, and from time to time amend or rescind such bylaws, rules and regulations as may be necessary or convenient for the performance of its functions, powers and duties under this article;
(h) To sue and be sued;
(i) To purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
(j) To sell, convey, lease, exchange, transfer or otherwise dispose of, all or any of its property or any interest therein, wherever situated;
(k) To adopt and use a seal; and
(l) To exercise all other powers and functions necessary or appropriate to carry out the duties and purposes set forth in this article.

§5B-3-6. Stimulation and facilitation of funding for West Virginia exports.

(a) The authority is empowered to provide guaranteed funding, as defined in subsection (c) below, for any eligible export loan, as defined in subsection (b) below, through a participating banking organization, as defined in subsection (d) below.
(b) An eligible export loan shall consist of a loan from the authority to any participating banking organization located within the state of West Virginia to finance an international preexport or export from the state which, in the judgment of the authority, will:
(1) Create or maintain employment in West Virginia;
and
(2) Shall contain at least twenty-five percent of the
value of manufactured goods, coal products, lumber and
wood products or services whose final processing occurs in
West Virginia. An eligible export loan may include a pool of
individual exports, all of which, in the judgment of the
authority, meet the foregoing conditions.

(c) Guaranteed funding shall consist of a guarantee
against political or commercial loss in whole or in part of
principal and interest on an eligible export loan. Such a
guarantee may include, without limitation, insurance
against loss up to a stated amount. The maximum amount
payable under any guarantee, herein called the
"Guaranteed Amount," shall be specifically set forth in
writing, executed by the chairman and secretary of the
board, at the time any such guarantee is entered into by the
authority. Any guarantee entered into by the authority
hereunder shall not constitute a general obligation of the
state of West Virginia. Any guarantee made by the authority
hereunder shall not be terminated, cancelled or otherwise
revoked except in accordance with the terms thereof; shall
be conclusive evidence that such guarantee complies fully
with the provisions of this article; and shall be valid and
incontestable in the hands of a holder in due course of a
guaranteed eligible export loan.

(d) A participating banking organization shall be any
organization as defined by the state banking acts of West
Virginia; any agency or branch of a foreign banking
corporation licensed by the commissioner of banking; any
national bank, federal savings and loan association and
federal credit union located within this state who has been
approved by the board of directors of the authority to
participate in any eligible export loan or guaranteed
funding within the purposes of this article.

The authority may charge reasonable fees for providing
any eligible export loan or guaranteed funding pursuant to
this section to a participating banking organization.

(e) Prior to providing an eligible export loan or
guaranteed funding hereunder, the participating banking
organization shall make an investigation of a line of credit
to the exporter in order to determine its viability, the
economic benefits to be derived therefrom, the prospects for repayment, and such other facts as it deems necessary in order to determine that such an eligible export loan or guaranteed funding is consistent with the purposes of this article. The authority shall provide guaranteed funding only if, and to the extent that, it determines, in its sole discretion, that:

(1) Such guaranteed funding is reasonably necessary in order to stimulate or facilitate the making of the eligible export loan including, without limitation, the making of the eligible export loan upon terms which will enable the loan to be reasonably competitive with loans in other states or in foreign countries; or

(2) Such guaranteed funding is reasonably necessary in order to stimulate or facilitate the resale of such eligible export loan to a holder in due course which would not otherwise purchase such eligible export loan: Provided, That the eligible export loan or guaranteed funding provided by the authority to the participating banking organization shall be loaned to the exporter at a fixed interest rate and term as the authority may from time to time require. The authority may condition the provision of an eligible export loan or guaranteed funding hereunder upon such other terms and conditions as it may deem desirable to carry out the purposes of this article.

§5B-3-7. Annual report and audits.

On the first day of January of each year the authority shall report on its operations for the preceding fiscal year to the governor and the state Legislature. Such report shall include a summary of the activities of the authority and a complete operating and financial statement. The West Virginia export development authority shall cause an annual audit to be made by a resident certified public accountant or a registered public accountant of its books, accounts and records, with respect to its receipts, disbursements and all other matters related to its financial operations. The person performing such audit shall also furnish copies of the audit report to the Speaker of the House of Delegates, the President of the Senate and the majority and minority leaders of both houses, and the legislative auditor.
§5B-3-8. Powers to be interpreted broadly.

1. The powers enumerated in this article shall be interpreted broadly to effectuate the purposes thereof and shall not be construed as a limitation of powers.

§5B-3-9. Tax exemption.

1. The authority shall be and hereby is exempt from all franchise, corporate, business and taxes of every nature levied by the state: Provided, That nothing herein shall be construed to exempt from any such taxes any person receiving an eligible export loan or guaranteed funding with the authority hereunder.

§5B-3-10. Conflict of interests.

1 (a) No member of the authority or officer, agent or employee thereof shall, in his or her own name or in the name of a nominee, hold an ownership interest of more than seven and one-half percent in any association, trust, corporation, partnership or other entity which is, in its own name or in the name of a nominee, a party to a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote.

(b) With respect to any direct or any indirect interest, other than an interest prohibited in subsection (a), in a contract or agreement upon which the member or officer, agent or employee may be called upon to act or vote, a member of the authority or officer, agent or employee thereof shall disclose the same to the secretary of the authority prior to the taking of final action by the authority concerning such contract or agreement and shall so disclose the nature and extent of such interest and his or her acquisition thereof, which disclosure shall be publicly acknowledged by the authority and entered upon the minutes of the authority. If a member of the authority or officer, agent or employee thereof holds such an interest, he or she shall refrain from any further official involvement in regard to such contract or agreement, from voting on any matter pertaining to such contract or agreement, and from communicating with other members of the authority or its officers, agents and employees concerning said contract or agreement. Notwithstanding any other provision of law,
any contract or agreement entered into in conformity with
this subsection shall not be void or invalid by reason of
the interest described in this subsection, nor shall any
person so disclosing the interest and refraining from further
official involvement as provided in this subsection be guilty
of an offense, be removed from office or be subject to any
other penalty on account of such interest.
(c) Any contract or agreement made in violation of
subsection (a) or (b) of this section shall be null and void
and give rise to no action against the authority.

§5B-3-11. Personal liability of members or persons acting on
behalf of the authority.

(a) No director or any person acting on behalf of the
authority executing any contracts, commitments or
agreements issued pursuant to this article shall be liable
personally upon such contracts, commitments or
agreements or be subject to any personal liability or
accountability by reason thereof.
(b) No director or any person acting on behalf of the
authority shall be personally liable for damage or injury
resulting from the performance of his duties hereunder.

§5B-3-12. Financing of the authority; bonds payable solely
from revenues; bonds not state debt; execution,
form, delivery, conditions and sale of bonds.

(a) The authority is hereby authorized to issue, sell and
provide for the retirement of bonds in the amount of fifty
million dollars to provide funds for the creation and
operation of the authority. Such bonds shall be limited
obligations of the authority, the principal of and interest on
which shall be payable solely out of the revenues derived by
the authority. Bonds issued under authority of this section
shall never constitute an indebtedness of the state of West
Virginia or the authority within the meaning of any state
constitutional provision or statutory limitation, but such
bonds shall be indebtedness payable solely from a revenue
producing source or from a special source, which source
does not include revenues from any tax or license, and shall
never constitute nor give rise to a pecuniary liability of the
state of West Virginia or the authority or a charge against
the general credit of the authority or the state or taxing
powers of the state, and such fact shall be plainly stated on
the face of each bond. Such bonds may be executed and
delivered at any time as a single issue or from time to time as
several issues, may be in such form and denominations, may
be of such tenor, shall be in coupon or registered form, may
be payable in such installments and at such time or times
not exceeding five years from their date, may be subject to
such terms of redemption, may be payable at such place or
places, may bear interest at such rate or rates payable at
such place or places and evidence in such manner, and may
contain such provisions not inconsistent herewith, all of
which shall be provided in the resolution of the authority
authorizing the bonds. Any bonds issued under the
authority of this section may be sold at public or private sale
at such price and in such manner and from time to time as
may be determined by the authority to be most
advantageous. The authority may pay all expenses,
premiums, insurance premiums and commissions which the
authority may deem necessary or advantageous in
connection with the authorization, sale and issuance
thereof from proceeds of the bonds.
(b) The resolution under which such bonds are
authorized to be issued or any security agreement,
including an indenture or trust indenture to be entered into
in connection therewith, may contain any agreements and
provisions customarily contained in instruments securing
bonds, including, without limiting the generality of the
foregoing, provisions respecting the fixing and collection of
obligations, the creation and maintenance of special funds,
and the rights and remedies available, in the event of
default, to the bondholders or to the trustee under such
security agreement, all as the authority shall deem
advisable and as shall not be in conflict with the provisions
of this article: Provided, That in making any such
agreements or provisions the authority shall not have the
power to obligate itself except with respect to eligible
export loans and shall not have the power to incur a
pecuniary liability or a charge upon the general credit of the
authority or of the state or against the taxing powers of the
state. The resolution of the authority authorizing any bonds
hereunder and any security agreement securing such bonds
may provide that, in the event of default in payment of the
principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or security agreement, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect any obligations and to apply any revenues pledged in accordance with such proceedings or the provisions of such security agreement. Any such security agreement may provide also that in the event of default in payment or the violation of any agreement contained in the security agreement, it may be foreclosed by proceedings at law or in equity, and may provide that any trustee under the security agreement or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale, if he is the highest bidder. No breach of any such agreement shall impose any pecuniary liability upon the state of West Virginia or the authority or any charge upon the general credit of the authority or of the state or against the taxing power of the state.

The trustee or trustees under any security agreement, or any depository specified by such security agreement, may be such persons or corporations as the authority shall designate, notwithstanding that they may be a nonresident of West Virginia or incorporated under the laws of the United States or any state thereof.

(c) Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority, by the issuance of its refunding bonds in such amount as the authority may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be refunded, together with any unpaid interest thereon and any premiums, expenses and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or shall thereafter mature, either by sale of the refunding bonds to be refunded, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable, or, if they are called for redemption, prior to the date on which they are by their
terms subject to redemption. All refunding bonds issued under the authority of this section shall be payable in the same manner and under the same terms and conditions as are herein provided for the issuance of bonds.

(d) The proceeds from the sale of any bonds issued under authority of this section shall be applied only for the purpose for which the bonds were issued: Provided, That any premium and secured interest received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: Provided, however, That if for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, such unneeded portion of the proceeds shall be applied to the payment of the principal of or the interest on the bonds.

(e) The proceeds of the export development bonds shall be kept in a separate fund to be known as the "Export Development Bond Fund." All other moneys received by the authority shall also be deposited in such fund. The treasurer may, with the approval of the board of directors of the authority, invest and reinvest all moneys in such fund from time to time in such obligations of the United States government or such other governmental or corporate issuers as the treasurer, with the approval of the board of directors of the authority, deems appropriate. All earnings upon such investment shall be added to such fund. The authority is authorized to use moneys deposited in the fund expressly for the purposes specified in and according to the procedures established by this article.

§5B-3-13. Bonds, income therefrom, security agreements, financing agreements are exempt from certain taxes.

The bonds authorized pursuant to this article and the income therefrom shall be exempt from all taxation in the state of West Virginia except for inheritance, estate or transfer taxes; and all security agreements and financing agreements made pursuant to the provisions of this article shall be exempt from West Virginia stamp and transfer taxes.

§5B-3-14. Insurance fund; purchase of insurance by authority.

The authority is authorized to create an insurance fund
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consisting solely of funds from the export development
bond fund. Such insurance fund shall be held in the custody
of one or more banks or trust companies having a principal
place of business in this state. The insurance fund shall be
held as security for the holders of bonds issued under this
article. It shall be governed by a trust agreement entered
into by the authority with the trustees. The trust agreement
may contain such provisions and limitations as to the
investment and disbursement of moneys in the insurance
fund, the payment of expenses of the insurance fund, the
appointment, resignation and discharge of trustees, the
delegation of enforcement and collection powers under the
insurance agreements to the trustee, the duties of the
trustees, amendments of the trust agreement and such other
lawful provisions and limitations as may be deemed
appropriate by the authority. The trust agreement may
pledge premiums and other moneys which may be deposited
in the insurance fund. Such pledge shall be valid and
binding from the time when the pledge is made. The
premiums and other moneys so pledged and thereafter
received by the insurance fund or by the trustees in its
behalf shall immediately be subject to the lien of such
pledge and shall be valid and binding as against all parties
having claims of any kind against the insurance fund,
irrespective of whether such parties have notice thereof.
The authority may also use export development bond
funds to purchase insurance which shall be pledged for the
security of the holders of any bonds issued under this
article. In any case in which insurance is pledged as
security, whether obtained through the insurance funds
authorized to be created under this section or purchased
with export development bond funds, any description of
such insurance shall expressly indicate the limitation of the
liability of the authority and that neither the credit nor
taxing power of the state of West Virginia or any political
subdivision thereof shall be available to satisfy any
obligations with respect thereto.

§5B-3-15. Bonds and notes of the authority legal investments
for fiduciaries.

1 The bonds, debentures, notes or other evidence of
indebtedness of the authority are hereby made securities in
which all public officers and bodies of the state of West
Virginia and all municipalities and municipal subdivisions,
all insurance companies and associations and other persons
carrying on an insurance business, all banks, bankers, trust
companies, savings banks, savings associations, including
savings and loan associations and building and loan
associations, investment companies and other persons
carrying on a banking business, all administrators,
guardians, executors, trustees and other fiduciaries, and all
other persons whatsoever who are now or who may
hereafter be authorized to invest in bonds or other
obligations of the state of West Virginia, may properly and
legally invest funds including capital in their control or
belonging to them. Notwithstanding any other provision of
law, the bonds, debentures, notes or other evidence of
indebtedness of the authority are also hereby made
securities which may be deposited with and may be received
by all public officers and bodies of this state and all
municipalities and municipal subdivisions for any purpose
for which the deposit of bonds or other obligations of this
state are now or may hereafter be authorized.

§5B-3-16. Exemption from disclosure of confidential informa-
tion.

Any information submitted to or compiled by the
authority in connection with the authority’s
responsibilities with respect to the identity, background,
finance, marketing plans, trade secrets or any other
commercially sensitive information of persons, firms,
associations, partnerships, agencies, corporations or other
entities, shall be confidential, except to the extent that the
person or entity which provided such information consents
to disclosure.

§5B-3-17. Provisions as cumulative.

Neither this article nor anything herein contained shall
be construed as a restriction or limitation upon any powers
which the authority might otherwise have under any laws of
this state, but shall be construed as cumulative.

§5B-3-18. Severability.

If for any reason any section or provision of this article
shall be held to be invalid or unconstitutional, such holding shall not affect the validity or applicability of the remainder of this article.

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

§5B-4-2. Objectives of the council.

§5B-4-3. Powers, duties and functions of the council; annual reports.

§5B-4-4. Regional advisory committee; composition; functions.

§5B-4-5. Compensation of members of council and committees; employment of staff; expenses of council.

§5B-4-6. Duration of council.

§5B-4-1. Appointment, terms, vacancies, chairman, quorum of the labor-management council.

1. The West Virginia labor-management advisory council, heretofore created under the provisions of article one-c, chapter twenty-one of this code, shall be continued and be so designated as the West Virginia labor-management council. The council shall consist of twenty-six members.

2. One member of the council shall be the commissioner of labor, one member of the council shall be a member of the economic development authority, one member of the council shall be the employment security commissioner or his designated representative, one member of the council shall be the state superintendent of schools, one member of the council shall be a member of the economic development board to be selected by it annually, and one member of the council shall be a member of the board of regents to be selected by it annually, all of whom shall be ex officio nonvoting members of the council. The other members of the council shall be appointed by the governor by and with the advice and consent of the Senate for terms of four years or until their successors have been appointed and have qualified. The members of the council appointed by the governor shall include one president of a state university, one president of a state college or community college, and two persons representing public secondary schools in the state, who shall be appointed for terms of two, three and four years, respectively, as designated by the governor at the time of their appointment, and until their successors have been appointed and have qualified. The present
members of the council shall continue to serve out the terms to which they were appointed.

Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.

In making appointments to the council, the governor shall consider names of persons recommended to him by the West Virginia chamber of commerce, the West Virginia coal association, the West Virginia manufacturers' association, the West Virginia retailers' association, utilities, other industrial groups in this state, the West Virginia labor federation, the united mine workers union, the West Virginia building trades council, other labor organizations in the state, the institutional boards of advisors for state colleges and universities, the state board of education, and the West Virginia school board association. Membership shall be composed of, in addition to those of the state or other government agencies and educational institutions, no less than eight members from industry and eight from labor.

The council shall elect one of its members as chairman and may elect such other officers as the council may deem necessary or desirable. Such persons shall serve as such for one year or until their successors are elected and shall be eligible for reelection.

The council shall meet at least four times each year and at other times on call of the chairman or a majority of the members. Thirteen members of the council shall constitute a quorum for the transaction of business.

§5B-4-2. Objectives of the council.

It is the object of this article to improve labor-management relations within this state, in order both to improve the present convenience and welfare of the citizens of the state, and to attract and encourage new and existing industry in the state. To this end, the council shall act as advisor and consultant to state government, and to labor and management within this state, to promote better labor-management relations within the state; develop and encourage methods of improved communications and mutual respect between labor and management; endeavor to narrow ideological differences between labor and
management; develop and encourage innovative techniques to resolve labor-management conflicts through cooperative teamwork rather than confrontation; and encourage both labor and management to recognize their common ground and common purpose.

§5B-4-3. Powers, duties and functions of the council; annual reports.

On or before the first day of September, one thousand nine hundred eighty-five, the council shall submit to the joint committee on government and finance a preliminary plan for the implementation of programs designed to improve labor-management relations within the state. Such plan shall include, but need not be limited to, programs to:

(a) Conduct seminars and other programs designed to promote better labor-management relations and greater productivity, including the provision of training in specialized skills required by management and by employee representatives, in cooperation with institutions of higher and secondary education within the state;

(b) Develop a resource network through which labor and management can be made aware of available experts and other resources for resolving labor-management disputes and improving labor-management relations;

(c) Develop a method of compiling, analyzing and publicizing fair and honest information about the characteristics of the workforce in this state, including its productivity and loyalty, in cooperation with the commission on employment security, the West Virginia promotion and development foundation and other state agencies and educational institutions;

(d) Conduct and publicize, in cooperation with the West Virginia promotion and development foundation, case studies which identify examples of successful business operations in the state with excellent labor-management relations, and which document the specific characteristics of labor-management relations in each such business;

(e) Establish forums for dialogue between labor and management, including an annual state conference on labor-management relations;
(f) Hold public hearings, and solicit comment and suggestions from interested parties and the public in general, concerning the development of a long-term plan for improving labor-management relations within the state;

(g) Develop a long-term plan for improving labor-management relations within this state;

(h) Submit a preliminary operation report to the joint committee on government and finance by the first day of September, one thousand nine hundred eighty-five, at such other times as the council may find desirable, or as directed by the commission or the board, which report shall reflect the plan of operation of the council and contain such recommendations as it shall see fit as to structure, functions and financing; and

(i) Cooperate with other agencies, organizations and institutions, both public and private, and in particular with institutions of higher and secondary education within the state and with the regional advisory committees established by this article in performing the duties and functions of the council and is authorized to enter into agreements with any such agencies, organizations and institutions for the purpose of carrying out the provisions of this article.

The council is authorized and empowered to apply for, receive and utilize appropriations, gifts, bequests or grants, in money or in kind, from any person, organization, governmental agency or entity whatsoever to assist in achieving the public purposes of this article. The council may decline to receive gifts, bequests or grants from private sources which are restricted in a manner which to the opinion of the council would benefit either labor or management over the other. All funds received by the council shall be deposited with the state treasurer of West Virginia and dispersed by the council to be used exclusively for carrying out the provisions of this article: Provided, that any appropriations, gifts, bequests or grants received by the council with any restriction or restrictions on the use thereof shall be expended by the council in accordance with such restriction or restrictions.
§5B-4-4. Regional advisory committees; composition; functions.

1 The council shall designate at least five regions, representing the northern, southern, eastern, western and central geographic areas of the state, and shall appoint a regional advisory committee for each such region, to advise and consult with the council and to address problems of common interest within the region. The council shall determine the number of members to serve on each regional committee. In making appointments to the committee, the council shall consider names of persons recommended by business, labor and educational organizations and institutions within the respective region and shall endeavor to appoint persons with a commonality of interest in labor-management relations. Committee members shall serve for a term of four years and until their successors have been appointed and have qualified, except that the members first appointed shall be for two, three and four years, respectively, as designated by the council at the time of their appointment, and until their successors have been appointed and have qualified. Vacancies shall be filled by appointment by the council for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy.

2 Each regional advisory committee shall meet at least two times each year and at other times on call of the chairman or a majority of the members or as the council may direct. Each committee shall elect a chairman from among its members, and the chairman shall cause a summary of the proceedings of each committee meeting, as well as any recommendations made by the committee, to be delivered to the council.

3 The regional advisory committees shall review the plans prepared by the council pursuant to section three of this article, and shall make such recommendations as they deem appropriate. The committees shall participate in the programs established by the council, and also may establish programs to improve labor-management relations within their respective regions.

4 The council may enter into an agreement with a state university, college or community college, county governments or boards of education within each region to
provide space sufficient to enable the regional advisory committee to carry out its functions.

§5B-4-5. Compensation of members of council and committees; employment of staff; expenses of council.

1 The labor-management council and the regional advisory committees shall be supplied with necessary staff and supplies within the limits of appropriation by the commissioner of labor as well as funds for reimbursing each member of the council and of the regional advisory committees for reasonable and necessary expenses at the rate of one hundred dollars per diem for each meeting attended.

§5B-4-6. Duration of council.

1 After having conducted a performance 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 West Virginia labor-management advisory council heretofore established under the provisions of article one-c, chapter twenty-one of this code, should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the West Virginia labor-management advisory council shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 5C. BASIC ASSISTANCE FOR INDUSTRY AND TRADE.

Article.
1 West Virginia Automobile Assistance Corporation.
2 West Virginia Industrial and Trade Jobs Development Corporation.

ARTICLE I. WEST VIRGINIA AUTOMOBILE ASSISTANCE CORPORATION.

§5C-1-1. General provisions.
§5C-1-2. Purpose and intent.
§5C-1-3. Definitions.
§5C-1-4. Severability.
§5C-1-5. Creation of the West Virginia automobile industry assistance corporation.
§5C-1-6. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.
§5C-1-7. Management and control of corporation; officers; liability.
§5C-1-8. Officers and employees; wages of laborers and mechanics.
§5C-1-9. Corporate powers.
§5C-1-10. Transfer of state property to corporation.
§5C-1-11. Principal office of the corporation; account books; directors' oath of office.
§5C-1-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.
§5C-1-13. Authority of the board of investments.
§5C-1-14. Requirements of loan.
§5C-1-15. Limitations on loan authority.
§5C-1-16. Terms and conditions of loans.
§5C-1-17. Audits; audit reports.
§5C-1-18. Enforcement of rights accruing to the state.
§5C-1-19. Tax credit for borrowers.
§5C-1-20. Reports to the Legislature.
§5C-1-21. Termination.

§5C-1-1. General provisions.

1 This chapter shall be known and may be cited as the "West Virginia Basic Assistance for Industry and Trade Act."

§5C-1-2. Purpose and intent.

1 The Legislature finds and declares that West Virginia's economy can be rejuvenated; that bringing new industry and trade to the state will serve as a catalyst for reviving and restoring steel, aluminum, coal and other industrial and commercial activities within the state; that increasing such activities will form the nucleus for growing and prosperous communities, offering new job opportunities both in industry and trade; and that new jobs and investments, higher income and profits, and rising property values will support better education and superior public services.

12 Therefore, it is the intent of the Legislature to create authorities for the purpose of enhancing the establishment or renewal of industry and trade in the state of West Virginia.

§5C-1-3. Definitions.

1 For the purpose of this article:
(1) The term "automobile manufacturer" means a business entity, the subsidiaries and affiliates, whose primary business is the production and sale of motor vehicles;

(2) The term "board of investments" means the board of investments established by article six, chapter twelve of this code;

(3) The term "borrower" means an automobile manufacturer, any of its subsidiaries or affiliates, or any other entity the board of investments may designate from time to time which borrows funds for the benefit or use of an automobile manufacturer;

(4) The term "corporation" means the West Virginia automobile industry assistance corporation, unless the context in which such term is used clearly indicates that reference is made to some other corporation;

(5) The term "financing plan" means a plan designed to meet the financing needs of an automobile manufacturer as reelected in the operating plan;

(6) The term "fiscal year" means the fiscal year of an automobile manufacturer; and

(7) The term "operating plan" means a document detailing production, distribution and sales plans of an automobile manufacturer, together with the expenditures necessary to carry out those plans (including budget and cash flow projections), on an annual basis, and an employment-generating plan setting forth steps to be taken by the automobile manufacturer to create jobs and reduce unemployment in this state.

§5C-1-4. Severability.

If any section, subsection, subdivision, subparagraph, sentence or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article, and, to this end, the provisions of this article are hereby declared to be severable.

§5C-1-5. Creation of the West Virginia automobile industry assistance corporation.

(a) For the purpose of aiding the establishment and expansion of the automobile industry in this state,
3 encouraging and increasing the use of energy derived from
4 hydrocarbon sources located in the state of West Virginia,
5 for developing and maintaining properties now owned or to
6 be owned by the state of West Virginia throughout this
7 state, and in the interest of improving employment
8 opportunities in this state, there is created a body
9 corporate, denominated the "West Virginia Automobile
10 Industry Assistance Corporation," (hereinafter referred to
11 as the "corporation"). The board of directors first
12 appointed shall be deemed the incorporators, and the
13 incorporation shall be held to have been effected from the
14 date of the first meeting of the board.
15 (b) The corporation is created and established to serve a
16 public corporate purpose and to act for the public benefit
17 and as a governmental instrumentality of the state of West
18 Virginia, to act on behalf of the state and its people in
19 improving their health, welfare and prosperity.
20 (c) The corporation:
21 (1) Shall have succession in its corporate name;
22 (2) May sue and be sued in its corporate name;
23 (3) May adopt and use a corporate seal, which shall be
24 judicially noticed;
25 (4) May make contracts as herein authorized; and
26 (5) May adopt, amend and repeal bylaws.

§5C-1-6. Directors; number; appointment and terms of office;
compensation; interest in competing business
forbidden.

1 (a) The board of directors of the corporation
2 (hereinafter referred to as the "board") shall be composed
3 of three members, to be appointed by the governor, by and
4 with the advice and consent of the Senate. No more than
5 two of the directors shall be from the same political party.
6 In appointing the board, the governor shall designate the
7 chairman, vice chairman and treasurer. All other officials,
8 agents and employees shall be designated and selected by
9 the board.
10 (b) The terms of office of the members first taking office
11 on or after the first day of July, one thousand nine hundred
12 eighty-five, shall expire as designated by the governor at
13 the time of nomination, one at the end of the second year,
14 one at the end of the fourth year and one at the end of the
sixth year, after the first day of July, one thousand nine
hundred eighty-five. A successor to a member of the board
shall be appointed in the same manner as the original
members and shall have a term of office expiring six years
from the date of the expiration of the term for which his
predecessor was appointed.

(c) In cases of any vacancy in the office of director, such
vacancy shall be filled by appointment by the governor. Any
member appointed to fill a vacancy in the board occurring
prior to the expiration of the term for which his predecessor
was appointed shall be appointed for the remainder of such
term.

(d) The governor may remove a director in the case of
incompetence, neglect of duty, gross immorality or
malfeasance in office, and may declare such director's
office vacant and appoint a person for such vacancy as
provided in other cases of vacancy.

(e) Vacancies in the board, so long as there shall be two
members in office, shall not impair the powers of the board
to execute the functions of the corporation, and two of the
members in office shall constitute a quorum for the
transaction of the business of the board.

(f) Each of the members of the board shall be a citizen of
the state of West Virginia. The compensation of each
member of the board shall be paid by the corporation as
current expenses. Members of the board shall be
reimbursed by the corporation for actual expenses
(including traveling and subsistence expenses) incurred by
them in the performance of the duties vested in the board by
this article. No member of said board shall, during his
continuance in office, be engaged in any other business, but
each member shall devote himself to the work of the
corporation.

(g) No director shall have a financial interest in any
automobile manufacturer or in any public-utility
corporation engaged in the business of distributing and
selling electric power or natural gas to the public nor shall
any member have any interest in any business that may be
adversely affected by the success of the corporation as a
distributor of water, electric power, or oil or natural gas.
§5C-1-7. Management and control of corporation; officers; liability.

(a) The board shall direct the exercise of all the powers of the corporation.

(b) The chairman shall be the chief executive officer of the corporation, and, in his absence, the vice chairman shall act as chief executive officer.

(c) The board shall annually elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board and perform such other duties as may be determined appropriate by the board.

(d) The treasurer of the corporation shall be custodian of all funds of the corporation, and shall be bonded in such amount as the other members of the board of directors may designate.

(e) The directors and officers of the corporation shall not be liable personally, either jointly or severally, for any debt or obligation created by the corporation.

§5C-1-8. Officers and employees; wages of laborers and mechanics.

The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint such managers, assistant managers, officers, employees, attorneys and agents as are necessary for the transaction of its business, fix their compensation, define their duties, and provide a system of organization to fix responsibility and promote efficiency.

Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the corporation shall receive a salary in excess of that received by the members of the board.

All contracts to which the corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance or repair of buildings, gas transmission pipelines, electric power lines, waterworks systems and waterlines, sewer systems and sewage treatment and disposal systems, roads or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature
prevailing in the vicinity shall be paid to such laborers or mechanics.

In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the commissioner of the department of labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.

Where such work as is described in the two preceding paragraphs is done directly by the corporation the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

§5C-1-9. Corporate powers.

1 In order to foster and expand the automobile industry in this state and to encourage the widest possible use of energy that can be generated from hydrocarbon sources in this state and to market and provide reasonable outlets therefore, the corporation is empowered and directed:

(a) To provide, construct, operate, maintain and improve such gas and oil pipelines, electric transmission lines, substations and facilities and structures appurtenant thereto, as it finds necessary, desirable and appropriate for the purpose of transmitting gas, oil and electric energy, available for sale, from sources within this state to existing and potential markets, and, for the purpose of interchange of energy, to interconnect sources within this state with either private projects, other state or federal projects, and publicly owned power systems now or hereafter constructed;

(b) To provide for the construction and maintenance of streets, avenues, roads, alleys, ways, sidewalks, crosswalks and other access ways to facilitate the ingress and egress to industrial sites belonging to an automobile manufacturer;

(c) To construct, acquire, operate, maintain and improve such waterworks systems and waterlines, sewer systems and sewage treatment and disposal systems, or any combination thereof, as it finds necessary, desirable and appropriate for the purpose of assisting an automobile manufacturer in carrying out its operating plan, and to
acquire watersheds, water and riparian rights, plant sites, rights-of-way and any and all other property and appurtenances necessary, appropriate, useful, convenient or incidental to such system or systems;

(d) To acquire, by purchase, lease, condemnation or donation, such real or personal property, or any interest therein, including lands, easements, rights-of-way, franchises, oil or gas pipelines, electric transmission lines, substations and facilities and structures appurtenant thereto, waterworks systems and waterlines, and sewer systems and sewage treatment and disposal systems, as the board finds necessary and appropriate to carry out the purposes of this article. Title to all property and property rights acquired by the corporation shall be taken in the name of the corporation.

(e) To acquire any property or property rights, including patent rights, which in the opinion of the board are necessary to carry out the purposes of this article, by purchase, lease, donation, or by the exercise of the right of eminent domain and to institute condemnation proceedings therefor in the same manner as is provided by law for the condemnation of real estate.

(f) To sell, lease or otherwise dispose of such personal property as in the opinion of the board is not required for the purposes of this article and such real property and interests in land acquired in connection with construction or operation of gas and oil pipelines, electric transmission lines, substations, roads and facilities and other structures, waterworks systems and waterlines, and sewer systems and sewage treatment and disposal systems as in the opinion of the board are not required for the purposes of this article.

(g) To negotiate and enter into such contracts, agreements and arrangements as it shall find necessary and appropriate to carry out the purposes of this article.

(h) To accept appropriations, gifts, grants, bequests and devises, and to dispose of the same to carry out its corporate purposes;

(i) To invest any funds not required for immediate disbursement in any of the following securities:

(1) Direct obligations of or obligations guaranteed by the United States of America;

(2) 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;

(3) 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;

(4) Certificates of deposit secured by obligations of the United States of America;

(5) Direct obligations of or obligations guaranteed by the state of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchases, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (1) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (2) such corporation has not defaulted in the payment of principal or interest on any of the outstanding funded indebtedness during its preceding ten fiscal years, and (3) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating agencies.
services such as Standard and Poor's, Dun & Bradstreet or Moody's;
(j) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;
(k) To make and publish such rules and regulations as are necessary to effectuate its corporate purpose;
(l) To borrow money to carry out and effectuate its corporate purpose and to issue 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;
(m) To issue renewal notes, except that no such renewal notes shall be issued to mature more than ten years from date of issuance of the notes renewed;
(n) To apply the proceeds from the sale of renewal notes to the purchase, redemption or payment of the notes to be refunded; and
(o) To make proper application to the West Virginia economic development authority for the issuance of bonds, in accordance with the provisions of article fifteen, chapter thirty-one of this code.

The corporation shall have such additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

§5C-1-10. Transfer of state property to corporation.

The governor is authorized to provide for the transfer to the corporation of the use, possession and control of such real or personal property of the state of West Virginia as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

§5C-1-11. Principal office of the corporation; account books; directors' oath of office.

(a) The corporation shall maintain its principal office in the immediate vicinity of Charleston, West Virginia or upon the site of any facility.
(b) The corporation shall at all times maintain complete and accurate books of accounts.
(c) Each member of the board, before entering upon the
duties of his office, shall subscribe to an oath or affirmation
to support the constitution of the state of West Virginia and
to faithfully and impartially perform the duties imposed
upon him by this article.

§5C-1-12. West Virginia board of investments to act as board of
investments for purposes of this article; powers.

The West Virginia state board of investments as
heretofore created and constituted under the provisions of
article six, chapter twelve of this code, shall be ex officio a
board of investments for public employees retirement
system funds as they are made available for investment in
accordance with the provisions of this article, and as such,
the board of investments may exercise all of the powers and
functions granted to it pursuant to the provisions of said
article six in carrying out the duties assigned to it under the
provisions of this article.

§5C-1-13. Authority of the board of investments.

Subject to the provisions of this article, the board of
investments, on such terms and conditions as it deems
appropriate, may invest moneys, securities, and other assets
of the public employees retirement system in the form of
interest-bearing loans to a borrower, if at the time of the
commitment to make the loan, the board of investments
da:
(1) That there exists an employment-generating plan
which:
(A) Is satisfactory to the board of investments;
(B) Has been developed in consultation with other
appropriate state agencies, including, but not limited to, the
department of labor and the office of community and
industrial development;
(C) Focuses upon the need to increase the number of
jobs available in this state; and
(D) Can be carried out by the borrower;
(2) That the loan is needed to assist the borrower to open
a new facility or expand an existing facility, in this state, to
produce, distribute and sell automobiles, and that by
meeting such need employment will be increased in the
state;
(3) That the borrower has submitted to the board of investments a satisfactory operating plan for the 1985-1986 fiscal year and the next succeeding two fiscal years demonstrating the ability of the borrower to employ not less than an additional one thousand full-time employees in this state in the furnishing of goods and services, and after the thirty-first day of December, one thousand nine hundred eighty-eight, to continue to maintain such increased level of employment without additional loans under the provisions of this article;

(4) That the board of investments has received such assurances as it shall require that the operating plan is realistic and feasible;

(5) That the borrower has submitted to the board of investments a satisfactory financing plan which meets the financial needs of the borrower as reflected in the operating plan for the period covered by such plan;

(6) That the board of investments has received adequate assurances regarding the availability of all financing, both public and private, contemplated by the financing plan and that such financing is adequate to meet the borrower's projected financial needs during the period covered by the financing plan;

(7) That none of the proceeds of a loan made under the provisions of this article will be used to repay credit extended or committed prior to the date the loan is made under the provisions of this article; and

(8) That the financing plan submitted under subdivision (5) of this section provides that expenditures under the financing plan will reduce unemployment in this state.

§5C-1-14. Requirements of loan.

(a) A loan may be made under the provisions of this article when such loan is based upon the criteria set forth in section sixteen of this article. In addition, the terms of any such loan shall provide that the loan is made upon the following findings of the board of investments:

(1) That the prospective earning power of the borrower, together with the character and value of any security pledged, furnish reasonable assurance of repayment of the loan in accordance with its terms;

(2) That the loan will bear interest at a rate determined
by the board of investments to be reasonable, taking into account the current average yield on outstanding investments of the board of investments of the pension funds in the consolidated pension fund established under the provisions of section eight, article six, chapter twelve of this code;

(3) That the corporation has agreed for as long as unpaid balances of principal and interest are outstanding on a loan issued under this article:

(A) To have prepared and submitted on or before the thirtieth day preceding each fiscal year beginning after the thirty-first day of December, one thousand nine hundred eighty-six, a revised operating plan and financial plan which cover the two-year period commencing with such fiscal year and which show compliance with the requirements of section sixteen of this article, and

(B) To prepare and deliver to the board of investments within one hundred twenty days following the close of each fiscal year, an analysis reconciling the borrower’s actual performance in generating employment in this state with the projected employment for such year as set forth in the operating plan and the financial plan in effect at the start of such fiscal year.

(b) The borrower has agreed to pay such loan fees as may be prescribed by the board of investments from time to time. The board of investments shall prescribe and collect no less frequently than annually a loan fee in connection with each loan made under the provisions of this article. Such fee shall be sufficient to compensate the board of investments for all of the administrative expenses of the board of investments related to the loan, but in no case shall such fee be less than one half of one percent per annum of the outstanding principal amount of the loan computed daily. All amounts collected by the board of investments pursuant to this subsection (b) shall be deposited in the state treasury as general revenue.

§5C-1-15. Limitations on loan authority.

(a) The authority of the board of investments to make loans under the provisions of this article shall not at any time exceed two hundred fifty million dollars in the aggregate principal amount outstanding.
§5C-1-16. Terms and conditions of loans.

(a) Loans made under the provisions of this article shall be payable in full not later than twenty years from the date the loan is made.

(b) The board of investments shall require security for the loans to be made under this article at the time the commitment is made. Any commitment to make a loan under the provisions of this article shall contain all of the affirmative and negative covenants and other protective provisions that the board of investments determines are appropriate.

§5C-1-17. Audits; audit reports.

(a) The accounts of a borrower under this article shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of this state or a sister state.

(b) At any time a request for an application for a loan under this article is pending or a loan under this article is outstanding, the board of investments is authorized to request a report of such independent audit. The report shall set forth the scope of the audit and include such statements as are necessary to present fairly the borrower's assets and liabilities, surplus or deficit with an analysis of changes therein during the year, supplemented in reasonable detail by a statement of the corporation's income and expenses during the year, together with the independent auditor's opinion of those statements.

(c) No loan may be made under this article unless and until the borrower agrees, in writing, to provide the board of investments with such reports of independent audits as may be requested under the provisions of subsection (b) of this section.

§5C-1-18. Enforcement of rights accruing to the state.

The board of investments shall take such action as may be appropriate to enforce any right accruing to the state or any officer or agency thereof as a result of the making of a loan under the provisions of this article.
§5C-1-19. Tax credit for borrowers.

1 The borrower, as defined in this article, may be eligible for any tax credits provided for in articles thirteen-c, thirteen-d and thirteen-e, chapter eleven of this code.

§5C-1-20. Reports to the Legislature.

1 The board of investments shall submit to the Legislature annually a full report of its activities under this article during fiscal years 1985-1986 and 1986-1987, and annually thereafter so long as any loan guaranteed under this article is outstanding. The report for 1987 shall include an evaluation of the long-term employment implications of the loan program created under the provisions of this article, with findings, conclusions and recommendations for legislative and administrative actions considered appropriate to future loans under this article or under similar loan programs which might be foreseen.

§5C-1-21. Termination.

1 The authority of the board of investments to make loans under this article expires on the thirty-first day of December, one thousand nine hundred eighty-seven.

ARTICLE 2. WEST VIRGINIA INDUSTRIAL AND TRADE JOBS DEVELOPMENT CORPORATION.

§5C-2-1. Definitions.

§5C-2-2. Creation of the West Virginia industrial and trade jobs development corporation.

§5C-2-3. Directors; number; appointment and terms of office; compensation; interest in competing business forbidden.

§5C-2-4. Management and control of corporation; officers liability.

§5C-2-5. Officers and employees; wages of laborers and mechanics.

§5C-2-6. Corporate powers.

§5C-2-7. Investment fund.

§5C-2-8. Investment in qualified securities.


§5C-2-10. Transfer of state property to corporation.

§5C-2-11. Principal office of the corporation; account books; directors’ oath of office.

§5C-2-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.

§5C-2-13. Authority of the board of investments.

§5C-2-14. Requirements of loan.

§5C-2-15. Limitations on loan authority.
§5C-2-16. Terms and conditions of loans.
§5C-2-17. Enforcement of rights accruing to the state.
§5C-2-18. Tax credit for borrowers.
§5C-2-19. Reports to the Legislature.
§5C-2-20. Termination.
§5C-2-21. Inspection, audit and investigation.

§5C-2-1. Definitions.

1 For the purposes of this chapter:
2 (1) The term "enterprise" means a business entity which
3 is or proposes to be engaged in this state in any commercial
4 activity for profit. The entity may be owned, operated,
5 controlled or under the management of a person,
6 partnership, corporation, community-based development
7 organization or council, local commerce group, employee
8 stock ownership plan, pension or profit-sharing plan or
9 trust, a group of participating employees who desire to own
10 an entity which does not presently exist, or any similar
11 entity or organization;
12 (2) The term "board of investments" means the board of
13 investments established by article six, chapter twelve of
14 this code;
15 (3) The term "borrower" means an enterprise, any of its
16 subsidiaries or affiliates, or any other entity the board of
17 investments may designate from time to time which
18 borrows funds for the benefit or use of an enterprise;
19 (4) The term "corporation" means the West Virginia
20 industrial and trade jobs development corporation, unless
21 the context in which such term is used clearly indicates that
22 reference is made to some other corporation;
23 (5) The term "financing plan" means a plan designed to
24 meet the financing needs of an enterprise as reflected in the
25 operating plan;
26 (6) The term "fiscal year" means the fiscal year of an
27 enterprise;
28 (7) The term "operating plan" means a document
29 detailing production, distribution and sales plans of an
30 enterprise, together with the expenditures necessary to
31 carry out those plans (including budget and cash flow
32 projections) on an annual basis, and an employment-
33 generating plan setting forth steps to be taken by the
34 enterprise to create jobs and reduce unemployment in this
35 state;
(8) The term “investment” means an investment by the corporation in qualified securities of an enterprise to provide initial capital to the enterprise;

(9) The term “primary employment” means work which pays at least the prevailing wage in the industry, offers adequate fringe benefits, including health insurance, and is not seasonal or part-time;

(10) The term “qualified security” means any note, bond, debenture, convertible debenture, evidence of indebtedness, certificate of deposit for a security, certificate of interest or participation in a patent, trademark, or other intangible property or application therefor, or in general, any interest or instrument commonly known as a security or warrant or right to subscribe to or purchase any of the foregoing, but shall not include any security the ownership of which is prohibited by section six, article ten of the Constitution of the state of West Virginia;

(11) The term “initial capital” shall mean financing that is provided for the development, refinement and commercialization of a product, process or service, and other initial working capital needs, including formation, organization, promotion, employment, employment training, and similar expenditures incident to the start-up of an enterprise; and

(12) The term “development project” means a commercial or industrial project and all of the assets reasonably and necessarily required for its operation.

§5C-2-2. Creation of the West Virginia industrial and trade jobs development corporation.

(a) For the purpose of aiding the establishment and expansion of industry and trade in this state, encouraging and increasing the use of energy derived from hydrocarbon sources located in the state of West Virginia, for developing and maintaining properties now owned or to be owned by the state of West Virginia throughout this state, and in the interest of improving employment opportunities in this state, there is created a body corporate, denominated the “West Virginia Industrial and Trade Jobs Development Corporation” (hereinafter referred to as the “corporation”). The board of directors first appointed shall be deemed the incorporators, and the incorporation shall be held to have
been effected from the date of the first meeting of the board. 
(b) The corporation is created and established to serve a 
public corporate purpose and to act for the public benefit 
and as a governmental instrumentality of the state of West 
Virginia, to act on behalf of the state and its people in 
improving their health, welfare and prosperity.

§5C-2-3. Directors; number; appointment and terms of office; 
compensation; interest in competing business 
forbidden.

(a) The board of directors of the corporation 
(hereinafter referred to as the “board”) shall be composed 
of three members, to be appointed by the governor, by and 
with the advice and consent of the Senate. No more than 
two of the directors shall be from the same political party. 
In appointing the board, the governor shall designate the 
chairman, vice chairman and treasurer. All other officials, 
agents and employees shall be designated and selected by 
the board.

(b) The terms of office of the members first taking office 
on or after the first day of July, one thousand nine hundred 
eighty-five, shall expire as designated by the governor at 
the time of nomination, one at the end of the second year, 
one at the end of the fourth year, and one at the end of the 
sixth year, after the first day of July, one thousand nine 
hundred eighty-five. A successor to a member of the board 
shall be appointed in the same manner as the original 
members and shall have a term of office expiring six years 
from the date of the expiration of the term for which his 
predecessor was appointed.

(c) In cases of any vacancy in the office of director, such 
vacancy shall be filled by appointment by the governor. Any 
member appointed to fill a vacancy in the board occurring 
prior to the expiration of the term for which his predecessor 
was appointed shall be appointed for the remainder of such 
term.

(d) The governor may remove a director in the case of 
incompetence, neglect of duty, gross immorality or 
malfeasance in office, and may declare such director’s 
office vacant and appoint a person for such vacancy as 
provided in other cases of vacancy.

(e) Vacancies in the board, so long as there shall be two 
members in office, shall not impair the powers of the board.
to execute the functions of the corporation, and two of the
members in office shall constitute a quorum for the
transaction of the business of the board.

(f) Each of the members of the board shall be a citizen of
the state of West Virginia. The compensation of each
member of the board shall be paid by the corporation as
current expenses. Members of the board shall be
reimbursed by the corporation for actual expenses
(including traveling and subsistence expenses) incurred by
them in the performance of the duties vested in the board by
this article. No member of said board shall, during his
continuance in office, be engaged in any other business, but
each member shall devote himself to the work of the
corporation.

(g) No officer, member or employee of the corporation
shall be financially interested, directly or indirectly, in any
contract of any person with the corporation, or in the sale of
any property, real or personal, to or from the corporation.
This section does not apply to contracts or purchases of
property, real or personal, between the corporation and any
governmental agency. Any officer, member or employee of
the corporation who has such financial interest in a
contract or sale of property prohibited hereby, shall be
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not more than one thousand dollars, or imprisoned
in the county jail not more than one year, or both fined and
imprisoned.

§5C-2-4. Management and control of corporation; officers; liability.

(a) The board shall direct the exercise of all the powers
of the corporation.

(b) The chairman shall be the chief executive officer of
the corporation, and, in his absence, the vice chairman shall
act as chief executive officer.

(c) The board shall annually elect a secretary, who need
not be a member of the board, to keep a record of the
proceedings of the board and perform such other duties as
may be determined appropriate by the board.

(d) The treasurer of the corporation shall be custodian
of all funds of the corporation, and shall be bonded in such
amount as the other members of the board of directors may
designate.
The directors and officers of the corporation shall not be liable personally, either jointly or severally, for any debt or obligation created by the corporation.

§5C-2-5. Officers and employees; wages of laborers and mechanics.

1. The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the state of West Virginia, appoint such managers, assistant managers, officers, employees, attorneys and agents as are necessary for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency.

2. Any appointee of the board may be removed in the discretion of the board. No regular officer or employee of the corporation shall receive a salary in excess of that received by the members of the board.

3. All contracts to which the corporation is a party and which require the employment of laborers and mechanics in the construction, alteration, maintenance or repair of buildings, gas transmission pipelines, electric power lines, waterworks systems and waterlines, sewer systems and sewage treatment and disposal systems, roads or other projects shall contain a provision that not less than the prevailing rate of wages for work of a similar nature prevailing in the vicinity shall be paid to such laborers or mechanics.

4. In the event any dispute arises as to what are the prevailing rates of wages, the question shall be referred to the commissioner of the department of labor for determination, and his decision shall be final. In the determination of such prevailing rate or rates, due regard shall be given to those rates which have been secured through collective agreement by representatives of employers and employees.

5. Where such work as is described in the two preceding paragraphs is done directly by the corporation, the prevailing rate of wages shall be paid in the same manner as though such work had been let by contract.

§5C-2-6. Corporate powers.

1. In order to foster and expand industry and trade in this state, the corporation is empowered and directed to:
(a) Make, amend and repeal bylaws; and promulgate rules and regulations in accordance with the provisions of chapter twenty-nine-a of this code;
(b) Sue and be sued in its corporate name;
(c) Adopt and use a corporate seal;
(d) Make contracts, and execute all instruments necessary or convenient for the carrying on of its business;
(e) Acquire, own, hold, dispose of and encumber personal property of any nature, or any interest therein;
(f) Enter into agreements or other transactions with any federal, state or municipal agency;
(g) Acquire real property, or an interest therein, by purchase or foreclosure, where such acquisition is necessary or appropriate to protect or secure any investment or loan in which the corporation has an interest;
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;
(h) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the state;
(i) Borrow money and give guarantees, provided that the indebtedness and other obligations of the corporation shall be payable solely out of its own resources;
(j) Appoint officers, employees, consultants, agents and advisors and prescribe their duties and fix compensation within the limitations provided by law;
(k) Appear in its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;
(l) Procure insurance against any losses in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;
(m) Consent, subject to the provisions of any contract with noteholders, whenever it deems it necessary or desirable in the fulfillment of the purposes of this article, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms of any contract or agreement of any kind to which the corporation is a party;
(n) To accept any and all donations, grants, bequests
and devises, conditional or otherwise, of money, property, 
service or other things of value which may be received from 
the United States or any agency thereof, any governmental 
agency or any institution, person, firm or corporation, 
public or private, to be held, used or applied for any or all of 
the purposes specified in this article, in accordance with the 
terms and conditions of any such grant. Receipt of each such 
donation or grant shall be detailed in the annual report of 
the corporation. Such report shall include the identity of 
the donor or lender, the nature of the transaction and any 
conditions attaching thereto;

(o) Buy, hold and sell qualified securities;

(p) Finance, conduct or cooperate in financing or 
conducting technological, business, financial or other 
investigations which are related to or likely to lead to 
business and economic development by making and 
entering into contracts and other appropriate 
arrangements, including the provision of grants, loans and 
other forms of assistance;

(q) Solicit, study and assist in the preparation of 
business plans and proposals of new or established 
businesses suitable for support by the corporation;

(r) Prepare, publish and distribute, with or without 
charge as the corporation may determine, such technical 
studies, reports, bulletins and other materials as it deems 
appropriate, subject only to the maintenance and respect 
for confidentiality of client proprietary information;

(s) Organize, conduct, sponsor or cooperate in and assist 
the conduct of special institutes, conferences, 
demonstrations and studies relating to the stimulation and 
formation of industry and trade endeavors;

(t) Provide and pay for such advisory services and 
technical assistance as may be necessary or desirable to 
carry out the purposes of this article;

(u) Exercise any other powers of a corporation 
organized under article one, chapter thirty-one of this code;

(v) Cooperate with state and federal agencies in efforts 
to promote the expansion of commercial and industrial 
development in this state;

(w) Request the issuance of revenue bonds by the 
economic development authority, payable solely from 
revenues, to pay the cost or finance in whole or in part
87 enterprises or development projects;
88 (x) Make, upon proper application of any local
development agency, loans to such agency for development
projects and to provide for the repayment and redeposit of
such loans in the manner provided in this article;
89 (y) Take title by foreclosure to any enterprise or
development project where acquisition is necessary to
protect any investment or financing previously made by the
corporation, and to sell, transfer and convey such enterprise
or project, or any part thereof, to any responsible buyer. In
the event such sale, transfer and conveyance cannot be
affected with reasonable promptness, the authority may, in
order to minimize financial losses and sustain employment,
lease the project to a responsible tenant. The corporation
may lease, sublease or engage in similar financial
transactions with any enterprise or project, under the
conditions and for the purposes cited in this section;
90 (z) Participate in any reorganization proceeding
pending pursuant to the United States Code (being the act
of Congress, establishing a uniform system of bankruptcy
throughout the United States, as amended) or in any
receivership proceeding in a state or federal court for the
reorganization or liquidation of any enterprise or
development project. The corporation may file its claim
against any enterprise or development project in any of the
foregoing proceedings, vote upon any question pending
therein which requires the approval of the creditors
participating in any reorganization proceeding or
receivership, exchange any evidence of such indebtedness
for any property, security or evidence of indebtedness
offered as a part of the reorganization of such responsible
tenant or of any other entity formed to acquire the assets
thereof and may compromise or reduce the amount of any
indebtedness owing to it as a part of any such
reorganization;
91 (aa) Sell security interests in the loan portfolio of the
corporation. Such security interests shall be evidenced by
instruments issued by the corporation. Proceeds from the
sale of security interests may be issued in the same manner
and for the same purposes as note revenues;
92 (bb) Procure insurance against any losses in connection
with its property, operations or assets in such amounts and
§5C-2-7. Investment fund.

There is hereby established an investment fund to which shall be credited any state appropriations or other moneys made available to the fund. The corporation shall hold the investment fund in an account or accounts separate from other funds. The corporation shall invest and reinvest the fund and the income thereof, temporarily pending use for the purposes of this article, in the purchase of such securities as may be lawful investments for fiduciaries in the state. All funds may be used to pay for the proper general expenses of the corporation. Unless otherwise specified, all moneys of the corporation from whatever source derived shall be paid to the treasurer of the corporation. Funds in said accounts shall be paid out on the warrant or other order of the treasurer of the corporation and other person or persons as the board may authorize to execute such warrants or order.

The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the corporation for the purposes of this article. The corporation shall requisition from the fund such amounts as are necessary to accomplish the purposes of this article. Whenever the corporation determines that the balance in the fund is in excess of its immediate requirements, it may request that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

If the corporation determines that funds held in the fund are in excess of the amount needed to accomplish the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury. The fund shall consist of the following:
(a) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;
(b) Contributions, grants and gifts from any source, both public and private, which may be used by the corporation for any project or projects;
(c) All interest earned on investments made by the state from moneys deposited in the fund;
(d) The proceeds from the issuance of any revenue bonds issued by the economic development authority in accordance with the provisions of article fifteen, chapter thirty-one of this code; and
(e) The proceeds, repayments, lease or rental receipts, sale proceeds, liquidation proceeds, and any other receipts from investments and financings made pursuant to the authority granted by this article.

§5C-2-8. Investment in qualified securities.
(1) The corporation may invest in qualified securities issued by an enterprise only after:
(a) Receipt of an application from the enterprise which contains a business plan including a description of the enterprise and its management, product or service and market, a statement of the amount, timing and projected use of the capital required, a statement of the potential economic impact of the enterprise, including the number, location and types of jobs expected to be created, and such other information as the board shall request; and
(b) Approval of the investment by the board after the board shall find, based upon the application submitted by the enterprise and such additional investigation as the corporation shall make, and incorporate in its minutes that:
(1) The proceeds of the investment will be used to cover the initial capital needs of the enterprise as hereinafter authorized;
(2) The enterprise has a reasonable chance of success;
(3) The corporation's participation is necessary to the success of the enterprise because funding for the enterprise is unavailable in the traditional capital markets, or because funding has been offered on terms that would substantially hinder the success of the enterprise;
The enterprise has reasonable potential to create a substantial amount of primary employment within the state and this employment, so far as feasible, offers employment opportunities to unskilled and semiskilled individuals;

(5) The founders or owners of the enterprise have already made or are prepared to make a financial or time commitment, or both, to the enterprise;

(6) The securities to be purchased are qualified securities;

(7) There is a reasonable possibility that the corporation will recoup at least its initial investment;

(8) Binding commitments have been made to the corporation by the enterprise for adequate reporting of financial data to the corporation which shall include a requirement for an annual or other periodic audit of the books of the enterprise, by an independent certified public accountant, and for such control on the part of the corporation as the board shall consider prudent over the management of the enterprise, so as to protect the investment of the corporation including, in the discretion of the board and without limitation, right of access to financial and other records of the enterprise; and

(9) A reasonable effort has been made to find an investor to make an investment in the enterprise as a coventure, and that such effort was unsuccessful.

Such findings when made by the board shall be conclusive.

(2) The corporation shall not make investments in qualified securities issued by enterprises in excess of the following limits:

(a) Not more than one million dollars shall be invested in the securities of any one enterprise; except that not more than a total of two million dollars may be invested in the securities of any one enterprise if the board shall find, after the initial investment by the corporation, that additional investments in such enterprise are required to protect the initial investment of the corporation and the other findings set forth above are made as to the additional investment: Provided, That the board may, by rule adopted in accordance with the provisions of chapter twenty-nine-a of this code, determine that a higher amount is necessary and prudent, and may, after hearing, determine that a higher amount is necessary and prudent in a particular situation.
(b) The corporation shall not invest in securities representing more than ninety-nine percent of the market value of the enterprise at the time of investment by the corporation, after giving effect to the conversion of all outstanding convertible securities of the enterprise.

(3) Any investment, or proposed investment, by the corporation, and by all others involved in the enterprise, shall be exempt transactions under the provisions of section four hundred two, article four, chapter thirty-two of this code.


The corporation may finance development projects, only after:

(a) Receipt of an application, except that if an application has been received under section eight of this article, no new application need be received at the discretion of the board, from the enterprise which contains a business plan including a description of the enterprise and its management, product or service and market, a description of the development project, a statement of the amount, timing and projected use of the funds, a statement of the potential economic impact of the development project, including the number, location and types of jobs expected to be created, and other information as the board shall request;

(b) Approval of the financing by the board after the board shall find based upon the application submitted by the enterprise and such additional investigation as the corporation shall make, and incorporate in its minutes that:

(1) The proceeds of the financing will be used for development of the project;

(2) The development project has a reasonable chance of success;

(3) The corporation's participation is necessary to the success of the enterprise because financing for the development project is unavailable in the traditional capital markets, or because financing has been offered on terms that would substantially hinder the success of the development project;

(4) The development project has reasonable potential to
create a substantial amount of primary employment within
the state and this employment, so far as feasible, offers
employment opportunities to unskilled and semiskilled
individuals;
(5) The founders of the development project have
already made or are prepared to make a financial or time
commitment, or both, to the project;
(6) Binding commitments have been made to the
corporation by the project for adequate reporting of
financial data to the corporation, which shall include a
requirement for an annual or other periodic audit of the
books of the project by an independent certified public
accountant, and for such control on the part of the
corporation as the board shall consider prudent over the
management of the project, so as to protect the investment
of the corporation including, in the discretion of the board
and without limitation, right of access to financial and
other records of the project; and
(7) A reasonable effort has been made to find other
financing for the development project and that such effort
was unsuccessful.
Such findings when made by the board shall be
conclusive.
The corporation may not finance development projects in
excess of the following limits:
(a) One hundred percent of development project costs;
(b) Ten million dollars for any one development project;
except that after two years of continual operations, the
corporation may finance a total of twenty million dollars of
development costs for any one project where the board finds
that the development project warrants expansion beyond
the original project limits: Provided, That the board may,
by rule adopted in accordance with the provisions of
chapter twenty-nine-a of this code, determine that a higher
amount is necessary and prudent.
The corporation shall utilize appropriate financing
documents and notes in making financing arrangements
and shall acquire appropriate security interests, deeds of
trust, collateral security agreements, senior and junior
security arrangements, and other necessary lienholder
interests, not necessitating recourse financing.
Any such financing, or proposed financing, by the
corporation, and by all others involved in the development project, shall be exempt transactions under the provisions of section four hundred two, article four, chapter thirty-two of this code.

§5C-2-10. Transfer of state property to corporation.

1 The governor is authorized to provide for the transfer to the corporation of the use, possession and control of such real or personal property of the state of West Virginia as he may from time to time deem necessary and proper for the purposes of the corporation as herein stated.

§5C-2-11. Principal office of the corporation; account books; directors' oath of office.

1 (a) The corporation shall maintain its principal office in the immediate vicinity of Charleston, West Virginia or upon the site of any facility.

2 (b) The corporation shall at all times maintain complete and accurate books of accounts.

3 (c) Each member of the board, before entering upon the duties of his office, shall subscribe to an oath or affirmation to support the constitution of the state of West Virginia and to faithfully and impartially perform the duties imposed upon him by this article.

§5C-2-12. West Virginia board of investments to act as board of investments for purposes of this article; powers.

1 The West Virginia state board of investments as heretofore created and constituted under the provisions of article six, chapter twelve of this code, shall be ex officio a board of investments for public employees retirement system funds as they are made available for investment in accordance with the provisions of this article, and as such, the board of investments may exercise all of the powers and functions granted to it pursuant to the provisions of said article six in carrying out the duties assigned to it under the provisions of this article.

§5C-2-13. Authority of the board of investments.

1 Subject to the provisions of this article, the board of investments, on such terms and conditions as it deems appropriate, may invest moneys, securities and other assets
of the public employees retirement system in the form of interest-bearing loans to a borrower, if at the time of the commitment to make the loan, the board of investments determines:

1. That there exists an employment-generating plan which:
   a. Is satisfactory to the board of investments;
   b. Has been developed in consultation with other appropriate state agencies, including, but not limited to, the department of labor and the office of community and industrial development;
   c. Focuses upon the need to increase the number of jobs available in this state; and
   d. Can be carried out by the borrower;

2. That the loan is needed to assist the borrower to open a new facility or expand an existing facility in this state, and that, by meeting such need, employment will be increased in the state;

3. That the borrower has submitted to the board of investments a satisfactory operating plan for the 1985-1986 fiscal year and the next succeeding two fiscal years demonstrating the ability of the borrower to generate additional employment in this state in the furnishing of goods and services, and after the thirty-first day of December, one thousand nine hundred eighty-eight, to continue to maintain such increased level of employment without additional loans under the provisions of this article;

4. That the board of investments has received such assurances as it shall require that the operating plan is realistic and feasible;

5. That the borrower has submitted to the board of investments a satisfactory financing plan which meets the financial needs of the borrower as reflected in the operating plan for the period covered by such plan;

6. That the board of investments has received adequate assurances regarding the availability of all financing, both public and private, contemplated by the financing plan and that such financing is adequate to meet the borrower's projected financial needs during the period covered by the financing plan;

7. That none of the proceeds of a loan made under the
provisions of this article will be used to repay credit
extended or committed prior to the date the loan is made
under the provisions of this article; and
(8) That the financing plan submitted under subdivision
(5) of this section provides that expenditures under the
financing plan will reduce unemployment in this state.

§5C-2-14. Requirements of loan.

(a) A loan may be made under the provisions of this
article when such loan is based upon the criteria set forth in
section sixteen of this article. In addition, the terms of any
such loan shall provide that the loan is made upon the
following findings of the board of investments:
(1) That the prospective earning power of the borrower,
together with the character and value of any security
pledged, furnish reasonable assurance of repayment of the
loan in accordance with its terms;
(2) That the loan will bear interest at a rate determined
by the board of investments to be reasonable, taking into
account the current average yield on outstanding
investments of the board of investments of the pension
funds in the consolidated pension fund established under
the provisions of section eight, article six, chapter twelve of
this code;
(3) That the corporation has agreed for as long as unpaid
balances of principal and interest are outstanding on a loan
issued under this article:
(A) To have prepared and submitted on or before the
thirtieth day preceding each fiscal year beginning after the
thirty-first day of December, one thousand nine hundred
eighty-six, a revised operating plan and financial plan
which cover the two-year period commencing with such
fiscal year and which show compliance with the
requirements of section sixteen of this article; and
(B) To prepare and deliver to the board of investments
within one hundred twenty days following the close of each
fiscal year, an analysis reconciling the borrower's actual
performance in generating employment in this state with
the projected employment for such year as set forth in the
operating plan and the financial plan in effect at the start of
such fiscal year;
(b) The borrower has agreed to pay such loan fees as
may be prescribed by the board of investments from time to
time. The board of investments shall prescribe and collect
no less frequently than annually a loan fee in connection
with each loan made under the provisions of this article.
Such fee shall be sufficient to compensate the board of
investments for all of the administrative expenses of the
board of investments related to the loan, but in no case shall
such fee be less than one half of one percent per annum of
the outstanding principal amount of the loan computed
daily. All amounts collected by the board of investments
pursuant to this subsection shall be deposited in the
state treasury as general revenue.

§5C-2-15. Limitations on loan authority.

(a) The authority of the board of investments to make
loans under the provisions of this article shall not at any
time exceed fifty million dollars in the aggregate principal
amount outstanding.

§5C-2-16. Terms and conditions of loans.

(a) Loans made under the provisions of this article shall
be payable in full not later than twenty years from the date
the loans are made.

(b) The board of investments shall require security for
the loans to be made under this article at the time the
commitment is made. Any commitment to make a loan
under the provisions of this article shall contain all of the
affirmative and negative covenants and other protective
provisions that the board of investments determines are
appropriate.

§5C-2-17. Enforcement of rights accruing to the state.

The board of investments shall take such action as may be
appropriate to enforce any right accruing to the state or any
officer or agency thereof as a result of the making of a loan
under the provisions of this article.

§5C-2-18. Tax credit for borrowers.

(a) There shall be allowed to every borrower under the
provisions of this article, as a credit against the business
and occupation tax imposed by article thirteen, chapter
eleven of this code, and as a credit against the corporation
net income tax imposed by article twenty-four of said chapter eleven, the amount determined under subsection (b) of this section. The liability of such borrower for business and occupation tax and corporation net income tax for the taxable year shall be the tax imposed by said chapter eleven for such taxes, reduced by the sum of the credit allowable under subsection (b) of this section.

(b) The amount of credit allowed by subsection (a) for the taxable year shall be equal to the amount of principal and interest paid by the borrower during the taxable year on a loan made under this article, subject to the limitations set forth in subsection (c) of this section.

(c) Notwithstanding subsection (b) of this section, the amount of the credit allowed by this section shall not exceed the liability of the borrower for business and occupation tax and corporation net income tax for the taxable year. The tax credit granted under the provisions of this section shall not extend beyond a period of five taxable years. The tax credit granted under the provisions of this section shall be in addition to the credits provided for in articles thirteen-c, thirteen-d and thirteen-e, chapter eleven of this code. There shall be no carryback of unused tax credit to taxable years preceding the tax year, nor shall there be a carryover to taxable years following the tax year.

§5C-2-19. Reports to the Legislature.

The board of investments shall submit to the Legislature annually a full report of its activities under this article during fiscal years 1985-1986 and 1986-1987, and annually thereafter so long as any loan guaranteed under this article is outstanding. The report for 1987 shall include an evaluation of the long-term employment implications of the loan program created under the provisions of this article, with findings, conclusions and recommendations for legislative and administrative actions considered appropriate to future loans under this article or under similar loan programs which might be foreseen.

§5C-2-20. Termination.

The authority of the board of investments to make loans under this article shall expire in accordance with the provisions of article ten, chapter four of this code.
§5C-2-21. Inspection, audit and investigation.

(a) At any time a request for an application for a loan under this article is pending or a loan under this article is outstanding, the board of investments is authorized to inspect and copy all accounts, books, records, memoranda, correspondence, and other documents and transactions of the borrower.

(b) The legislative auditor shall make such audits as may be deemed appropriate by the President of the Senate and the Speaker of the House of Delegates of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the borrower. No loan may be made under this article unless and until the borrower agrees, in writing, to allow the legislative auditor to make such audits. The legislative auditor shall report the results of all such audits to the Legislature.

(c) The board of investments is empowered to investigate and shall investigate all allegations of fraud, dishonesty, incompetence, misconduct or irregularity in the management of the affairs of the borrower which are material to the borrower's ability to repay a loan made under the provisions of this article.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY ACT.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-1. Short title.
§5D-1-2. Purpose and intent.
§5D-1-3. Definitions.
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§5D-1-22. Liberal construction of article.
§5D-1-23. Severability.

§5D-1-1. Short title.

1 This chapter shall be known and cited as the "West Virginia Public Energy Authority Act."

§5D-1-2. Purpose and intent.

1 The Legislature finds and declares:
2 (a) That the long-term health and economy of the United States will depend upon the availability of reliable sources of energy;
3 (b) That the state of West Virginia has abundant reserves of coal, natural gas and other natural resources;
4 (c) That the economy of the state of West Virginia needs a reliable and dependable market for the state's coal, natural gas and other natural resources;
5 (d) That, with all due regard to the protection and environment and husbandry of the natural resources of this state, the health, happiness, safety, right of gainful employment and general welfare of the citizens of this state will be promoted by the establishment and operation of coal fired electric generating plants and the establishment and operation of natural gas transmission projects and/or other energy projects; and
6 (e) That the means and measures herein authorized for the building and operation of the facilities described in subsection (d) are, as a matter of public policy, for the public purpose of the state.
Accordingly, the public energy authority created herein shall be authorized to initiate such directives and take such measures as may be necessary to effectuate the public purpose of this chapter.

§5D-1-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

1. “Authority” means the West Virginia public energy authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

2. “Board” means the West Virginia public energy authority board created in section four of this article, which shall manage and control the West Virginia public energy authority.

3. “Bond” means a revenue bond or note issued by the West Virginia economic development authority to effect the intents and purposes of this article.

4. “Construction” includes construction, reconstruction, enlargement improvement and providing furnishings or equipment.

5. “Cost” means, as applied to natural gas transmission projects, electric power generating projects or other energy projects authorized by the authority shall include, but not be limited to: The cost of their acquisition and construction, including all costs pertaining to pipelines; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, contract rights, lease rights and other rights or interests required by the authority for such acquisition and construction; the cost of demolishing or removing any pipeline, buildings or structures on land so acquired, including the cost of acquiring any lands to which such pipelines, buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment, all financing charges, and interest prior to and during construction and after completion of construction; the cost of all engineering services and all expenses of
research and development with respect to natural gas transmission projects, electric power generating projects, and related facilities; the cost of all legal services and expenses; cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such projects; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of any such projects; the financing of such acquisition or construction, and the cost of financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any governmental agency, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or revenue bonds as authorized by the provisions of this article.

(6) "End-user" means any person who consumes or uses natural gas in connection with any industrial, commercial, residential or other use, except that such term shall not include any person purchasing such natural gas for resale to another person. For purposes of this article, the term end-user shall include local distribution companies and intrastate pipelines as defined in article three, chapter twenty-four of this code.

(7) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; public service districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(8) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(9) "Owner" includes all persons having any title or
interest in any property rights, easements and interests authorized to be acquired by this article.

(10) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group of persons or individuals acting individually or as a group or any other legal entity whatever.

(11) "Pipeline" or "pipelines" means any actual lines of pipe for the transmission and distribution of natural gas together with all appurtenances, facilities, structures, equipment, machinery and other items related to the transmission and distribution of gas through lines of pipe.

(12) "Natural gas transmission project" means any natural gas pipeline and all facilities necessary or incident to the transportation of natural gas to or for the benefit of industrial or other end-users in West Virginia, the acquisition or construction of which is financed in whole or in part by the West Virginia public energy authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant, loan or any other source by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized in whole or in part by the West Virginia public energy authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant, loan or any other source by, or through, the authority as provided in this article, including all pipelines, buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(13) "Electric power generating project" means the complex of structures, machinery and associated equipment for the generation and transmission of electricity produced from coal, and all facilities related or incidental thereto.

(14) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia public energy
authority as rates, user fees, service charges or other charge for the electric power produced by, or for the use of, or in connection with, any electric power generating project; or as rent, use, transportation or service fee or charge for use of, or in connection with, any natural gas transmission project; or other money or property from any source which is received and may be expended for or pledged as revenues pursuant to this article.

§5D-1-4. West Virginia public energy authority created; West Virginia public energy board created; organization of authority and board; appointment of board members; term, compensation and expenses; director authority.

There is hereby created the West Virginia public energy authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by a nine member board known as the West Virginia public energy authority board which is hereby created. The nine members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years; two members shall be appointed to serve a term of three years; two members shall be appointed to serve a term of four years; two members shall be appointed to serve a term of five years; and one member shall be appointed to serve a term of six years. The successor of each such appointed member shall be appointed for a term of five years, 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 of his successor. No more than five of the board members shall at any one time belong to the same political party. No more than four members of the board shall be employed by or associated with any industry this authority is
empowered to effect. Board members may be reappointed
to serve additional terms.

All members of the board shall be citizens of the state.
Before entering upon his duties, each member of the board
shall comply with the requirements of article one, chapter
six of this code and give bond in the sum of twenty-five
thousand dollars in the manner provided in article two,
chapter six of this code. The governor may remove any
board member for cause as provided in article six, chapter
six of this code.

Annually the board shall elect one of its members as
chairman and another as vice chairman, and shall appoint a
secretary-treasurer, who need not be a member of the
board. Five members of the board shall constitute a quorum
and the affirmative vote of the majority of members present
at any meeting shall be necessary for any action taken by
vote of the board. No vacancy in the membership of the
board shall impair the rights of a quorum by such vote to
exercise all the rights and perform all the duties of the
board and the authority. The person appointed as
secretary-treasurer, including a board member if he is so
appointed, shall give bond in the sum of fifty thousand
dollars in the manner provided in article two, chapter six of
this code.

Each member of the board shall receive an annual salary
of six thousand dollars, payable in monthly installments.
Each member of the board shall be reimbursed for all
reasonable and necessary expenses actually incurred in the
performance of his duty as a member of such board. All such
expenses incurred by the board shall be payable solely from
funds of the authority or from funds appropriated for such
purpose by the Legislature and no liability or obligation
shall be incurred by the authority beyond the extent to
which moneys are available from funds of the authority or
from such appropriations.

There shall also be a director of the authority appointed
by the board, who shall be responsible for managing and
administering the daily functions of the authority and for
performing any and all other functions necessary or helpful
to the effective functioning of the authority, together with
all other functions and powers as may be delegated to him
by the board.
§5D-1-5. Powers, duties and responsibilities of authority generally.

The West Virginia public energy authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to:

1. Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

2. Adopt and use an official seal and alter the same at pleasure.

3. Maintain a principal office 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 this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

5. Apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, that the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, that the powers of eminent domain or condemnation provided for in this section shall not be exercised until such time as the bonds provided for in this subdivision have been approved by an act of general law and issued by the economic development authority.

6. 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.

7. 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 real property or parts thereof or rights therein, rights-of-
way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, and compensation shall be paid for public or private lands so taken.

The term "real property" as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

(8) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. (9) Employ managers, superintendents 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 revenue bonds or notes issued by the economic development authority, from revenues and from funds appropriated for such purpose by the Legislature.

(10) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric power generating projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(11) Purchase property coverage and liability insurance for any electric power generating project or natural gas transmission project or other energy project and for the principal office and suboffices of the authority, insurance
82 protecting the authority and its officers and employees
83 against liability, if any, for damage to property or injury to
84 or death of persons arising from its operations and any
85 other insurance which may be provided for under a
86 resolution authorizing the issuance of bonds or in any trust
87 agreement securing the same.
88 (12) Charge, alter and collect transportation fees and
89 other charges for the use or services of any natural gas
90 transmission project as provided in this article.
91 (13) Charge and collect fees or other charges from any
92 energy project undertaken as a result of this article.
93 (14) Charge reasonable fees in connection with the
94 making and providing of electric power and the sale thereof
95 to corporations, states, municipalities or other entities in
96 the furtherance of the purposes of this article.
97 (15) Purchase and sell electricity in and out of the state
98 of West Virginia.
99 (16) Enter into wheeling contracts for the transmission
100 of electric power over another party's lines.
101 (17) Make and enter into the construction of a facility and
102 joint ownership with another utility, and the provisions of
103 this article shall not constrain the authority from
104 participating as a joint partner therein.
105 (18) Make and enter into joint ownership agreements.
106 (19) Establish or increase reserves from moneys
107 received or to be received by the authority to secure or to
108 pay the principal of and interest on the bonds and notes
109 issued by the economic development authority pursuant to
110 the provisions of article fifteen, chapter thirty-one of this
111 code.
112 (20) Broker the purchase of natural gas for resale to
113 end-users: Provided, That whenever there are local
114 distribution company pipelines already in place the
115 authority shall arrange to transport the gas through such
116 pipelines at the rates approved by the public service
117 commission of West Virginia.
118 (21) Engage in market research, feasibility studies,
119 commercial research, and other studies and research
120 pertaining to electric power generating projects and
121 natural gas transmission projects or any other functions of
122 the authority pursuant to this article.
123 (22) Enter upon any lands, waters and premises in the
state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending, and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(23) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(24) Make or enter into management contracts with a second party or parties to operate any electric power generating project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(25) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(26) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

§5D-1-6. Authority may construct, finance, maintain, etc., electric power generating projects and transmission facilities.

To accomplish the public policies and purposes and to
meet the responsibility of the state as set forth in this article, the West Virginia public energy authority may initiate, acquire, construct, maintain, repair and operate electric power generating projects and transmission facilities, and may request the issuance of revenue bonds by the economic development authority, payable solely from revenues, to pay the cost or finance in whole or in part such projects: Provided, That the economic development authority shall not be authorized to issue any such bonds except by an act of general law, as provided in article fifteen, chapter thirty-one of this code. An electric power generating project shall not be undertaken unless it has been determined by the authority that the project will be consistent with the purposes set out in this article. Any resolution providing for acquiring or constructing such projects shall include a finding by the authority that such determinations have been made.

The authority is authorized and directed:

(1) To cooperate with the appropriate agencies and officials of the United States government to the end that any electric power generating project shall be so planned and constructed as to be adaptable to the plans of the United States.

(2) To apply to the appropriate agencies and officials of the United States government including the federal power commission for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable, and in its discretion and upon such terms and conditions as it may deem appropriate, to accept such licenses, permits or approvals as may be tendered to it by such agencies or officials and such federal or other public or governmental assistance as is now or may hereafter become available to it; and to enter into contracts with such agencies or officials relating to the construction or operation of any project authorized by this article.

(3) To proceed with the physical construction or completion of any project authorized by this article, including the erection of the necessary power houses and other facilities, instrumentalities and things necessary or convenient to that end, and including also the erection of such transmission lines as may be necessary to conduct the electricity; and including also the acquisition or
(4) To cooperate with and, when the board deems it feasible and advisable, to enter into contractual arrangements with utility companies.

(5) To purchase, when available, coal produced in this state as the fuel source for all electric power generating projects.

§5D-1-7. Authority may construct, finance, maintain, etc., natural gas transmission projects and facilities.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia public energy authority may initiate, acquire, construct, reconstruct, enlarge, maintain, repair, improve, furnish, equip, lease or rent, and operate natural gas transmission projects at such locations or areas within the state as may be determined by the authority: Provided, That at least thirty days prior to exercising any such power, the authority shall provide written notice to any local natural gas distribution company or to any company that transports natural gas in intrastate or interstate commerce, which would experience a direct loss of sales to an end-user presently served by such company as a result of such natural gas transmission project. For purposes of this article, notice shall be given either by personal delivery thereof to the affected company to be so notified, or by depositing such notice in the United States mail, postage prepaid, in an envelope addressed to such affected company.

§5D-1-8. Annual report to governor and Legislature; audit.

The authority shall make an annual report, as soon as possible after the close of each fiscal year, of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority’s operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under authority of this article. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state.

§5D-1-10. Use of funds by authority; restrictions.

All moneys, properties and assets acquired by the authority, bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds.

§5D-1-11. Investment of funds by authority.

The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

1. (1) (i) Direct obligations of or obligations guaranteed by the United States of America; (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specific obligations the timely payment of the principal of and the interest on which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the law of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purpose;

2. (2) 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
22 Association or the Government National Mortgage Association;
23 (3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual 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;
24 (4) Certificates of deposit secured by obligations of the United States of America;
25 (5) Direct obligations of or obligations guaranteed by the state of West Virginia;
26 (6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;
27 (7) Any fixed interest bond, note or debenture of any corporation organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (ii) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchased are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dun & Bradstreet or Moody's; and
28 (8) Such other investments which at the time of the acquisition thereof shall be listed as permissible
investments of trusted funds in an official statement, offering circular or prospectus with respect to indebtedness which is rated by Moody's or Standard & Poor's not less than the highest rating assigned by such agencies to any series of bonds.

§5D-1-12. Maintenance, operation and repair of projects.

Each electric power generating project, each natural gas transmission project or other energy project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority. Each such project owned by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.


The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all revenue bonds issued for the purposes of this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§5D-1-14. Exemption from taxation.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public
purpose. As the operation and maintenance of natural gas 
transmission projects and electric power generating 
projects and other energy projects will constitute the 
performance of essential governmental functions, the 
authority shall not be required to pay any taxes or 
assessments upon any such project or upon any property 
aquired or used by the authority or upon the income 
thereon. Such bonds and notes and all interest and income 
thereon shall be exempt from all taxation by this state, or 
any county, municipality, political subdivision or agency 
thereof, except inheritance taxes.

§5D-1-15. Acquisition of property by authority — acquisition 
by purchase; governmental agencies authorized to convey, etc., property.

The authority may acquire by purchase, whenever it 
deems such purchase expedient, any land, property, rights, 
rights-of-way, franchises, easements, leases and other 
interests in lands it deems necessary or convenient for the 
construction and operation of any natural gas transmission 
project, any electric power generating project, or other 
energy project, upon such terms and at such prices it 
considers reasonable and can be agreed upon between the 
authority and the owner thereof, and take title thereto in 
the name of the state.

All governmental agencies, notwithstanding any 
contrary provision of law, may lease, lend, grant or convey 
to the authority, at its request, upon such terms as the 
proper authorities of such governmental agencies deem 
reasonable and fair and without the necessity for an 
advertisement, auction, order of court or other action or 
formality, other than the regular and formal action of the 
governmental agency concerned, any real property or 
interest therein, including improvements thereto or 
personal property which is necessary or convenient to the 
effectuation of the authorized purposes of the authority, 
including public roads and other real property or interests 
therein, including improvements thereto or personal 
property already devoted to public use.
§5D-1-16. Authority not public utility and not subject to full jurisdiction of public service commission; authority subject to provisions concerning gas pipeline safety.

Notwithstanding anything contained in this article to the contrary, and specifically notwithstanding any activities of the authority which shall constitute a public service, the authority shall not be considered or deemed a public utility in any respect for purposes of chapter twenty-four of this code, and neither the authority, nor any of its activities or the activities of its agents or employees, nor any project constructed, maintained or operated by the authority, nor any other matters pertaining to the authority, shall be subject to the jurisdiction of the public service commission of West Virginia, either with respect to the powers of said public service commission generally, or with respect to its power over rates, or otherwise: Provided, That the authority and all natural gas transmission projects which it constructs, maintains or operates shall nevertheless be subject to the provisions of chapter twenty-four-b of this code concerning gas pipeline safety.

§5D-1-17. Transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers.

In conjunction with any natural gas transportation project, and for any other purpose in order to effectuate the policies and intent of this article, the authority may petition the public service commission, pursuant to section three-a, article three, chapter twenty-four of this code, to authorize and require the transportation of natural gas for the authority or for any end-user or other person doing business with the authority, by intrastate pipelines with unused or excess capacity not needed to meet its contractual obligations, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands, or by local distribution companies.

§5D-1-18. Transportation fees and other revenues from natural gas transmission projects owned by the authority.

This section shall apply to any natural gas transmission project or projects which are owned by the authority. The
authority may charge, alter and collect transportation fees or other charges for the use or services of any natural gas transmission project, and fix the terms, conditions, transportation fees or other charges for such use or services. Such transportation fees or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, including specifically the public service commission.

§5D-1-19. Financial interest in contracts prohibited; penalty.

No officer, member or employee of the authority shall 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 from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§5D-1-20. Personal liability of members or persons acting on behalf of the authority.

(a) No director or any person acting on behalf of the authority executing any contracts, comments or agreements issued pursuant to this article shall be liable personally upon such contracts, comments or agreements or be subject to any personal liability or accountability by reason thereof; and

(b) No director or any person acting on behalf of the authority shall be personally liable for damage or injury resulting from the performance of his duties hereunder.

§5D-1-21. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to
the inspection of the public at all reasonable times. Any
records or information relating to secret processes or secret
methods of manufacture or production which may be
obtained by the authority or other persons acting under
authority of this article are confidential and shall not be
disclosed.

§5D-1-22. Liberal construction of article.

The provisions of this article are hereby declared to be
remedial and shall be liberally construed to effectuate its
purposes and intents.

§5D-1-23. Severability.

If any section, part, provision, subsection, subpart,
subdivision, paragraph or subparagraph of this article or
the application thereof to any person or circumstance is
held unconstitutional or invalid, such unconstitutionality
or invalidity shall not affect any other section, part,
provision, subsection, subpart, subdivision, paragraph or
subparagraph of this article or its application or validity,
and to this end the provisions of this article are declared to
be severable.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-1. Definitions.
§12-1A-2. Legislative findings.
§12-1A-3. Limitations on investment in linked deposits.
§12-1A-4. Applications for loan priority; loan package.
§12-1A-5. Acceptance or rejection of loan package; deposit agreement.
§12-1A-6. Rate of loan; certification and monitoring of compliance; reports.
§12-1A-7. Liability of state and treasurer.

§12-1A-1. Definitions.

(a) "Eligible small business" means any business which
employs two hundred or less employees or has gross annual
receipts of four million dollars or less.
(b) "Eligible lending institution" means a financial
institution that is eligible to make commercial loans, is a
public depository of state funds and agrees to participate in
the linked deposit program.
(c) "Linked deposit" means a certificate of deposit
placed by the state treasurer with an eligible lending institution at up to three percent below current market rates, as determined and calculated by the state treasurer, provided the institution agrees to lend the value of such deposit, according to the deposit agreement provided for by this article, to eligible small businesses at three percent below the present borrowing rate applicable to each specific business at the time of the deposit of state funds in the institution.

§12-1A-2. Legislative findings.

The Legislature finds that many small businesses throughout the state are experiencing economic stagnation or decline, that high interest rates have caused small businesses in this state to suffer disproportionately in profitability and competition and that such high interest rates have fostered a serious increase in unemployment. The linked deposit program provided for by this article is intended to provide a statewide availability of lower cost funds for lending purposes that will materially contribute to the economic revitalization of this state. Accordingly, it is declared to be the public policy of the state through the linked deposit program to create an availability of lower-cost funds to inject needed capital into the business community, sustain or improve business profitability and protect the jobs of citizens of this state.

§12-1A-3. Limitations on investment in linked deposits.

The state treasurer may invest in linked deposits, provided that at the time of placement of the linked deposit not more than ten percent of the state's total investment portfolio is so invested. The total amount so deposited at any one time shall not exceed, in the aggregate, one hundred million dollars.

§12-1A-4. Applications for loan priority; loan package.

(a) An eligible lending institution that desires to receive a linked deposit shall accept and review applications for loans from eligible small businesses. The lending institution shall apply all usual lending standards to determine the creditworthiness of each eligible small business.

(b) An eligible small business shall certify on its loan
application that the reduced rate loan will be used exclusively to create new jobs or preserve existing jobs and employment opportunities. Whoever knowingly makes a false statement concerning such application shall be prohibited from entering into the linked deposit loan program.

(c) In considering which eligible small businesses should receive reduced rate loans, the eligible lending institution shall give priority to the economic needs of the area in which the business is located and the number of jobs to be created or preserved by the receipt of such loan.

(d) The eligible financial institution shall forward to the state treasurer a linked deposit loan package, in the form and manner as prescribed by the state treasurer. The package shall include such information as required by the state treasurer, including the amount of the loan requested and the number of jobs to be created or sustained by each eligible small business. The institution shall certify that each applicant is an eligible small business, and shall, for each business, certify the present borrowing rate applicable to each specific eligible business.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

(a) The state treasurer may accept or reject a linked deposit loan package or any portion thereof, based on the ratio of state funds to be deposited to jobs sustained or created.

(b) Upon acceptance of the linked deposit loan package or any portion thereof, the state treasurer may place certificates of deposit with the eligible lending institution at three percent below current market rates, as determined and calculated by the state treasurer. When necessary, the treasurer may place certificates of deposit prior to acceptance of a linked deposit loan package.

(c) The eligible lending institution shall enter into a deposit agreement with the state treasurer, which shall include requirements necessary to carry out the purposes of this article. Such requirements shall reflect the market conditions prevailing in the eligible lending institution's lending area. The agreement may include a specification of
§12-IA-6. Rate of loan; certification and monitoring of compliance; reports.

(a) Upon the placement of a linked deposit with an eligible lending institution, such institution is required to lend such funds to each approved eligible small business listed in the linked deposit loan package required in subsection (d), section four of this article, and in accordance with the deposit agreement required by subsection (c), section five of this article. The loan shall be at three percent below the present borrowing rate applicable to each business. A certification of compliance with this section in the form and manner as prescribed by the state treasurer shall be required of the eligible lending institution.

(b) The state treasurer shall take any and all steps necessary to implement the linked deposit program and monitor compliance of eligible lending institutions and eligible small businesses. The state treasurer and the industrial development authority shall notify each other at least quarterly of the names of the businesses receiving financial assistance from their respective programs.

By the first day of January, April, July and October of each year, the treasurer shall report on the linked deposit program for the preceding calendar quarter to the governor and to the joint committee on government and finance. The reports shall set forth the linked deposits made by the state treasurer under the program during the quarter and shall include information regarding the nature, terms and amounts of the loans upon which the linked deposits were based and the eligible small business to which the loans were made.

§12-IA-7. Liability of state and treasurer.

The state and the state treasurer are not liable to any eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible small
business. Any delay in payment or default on the part of an eligible small business does not in any manner affect the deposit agreement between the eligible lending institution and the state treasurer.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-1. Legislative findings.
§19-1A-2. Legislative purposes.
§19-1A-3. Division of forestry; division director; duties, powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.
§19-1A-4. Additional duties of the director of the division of forestry generally.
§19-1A-5. Forestry commission; qualifications and appointment of director, powers and duties generally; appointment of director by governor.

§19-1A-1. Legislative findings.

The Legislature finds that West Virginia has extensive forest resources and their continued development and expansion is vital to the economic well-being of the state and its people. The Legislature also finds that the production potential of the state’s forest resources remains far greater than the present demand. The Legislature further finds that the promotion of existing forest products industries and the promotion of new forest products industries would benefit the state in terms of employment and additional revenue to the state. The Legislature further finds and declares that, to increase employment and boost the state’s economy, the limits to the development of the potential of West Virginia forest resources must be reduced through an intensive campaign aimed at making new contacts, developing new and existing markets and increasing public awareness of the advantages of the forest resources in West Virginia. The Legislature further finds that the state forests are an important resource for silvicultural and scientific research; developed and undeveloped outdoor recreation; propagation of forest trees, fish and wildlife; wildlife and fisheries management; aesthetic preservation; hunting and fishing; timber production; and demonstration of state-of-the-art forestry management and therefore should be managed on a multiple-use basis.
§19-1A-2. Legislative purposes.

1 The purposes of this article are to provide for promoting
2 West Virginia products; promoting new forest products
3 industries; developing existing forest products industries;
4 promoting coordination of all state forests resources;
5 advising the governor and Legislature on all aspects of
6 forestry, the management of state forests for conservation
7 and preservation of wildlife, fish, forest species, natural
8 areas, aesthetic and scenic values and to provide developed
9 and undeveloped outdoor recreational opportunities, and
10 hunting and fishing for the citizens of this state and its
11 visitors.

§19-1A-3. Division of forestry; division director; duties,
powers, lands, records, equipment, appropriations and personnel transferred; creation of a special revenue account.

1 The division of forestry which existed within the
2 department of natural resources pursuant to article three,
3 chapter twenty of this code is hereby abolished. And, except
4 as otherwise provided in this article, all powers and duties
5 previously exercised by the director of natural resources
6 under subsection thirteen, section seven, article one and
7 article three, chapter twenty of this code, except those
8 powers and duties relating solely to wildlife areas as
9 described in section three, article three, chapter twenty of
10 this code are hereby transferred to the division of forestry
11 herein created in the department of agriculture. All books,
12 papers, maps, charts, plans, literature and other records,
13 equipment, personnel, buildings, structures, other tangible
14 properties and assets and appropriations used by or
15 assigned to the division shall be transferred with the
16 program. However, nothing in this article shall be
17 construed as to transfer the legal title to any real property
18 possessed by the department of natural resources prior to
19 the thirtieth day of June, one thousand nine hundred
20 eighty-five. The division of forestry of the department of
21 agriculture shall have within its jurisdiction and
22 supervision the state forests, other forests and woodland
23 areas, the protection of forest areas from injury and damage
24 by fire, disease, insects and other pestilences and forces the
management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of this chapter. All moneys collected from the sale of timber realized through management of the state-owned forests and the sale of seedlings from the tree nurseries shall be paid into the state treasury and into a special account therein to be subsequently appropriated to the department of agriculture for the administration of this article.

The chief of the division shall be designated state forester and shall be responsible for the execution and administration of the provisions of this article as an integral part of the natural resources program of the state. In addition to meeting merit system or civil service qualifications and requirements, the state forester shall be a graduate of an accredited school of forestry with practical experience and training in forestry field organization and programs. All other personnel shall be transferred with the current merit or civil service ratings they now hold under the civil service system.

The state forester shall study means and methods of implementing the provisions of section fifty-three, article six of the Constitution of West Virginia, relating to forest lands, and shall prepare and recommend to the commissioner legislation thereon.

The commissioner of the department of agriculture shall meet with the state forester and the director of the department of natural resources prior to the first day of June, one thousand nine hundred eighty-five, to facilitate the orderly transfer of the forestry division, books, papers, maps, charts, plans, literature, records, equipment, buildings, structures and other tangible properties and assets. The director of the department of natural resources shall cooperate fully to ensure that present forestry operations and programs are not discontinued prior to the transfer which shall be the first day of July, one thousand
nine hundred eighty-five. The director of the department of natural resources and the commissioner shall work out a pro rata agreement for continuation of the present occupancy of any buildings transferred that are occupied by department of natural resources personnel, other than personnel of the forestry division and for any buildings that are not transferred, but which are partially occupied by personnel of the forestry division.

The state forester shall immediately after the transfer of the division of forestry establish a system to divide the forests being transferred to the department of agriculture for management from the cabins, lodges and improved recreational facilities which shall remain with the parks division of the department of commerce.

In establishing the division lines, the commissioner and the state forester shall cooperate fully to ensure that management of improved property essential to the parks division is not transferred.

In the event of disagreement over the placement of a division line or dual occupancy of a building, the disposition shall be decided by the Legislature's joint committee on government and finance at a regularly scheduled meeting. The transfer of management shall include a transfer of all appurtenances, equipment, products, inventories and forest facilities.

All personnel employed in the division of forestry within the department of natural resources and whose employment is being transferred to the department of agriculture shall retain their coverage under the civil service commission and civil service system, and all matters relating to job classification, job tenure, salary and conditions of employment shall remain in force and effect from and after the effective date of this article.

The chief of the division of forestry in the department of natural resources on the effective date of transfer to the department of agriculture shall continue as, and thereafter be designated as, the state forester and retain civil service system coverage with such duties and responsibilities as may be assigned by the director.
§19-1A-4. Additional duties of the director of the division of forestry generally.

1 The division director shall encourage and assist in the location of new and expansion of existing wood products business and industry; stimulate and assist in the expansion of the forest industry; cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of the wood products industry in this state. The division shall arrange for or conduct research in forest utilization and the marketing of forest products, affecting the industrial and commercial development of the state; shall correlate and interchange information and disseminate the results of such research; and shall, to the extent considered necessary, provide for or conduct additional research projects or pilot plant demonstrations of research results by cooperating with all appropriate existing educational, public and industrial institutions or agencies of the state.

The division director may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this section, including the following powers, in addition to others herein granted:

(a) To cooperate with industrial development agencies in their efforts to promote the expansion of forest resources; and

(b) To pursue research and education related to forest resources and their multiple use, including conservation, management and utilization, evaluation of forest land use and the maintenance of the rural environment; the manufacture and marketing of forest products, the protection of recreation and aesthetic values, and the organization of technical advisory committees to assist in all or any other of these or any aspect of forestry.

The director shall study ways and shall advise the governor and the Legislature on all aspects of what is needed to:

(1) Improve the business climate for forest industries and the general awareness of forestry potential;

(2) Develop a strong state forestry agency;

(3) Improve forest resources data;
(4) Improve the transportation system for wood products; and
(5) Improve forestry knowledge and practices of private landowners.
(c) To accept and use gifts, donations or contributions from individuals, associations, corporations and to acquire by gift, lease or purchase real estate for purposes within the powers and duties of the division.
(d) To promulgate rules and regulations, subject to the provisions of chapter twenty-nine-a of this code, for the management of state forests and to implement the programs and policies of this article.

§19-1A-5. Forestry commission; qualifications and appointment of director; powers and duties generally; appointment of director by governor.

There is hereby created in the division of forestry in the department of agriculture a forestry commission composed of three members who are the commissioner of agriculture, the commissioner of commerce and the director of the department of natural resources. The commissioner of agriculture shall be the chairman of the commission. No business shall be transacted by the commission in the absence of a quorum which consists of two members including the chairman. The forestry commission shall hold meetings quarterly or at the call of the chairman. The commission shall appoint the director of the division of forestry. In the event that the commission cannot agree upon the appointment of a director within sixty days of any vacancy therein, the appointment shall be made by the governor within sixty days thereafter, but with the advice and consent of the Senate, in either event. The salary of the director shall be forty-five thousand dollars a year. The director shall be a graduate of a school of forestry accredited by the Society of American Foresters or have a minimum of ten years experience in forest management and shall serve at the will and pleasure of the forestry commission. The commission serves as an advisory board for the director and shall approve the division budget before it is submitted to the department of finance and administration by the department.
CHAPTER 20. NATURAL RESOURCES.

Article.
1. Organization and Administration.
7. Law Enforcement, Procedures and Penalties; Motorboating.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-14. Divisions within department.


1. Subject to any controlling rules and regulations of the department of finance and administration relating to state fiscal management policies and practices, the director shall establish in the department an adequate budget, finance and accounting system which will currently and accurately reflect the fiscal operations and conditions of the department at all times. The department's accounting and auditing services shall be on a fiscal-year basis.

2. The director shall select and designate a competent and qualified person as department fiscal officer who, under the supervision of the director, shall be responsible for all budget, finance and accounting services of the department. All moneys received by the department shall be recorded and shall be paid as special revenue to the department of natural resources, as provided in subdivision (i), section two, article two, chapter twelve of this code, except in cases wherein certain receipts of the department are by specific provisions of this chapter required to be paid into some special fund or funds.

§20-1-14. Divisions within department.

1. Divisions of game and fish, of forestry, of water resources, of law enforcement and of reclamation are hereby created and established within the department. Subject to provisions of law, the director shall allocate the functions and services of the department to the divisions, offices and activities thereof and may from time to time establish and abolish other divisions, offices and activities within the department in order to carry out fully and in an orderly manner the powers, duties and responsibilities of his office as director. The director shall select and designate a
11 competent and qualified person to be chief of each division.
12 The chief shall be the principal administrative officer of his
division and shall be accountable and responsible for the
13 orderly and efficient performance of the duties, functions
14 and services thereof.

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

PART I. LAW ENFORCEMENT, PROCEDURES AND PENALTIES.

§20-7-1. Chief conservation officer; conservation officers;
special and emergency conservation officers;
subsistence allowance; expenses.

1 The department's law-enforcement policies, practices
2 and programs shall be under the immediate supervision and
3 direction of the department law-enforcement officer
4 selected by the director and designated as chief
5 conservation officer as provided in article one hereof.
6 Under the supervision of the director, the chief
7 conservation officer shall organize, develop and maintain
8 law-enforcement practices, means and methods geared,
timed and adjustable to seasonal, emergency and other
9 needs and requirements of the department's comprehensive
10 natural resources program. All department personnel
11 detailed and assigned to law-enforcement duties and
12 services hereunder shall be known and designated as
13 conservation officers and shall be under the immediate
14 supervision and direction of the chief conservation officer.
15 All such conservation officers shall be trained, equipped
16 and conditioned for duty and services wherever and
17 whenever required by department law-enforcement needs.
18 The chief conservation officer, acting under supervision
19 of the director, is authorized to select and appoint
20 emergency conservation officers for a limited period of time
21 for effective enforcement of the provisions of this chapter
22 when considered necessary because of emergency or other
23 unusual circumstances. The emergency conservation
24 officers shall be selected from qualified civil service
25 personnel of the department, except in emergency
26 situations and circumstances when the director may
27 designate such officers, without regard to such
28 requirements and qualifications, to meet law-enforcement
needs. Emergency conservation officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried conservation officers except the provisions of subdivision (8).

The chief conservation officer, acting under supervision of the director, is also authorized to select and appoint as special conservation officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the department and who has satisfactorily completed a course of training established and administered by the chief conservation officer, when such action is deemed necessary because of law-enforcement needs. The powers and duties of a special conservation officer, appointed under this provision, shall be the same within his assigned area as prescribed for full-time salaried conservation officers. The jurisdiction of such person appointed as a special conservation officer, under this provision, shall be limited to the department area or areas to which he is assigned and directly manages.

The chief conservation officer, acting under supervision of the director, is also authorized to appoint as special conservation officers any full-time civil service forest fire control personnel who have satisfactorily completed a course of training established and administered by the chief conservation officer. The jurisdiction of forest fire control personnel appointed as special conservation officers shall be limited to the enforcement of the provisions of article three of this chapter.

The chief conservation officer, with the approval of the director, shall have the power and authority to revoke any such appointment of an emergency conservation officer or of a special conservation officer at any time.

Conservation officers shall be subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the department.

The chief conservation officer shall designate the area of primary residence of each conservation officer, including himself. Since the area of business activity of the department is actually anywhere within the territorial
71 confines of the state of West Virginia, actual expenses
72 incurred shall be paid whenever the duties are performed
73 outside the area of primary assignment and still within the
74 state.

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT
AUTHORITY.

§31-15-7b. Loans for construction of electrical power generating facilities,
natural gas transmission lines, coal processing plants, other energy
projects; and export development, farm development, job
development, forest development and projects.
§31-15-7c. Bonds and notes issued pursuant to section seven-b.
§31-15-7d. Trustee for bondholders; contents of trust agreement; relating to
bonds issued pursuant to section seven-c of this article.
§31-15-7e. Use of funds by authority; restrictions thereon; relating to projects
under section seven-b of this article.
§31-15-7f. Security for bonds and notes issued pursuant to section seven-c of
this article.
§31-15-7g. Enforcement of payment and validity of bonds and notes issued
pursuant to section seven-c of this article.
§31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section
seven-c of this article.
§31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this
article.
§31-15-7j. Purchase and cancellation of notes or bonds issued pursuant to
section seven-c of this article.
§31-15-7k. Vested rights; impairment; bonds issued pursuant to section seven-c
of this article.
§31-15-7m. Bonds and notes issued pursuant to section seven-c of this article
not debt of state, county, municipality or any political subdivi-
sion; exceptions; expenses incurred pursuant to article.
§31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-
c of this article.
§31-15-7o. Bonds and notes issued pursuant to section seven-c of this article;
legal investments.
§31-15-7p. Exemption from taxation; bonds issued pursuant to the provisions
of section seven-c of this article.
§31-15-7q. Personal liability; persons executing bonds or notes issued pursuant
to section seven-c of this article.
§31-15-7r. Cumulative authority as to powers conferred; applicability of other
statutes and charters; bonds issued pursuant to section seven-c of
this article.
ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


1 The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:
2   (a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.
3   (b) To determine, upon the proper application of an industrial development agency, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency of an industrial development project in this state.
4   (c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any industrial development project.
5   (d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.
6   (e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.
7   (f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.
8   (g) To make, upon proper application of any industrial development agency, loans to such agency for industrial development projects, industrial subdivision projects and industrial subdivision project improvements and to provide for the repayment and redeposit of such loans in the manner provided in this article.
(h) To sue and be sued, implead and be impleaded, and complain and defend in any court.

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

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

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

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

(m) Without in any way limiting any other subdivision of this section, to accept grants from and enter into contracts and other transactions with any federal agency.

(n) To take title by foreclosure to any industrial development project or any industrial subdivision project where acquisition is necessary to protect any loan previously made by the authority and to sell, transfer and convey such project to any responsible buyer. In the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the authority may, in order to minimize financial losses and sustain employment, lease the project to a responsible tenant. The authority shall not lease an industrial development project or industrial subdivision project, except under the conditions and for the purposes cited in this section.

(o) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.
(p) To borrow money and to issue its negotiable bonds, security interests or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold and dispose of any of its bonds, security interests or notes.

(q) To sell, at public or private sale, any bond or other negotiable instrument, security interests or obligation of the authority in such manner and upon such terms as the authority deems would best serve the purposes of this article.

(r) To issue its bonds, security interests and notes payable solely from the revenues or funds available to the authority therefor; and the authority may issue its bonds, security interests or notes in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including:

(i) The making of loans to approved industrial development agencies.

(ii) The payment, funding or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests or notes issued by it whether the bonds, security interests, notes or interest to be funded or refunded have or have not become due.

(iii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes or the interest thereon and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Any bonds, security interests or notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever.

(s) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no such renewal notes 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 twenty-five years from the date of issuance.

(t) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds to the purchase,
redemption or payment of the notes, security interests or bonds to be refunded.

(u) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(v) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note or contract or agreement of any kind to which the authority is a party.

(w) To sell security interests in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note revenues.

(x) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(y) To take and hold security interests for equipment loans as prescribed in this article.

(z) To make, upon proper application, loans for the purposes and under the conditions provided in this article, for electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects, export development, farm development, job development, forest development, and for automobile assistance corporation projects, and the industrial and trade jobs development corporation projects, and to provide for the repayment and redeposit of such loans in the manner provided in this article: Provided, That no bonds shall be issued for the constructing of electrical power generating facilities, natural gas transmission lines or other energy projects unless the same shall be specifically
provided for by an act of general law, after public notice
and public hearing.

(aa) To take title by foreclosure to any project, plant, property or equipment where acquisition is necessary to protect any loan previously made by the authority and to sell, transfer and convey such project, plant, property or equipment to any responsible buyer. In the event such sale, transfer and conveyance cannot be effected with reasonable promptness, the authority may, in order to minimize financial losses and sustain employment, lease a project to a responsible tenant.

(bb) To borrow money for its purpose and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes, and to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for the project loans, and the authority may issue its bonds and notes in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in subsection (z) of this section.

§31-15-7b. Loans for construction of electrical power generating facilities, natural gas transmission lines, coal processing plants, other energy projects; and export development, farm development, job development, forest development projects.

(a) At the request of the governor or the appropriate state agency or authority, the authority may lend money to such office, agency or authority for the acquisition, construction, improvement or alteration of projects for electrical power generating facilities, natural gas transmission lines, coal processing plants and other energy projects.

(b) At the request of the department of commerce or the office of community and industrial development, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative to export development, farm development, job development and forest development.

(c) At the request of the West Virginia automobile assistance corporation, the authority may lend money to
any person or entity for the acquisition, construction, improvement or alteration of any project relative thereto.

(d) At the request of the West Virginia industrial and trade jobs development corporation, the authority may lend money to any person or entity for the acquisition, construction, improvement or alteration of any project relative thereto.

(e) A loan shall not be made unless the authority is reasonably satisfied that the project will produce revenues sufficient, together with any other revenues pledged, to meet the principal and interest on the loan, other costs, expenses and charges in connection with the loan and other charges or obligations of the project which may be prior or equal to the loan, promptly as they become due; that the project is otherwise soundly financed; that the loan application requirements of section eight of this article have been satisfied; that the project will be owned and operated by the state of West Virginia. A loan made pursuant to this subsection shall not exceed the project costs as determined by the authority. A loan shall be secured in the manner required by the authority, shall be repaid in a period and bear interest at a rate as determined by the authority, which interest rate may be decreased or increased so that it shall in no event be less than the rate paid by the authority on notes, renewal notes or bonds issued to fund the loan, and shall have such terms and conditions as are required by the authority, all which shall be set forth in a loan agreement and related documents as required by the authority.

§31-15-7c. Bonds and notes issued pursuant to section seven-b.

The following provisions apply to loans made pursuant to section seven-b of this article:

(a) The authority periodically may issue its negotiable bonds and notes in a principal amount which, in the opinion of the authority, shall be necessary to provide sufficient funds for the making of loans provided for in section seven-b of this article, including temporary loans during the construction of such projects, for the payment of interest on bonds and notes of the authority during construction of such projects and for a reasonable time thereafter and for
the establishment of reserves to secure those bonds and notes.

(b) No bonds shall be issued for any projects for an electrical power generating facility, a natural gas transmission line or other energy project unless the same shall be specifically provided for by an act of general law.

(c) The authority periodically may issue renewal notes, may issue bonds to pay notes and, if it considers refunding expedient, to refund or to refund in advance, bonds or notes issued by the authority by the issuance of new bonds.

(d) Except as may otherwise be expressly provided by the authority, every issue of its notes or bonds shall be special obligations of the authority, payable solely from the property, revenues or other sources of or available to the authority pledged therefor.

(e) The bonds and the notes shall be authorized by resolution of the authority, shall bear such date and shall mature at such time or times, as such resolution may provide. The bonds and notes shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment and at such place or places and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by the chairman and vice chairman of the board, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond and note and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached to any bond or note shall bear the signature or facsimile signature of the chairman of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery; and, in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.
A resolution authorizing bonds or notes or an issue of bonds or notes under this article may contain provisions, which shall be a part of the contract with the holders of the bonds or notes, as to any or all of the following:

1. Pledging and creating a lien on all or any part of the fees and charges made or received or to be received by the authority, all or any part of the moneys received in payment of project loans and interest on project loans and all or any part of other moneys received or to be received, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

2. Pledging and creating a lien on all or any part of the assets of the authority, including notes, deeds of trust and obligations securing the assets, to secure the payment of the bonds or notes or of any issue of bonds or notes, subject to those agreements with bondholders or note holders which then exist;

3. Pledging and creating a lien on any loan, grant or contribution to be received from the federal, state or local government or other source;

4. The use and disposition of the income from project loans owned by the authority and payment of the principal and interest on project loans owned by the authority;

5. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

6. Limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging the proceeds to secure the payment of the bonds or notes or of any issue of the bonds or notes;

7. Limitations on the issuance of additional bonds or notes and the terms upon which additional bonds or notes may be issued and secured;

8. The procedure by which the terms of a contract with the bondholders or note holders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which the consent may be given; and

9. Vesting in a trustee or trustees the property, rights, powers, remedies and duties which the authority considers necessary or convenient.
§31-15-7d. Trustee for bondholders; contents of trust agreement; relating to bonds issued pursuant to section seven-c of this article.

For bonds issued pursuant to the provisions of section seven-c of this article, in the discretion of the authority, any bonds, including refunding bonds or notes issued by the authority, may be secured by a trust agreement between the authority and a corporate trustee, which trustee may be any trust company within or without the state. Any such trust agreement may contain provisions as set forth in section seven-c of this article with respect to resolution. All expenses incurred in carrying out the provisions of any trust agreement may be treated as a part of the costs of the operation of the project loan program provided for hereunder. Any such trust agreement, indenture or resolution authorizing the issuance of bonds or notes may provide the method whereby the general administrative overhead expenses of the authority shall be allocated among the several projects for which project loans have been made.

§31-15-7e. Use of funds by authority; restrictions thereon; relating to projects under section seven-b of this article.

For projects described in and loans made pursuant to section seven-b of this article, and bonds and notes issued pursuant to section seven-c thereof:

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of bonds or notes or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of bonds or notes or in any trust agreement securing the same, or except when invested pursuant to this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds or notes of any issue or the trust agreement securing such bonds or notes shall
provide that any officer to whom, or any banking
institution or trust company to which, such moneys are
paid, shall act as trustee of such moneys and hold and apply
them for the purposes hereof, subject to the conditions this
article and such resolution or trust agreement provide.

§31-15-7f. Security for bonds and notes issued pursuant to
section seven-c of this article.

A resolution authorizing the issuance of bonds or notes
under section seven-c of this article may provide that the
principal of and interest on the bonds or notes issued shall
be secured by a lien on any or all of the fees and charges
made or received, or to be received, by the authority from
the project in connection with the project loan, on any or all
of the money received in payment of the project loan and
interest thereon, on any or all of investment earnings or
profits on any of these sources or on any or all of the security
held for that payment, and on other funds or assets of the
authority or of any other agency, person or entity pledged
for such purpose.

§31-15-7g. Enforcement of payment and validity of bonds and
notes issued pursuant to section seven-c of this
article.

For bonds and notes issued pursuant to section seven-c of
this article:
(a) The provisions of this article and any resolution,
indenture, deed of trust or security agreement shall
continue in effect until the principal of and interest on the
bonds or notes of the authority have been fully paid, and the
duties of the authority under this article and any resolution,
indenture, deed of trust or security agreement shall be
enforceable by any bondholder or noteholder by
mandamus, trustee's sale under the deed of trust or other
appropriate action in any court of competent jurisdiction.
(b) The resolution authorizing the bonds or notes shall
provide that such bonds or notes shall contain a recital that
they are issued pursuant to this article, which recital shall
be conclusive evidence of their validity and of the regularity
of their issuance.
§31-15-7h. Pledges; time; liens; recordation; bonds issued pursuant to section seven-c of this article.

1 For bonds and notes issued pursuant to section seven-c of this article, any pledge made by the authority shall be valid and binding from the time the pledge is made. The money or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof.

§31-15-7i. Refunding bonds; bonds issued pursuant to section seven-c of this article.

1 Any bonds issued pursuant to the provisions of section seven-c of this article and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and to pay any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, from other moneys or from the principal of and interest on or other investment yield from investments or proceeds of bonds or other applicable funds and moneys,
including investments of proceeds of any refunding bonds, shall be subject to the provisions contained in section seven-c of this article and shall be secured in accordance with the provisions of sections seven-c and seven-d of this article.

§31-15-7j. Purchase and cancellation of notes or bonds issued pursuant to section seven-c of this article.

For bonds and notes issued pursuant to the provisions of section seven-c of this article:

The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase bonds, including refunding bonds, or notes of the authority.

If the bonds or notes are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the bonds or notes are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the bonds or notes become subject to redemptions plus accrued interest to such date. Upon such purchase, such bonds or notes shall be cancelled.

§31-15-7k. Vested rights; impairment; bonds issued pursuant to section seven-c of this article.

The state pledges and agrees with the holders of any bonds or notes issued under the provisions of section seven-c of this article that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof, or in any way impair the rights and remedies of the holders until the bonds or notes, together with the interest thereon, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.
§31-15-7m. Bonds and notes issued pursuant to section seven-c of this article not debt of state, county, municipality or any political subdivision; exceptions; expenses incurred pursuant to article.

Bonds, including refunding bonds, and notes issued under the authority of section seven-c of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders and owners thereof shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under the authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

Such bonds and notes shall be the debts of any state agency, office or authority specifically agreeing thereto. All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or any other political subdivision thereof.

§31-15-7n. Negotiability of bonds and notes issued pursuant to section seven-c of this article.

Whether or not the bonds or notes issued pursuant to the provisions of section seven-c of this article are of such form or character as to be negotiable instruments under the
4 Uniform Commercial Code, such bonds or notes are
5 negotiable instruments within the meaning of and for all
6 the purposes of the Uniform Commercial Code, subject only
7 to the provisions of the bonds or notes for registration.

§31-15-7o. Bonds and notes issued pursuant to section seven-c
  of this article; legal investments.

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstanding,
3 the bonds and notes issued pursuant to the provisions of
4 section seven-c of this article are securities in which all
5 public officers and bodies of this state, including the West
6 Virginia state board of investments, all municipalities and
7 other political subdivisions of this state, all insurance
8 companies and associations and other persons carrying on
9 an insurance business, including domestic for life and
10 domestic not for life insurance companies, all banks, trust
11 companies, societies for savings, building and loan
12 associations, savings and loan associations, deposit
13 guarantee associations and investment companies, all
14 administrators, guardians, executors, trustees and other
15 fiduciaries and all other persons whatsoever who are
16 authorized to invest in bonds or other obligations of the
17 state may properly and legally invest funds, including
18 capital, in their control or belonging to them.

§31-15-7p. Exemption from taxation; bonds issued pursuant to
  the provisions of section seven-c of this article.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the people
3 of the state for the improvement of their health, safety,
4 convenience and welfare and is a public purpose. As the
5 operation and maintenance of projects described in section
6 seven-b of this article will constitute the performance of
7 essential governmental functions, the authority shall not be
8 required to pay any taxes or assessments upon any property
9 acquired or used by the authority or upon the income
10 therefrom. All bonds and notes of the authority, and all
11 interest and income thereon, shall be exempt from all
12 taxation by this state and any county, municipality,
13 political subdivision or agency thereof, except inheritance
14 taxes.
All bonds and notes of the authority issued pursuant to the provisions of section seven-c of this article, and all interest and income thereon, shall be exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§31-15-7q. Personal liability; persons executing bonds or notes issued pursuant to section seven-c of this article.

Neither the members or officers of the authority or of any authority agency or office, nor any person executing the bonds or notes issued pursuant to the provisions of section seven-c of this article, shall be liable personally on such bonds or notes or be subject to any personal liability or accountability by reason of the insurance thereof.

§31-15-7r. Cumulative authority as to powers conferred; applicability of other statutes and charters; bonds issued pursuant to section seven-c of this article.

The provisions of this article relating to the issuance of loans made pursuant to the provisions of section seven-b of this article, and bonds issued pursuant to the provisions of section seven-c of this article shall be construed as granting cumulative authority for the exercise of the various powers herein conferred, and neither the powers nor any bonds or notes issued hereunder shall be affected or limited by any other statutory or charter provision now or hereafter in force, other than as may be provided in this article, it being the purpose and intention of this article to create full, separate and complete additional powers. The various powers conferred herein may be exercised independently and notwithstanding that no bonds or notes are issued hereunder.


The authority may make loans for equipment as part of industrial development projects, industrial subdivision projects, and projects for electrical power generating facilities, natural gas transmission lines, coal processing

Clerks Note: This section was also amended by S. B. 571, which passed prior to this act.
plants, other energy projects, export development, farm
development, job development, forest development,
automobile assistance corporation projects and industrial
and trade jobs development corporation projects, and
improvements thereto, subject to the same application,
loan and bond procedures and provisions as usually apply
to loans issued under the provisions of this article, or by an
unconditional letter of credit approved by the authority.
The real property in which a security interest is taken may
be the real property upon which the equipment is situate or
real property at a different location from the location of the
equipment. Such additional security shall be upon such
terms and in such amount satisfactory to the authority.


1 The aggregate principal amount of notes, security
interests and bonds issued by the authority shall not exceed
three hundred million dollars outstanding at any one time:
Provided, That in computing the total amount of notes,
security interests and bonds which may at any one time be
outstanding, the principal amount of any outstanding
notes, security interests and bonds refunded or to be
refunded either by application of the proceeds of the sale of
any refunding bonds, security interests or notes of the
authority or by exchange for any such refunding bonds,
security interests or notes shall be excluded. The provisions
of section nineteen of this article notwithstanding, the state
board of investments shall have invested no more than a
total aggregate principal amount of forty-five million
dollars at any one time in such notes, security interests or
bonds.

CHAPTER 42
(S. B. 571—By Senator Chernenko, Mr. Tonkovich, Mr. President,
Senators Loehr and Karras)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen,
chapter thirty-one of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating to the West Virginia economic development authority; additional security on equipment loans; location of real property that may be additional security.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, 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 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.


1 The authority may make loans for equipment as part of industrial development projects or industrial subdivision projects or improvement thereto subject to the same application and loan procedures and limitations as usually apply to loans for industrial development projects or industrial subdivision projects or improvements thereto:

Provided, That such loans shall be secured by a first lien on the equipment financed by the loan and shall be additionally secured by a deed of trust in real property and any improvement thereto. The real property in which a security interest is taken may be the real property upon which the equipment is situate or real property at a different location from the location of the equipment. Such additional security shall be upon such terms and in such amount satisfactory to the authority.

CHAPTER 43
(S. B. 213—By Senator Tucker)

[Passed April 11, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen,

* Clerk's Note: This section was also amended by S. B. 196, which passed subsequent to this act.
chapter thirty-three of said code by adding thereto a new section, designated section twelve; to amend article sixteen of said chapter by adding thereto a new section, designated section eight; to amend article sixteen-a of said chapter by adding thereto a new section, designated section ten-a; to amend article twenty-three of said chapter by adding thereto a new section, designated section thirty-five; and to amend article twenty-four of said chapter by adding thereto a new section, designated section thirteen, all relating to providing coverage for continuum of care services by insurance companies and health care corporations.

Be it enacted by the Legislature of West Virginia:

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

Chapter
33. Insurance.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5D. COORDINATION OF CONTINUUM OF CARE SERVICES FOR ELDERLY, IMPAIRED AND TERMINALLY ILL.

§16-5D-10. Insurance.

1 Not later than the first day of July, one thousand nine hundred eighty-six, every insurance carrier who shall offer for sale in this state any policy of health or accident and sickness insurance, shall make available for purchase at a reasonable rate supplemental insurance coverage for continuum of care services: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of care services hereunder shall not be required to expend funds for underwriting such
supplemental coverage until the continuum of care board,
in cooperation with the West Virginia state insurance
commissioner, shall have completed a written master plan
related to insurance coverage as set forth in section five, arti-
cle five-d, chapter sixteen of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, including,
but not limited to, the specific standards and coverages to
be provided in such supplemental coverage: Provided,
however, That a public hearing shall be held pursuant to the
provisions of chapter twenty-nine-a of this code applicable
to such proceedings prior to the consideration of the
aforesaid plan by said board. The rates for continuum of
care coverage shall accurately reflect the cost of such
coverage and shall not be subsidized by the rate structure
for any other coverage.

CHAPTER 33. INSURANCE.

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance;
16A. Group Health Insurance Conversion.
23. Fraternal Benefit Societies.
24. Hospital Service Corporations, Medical Service Corporations, Dental
    Service Corporations and Health Service Corporations.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.


Any insurer which, on or after the first day of July, one
thousand nine hundred eighty-six, delivers or issues for
delivery in this state any policy of accident and sickness
insurance under the provisions of this article, shall make
available for purchase, at a reasonable rate, supplemental
insurance coverage for continuum of care services pursuant
to article five-d, chapter sixteen of this code: Provided,
That any insurance carrier required to provide
supplemental insurance coverage for continuum of care
services hereunder shall not be required to expend funds for
underwriting such supplemental coverage until the
continuum of care board, in cooperation with the West
Virginia state insurance commissioner, shall have
completed a written master plan related to insurance
coverage as set forth in section five, article five-d, chapter
sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including, but not limited to, the specific standards and coverages to be provided in such supplemental coverage: Provided, however, That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the consideration of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-8. Continuum of care services.

Any insurer which, on or after the first day of July, one thousand nine hundred eighty-six, delivers or issues for delivery in this state any policy of group accident and sickness insurance under the provisions of this article, shall make available for purchase, at a reasonable rate, supplemental insurance coverage for continuum of care services pursuant to article five-d, chapter sixteen of this code: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of care services hereunder shall not be required to expend funds for underwriting such supplemental coverage until the continuum of care board, in cooperation with the West Virginia state insurance commissioner, shall have completed a written master plan related to insurance coverage as set forth in section five, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including, but not limited to, the specific standards and coverages to be provided in such supplemental coverage: Provided, however, That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the consideration of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.
ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.

§33-16A-10a. Continuum of care services.

1 If the group insurance policy from which conversion is made insures the employee or member for continuum of care services pursuant to article five-d, chapter sixteen of this code, the employee or member shall be entitled to obtain a converted policy providing benefits for continuum of care services to the same extent such benefits are provided in the group insurance policy: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of care services hereunder shall not be required to expend funds for underwriting such supplemental coverage until the continuum of care board, in cooperation with the West Virginia state insurance commissioner, shall have completed a written master plan related to insurance coverage as set forth in section five, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including, but not limited to, the specific standards and coverages to be provided in such supplemental coverage: Provided, however, That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the consideration of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-35. Continuum of care services.

1 Any society which, on or after the first day of July, one thousand nine hundred eighty-six, delivers or issues for delivery in this state any policy under the provisions of subdivision (e), subsection (1), section seventeen of this article, shall make available for purchase, at a reasonable rate, supplemental insurance coverage for continuum of care services pursuant to article five-d, chapter sixteen of this code: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of
care services hereunder shall not be required to expend funds for underwriting such supplemental coverage until the continuum of care board, in cooperation with the West Virginia state insurance commissioner, shall have completed a written master plan related to insurance coverage as set forth in section five, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including, but not limited to, the specific standards and coverages to be provided in such supplemental coverage: Provided, however, That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the consideration of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-13. Continuum of care services.

Any hospital service corporation, medical service corporation or health service corporation which, on or after the first day of July, one thousand nine hundred eighty-six, delivers or issues for delivery in this state any subscriber contract under the provisions of this article, shall make available for purchase, at a reasonable rate, supplemental insurance coverage for continuum of care services pursuant to article five-d, chapter sixteen of this code: Provided, That any insurance carrier required to provide supplemental insurance coverage for continuum of care services hereunder shall not be required to expend funds for underwriting such supplemental coverage until the continuum of care board, in cooperation with the West Virginia state insurance commissioner, shall have completed a written master plan related to insurance coverage as set forth in section five, article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, including, but not limited to, the specific standards and coverages to be provided in
such supplemental coverage: *Provided, however,* That a public hearing shall be held pursuant to the provisions of chapter twenty-nine-a of this code applicable to such proceedings prior to the consideration of the aforesaid plan by said board. The rates for continuum of care coverage shall accurately reflect the cost of such coverage and shall not be subsidized by the rate structure for any other coverage.

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**CHAPTER 44**

(Com. Sub. for H. B. 2042—By Mr. Speaker, Mr. Albright)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]  

AN ACT to amend and reenact sections two hundred one, two hundred four, two hundred six and two hundred twelve, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred eight, article three of said chapter, all relating to controlled substances; authority of board of pharmacy; emergency changes of schedules of controlled substances between legislative sessions; changing certain substances between schedules; adding buprenorphine to schedule five; and prescriptions for controlled substances.

*Be it enacted by the Legislature of West Virginia:*

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

**Article**

2. Standards and Schedules.

3. Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.

**ARTICLE 2. STANDARDS AND SCHEDULES.**

§60A-2-201. Authority of state board of pharmacy, recommendations to Legislature.
§60A-2-201. Authority of state board of pharmacy; recommendations to Legislature.

(a) The state board of pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The state board of pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the state board of pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;
(2) The scientific evidence of its pharmacological effect, if known;
(3) The state of current scientific knowledge regarding the substance;
(4) The history and current pattern of abuse;
(5) The scope, duration and significance of abuse;
(6) The potential of the substance to produce psychic or physiological dependence liability; and
(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the state board of pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any schedule has a potential for abuse, it shall recommend to the Legislature
that the substance be added to the appropriate schedule. If it
finds that any substance already controlled under any schedule
should be rescheduled or deleted, it shall so recommend to the
Legislature.
(c) If the state board of pharmacy designates a substance
as an immediate precursor, substances which are precursors
of the controlled precursor shall not be subject to the control
solely because they are precursors of the controlled precursor.
(d) If any substance is designated, rescheduled or deleted as
a controlled substance under federal laws and notice thereof
is given to the state board of pharmacy, the board shall
recommend similar control of such substance to the Legisla-
ture, specifically stating that such recommendation is based on
federal action and the reasons why the federal government
deemed such action necessary and proper.
(e) The authority vested in the board by subsection (a) of
this section shall not extend to distilled spirits, wine, malt
beverages or tobacco as those terms are defined or used in
other chapters of this code nor to any nonnarcotic substance
if such substance may under the "Federal Food, Drug and
Cosmetic Act" and the law of this state lawfully be sold over
the counter without a prescription.

*§60A-2-204. Schedule I.*

(a) The controlled substances listed in this section are
included in Schedule I.
(b) Unless specifically excepted or unless listed in another
schedule, any of the following opiates, including its isomers,
esters, ethers, salts and salts of isomers, esters and ethers
whenever the existence of such isomers, esters, ethers and salts
is possible within the specific chemical designation:

(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Alpha-methylfentanyl;

*Clerks Note: This section was also amended by H. B. 1082, which passed prior to this act.*
14 (7) Benzethidine;
15 (8) Betacetylmethadol;
16 (9) Betameprodine;
17 (10) Betamethadol;
18 (11) Betaprodine;
19 (12) Clonitazene;
20 (13) Dextromoramide;
21 (14) Diamprome;
22 (15) Diethylthiambutene;
23 (16) Difenozin;
24 (17) Dimenoxadol;
25 (18) Dimephtanol;
26 (19) Dimethylthiambutene;
27 (20) Dioxaphethylbutyrate;
28 (21) Dipipanone;
29 (22) Ethylmethylthiambutene;
30 (23) Etonitazene;
31 (24) Etoxeridine;
32 (25) Fenethylline;
33 (26) Furethidine;
34 (27) Hydroxypethidine;
35 (28) Ketobemidone;
36 (29) Levomoramide;
37 (30) Levophenacylmorphan;
38 (31) Morpheridine;
39 (32) Noracymethadol;
40 (33) Norlevorphanol;
41 (34) Normethadone;
(35) Norpipanone;
(36) Phenadoxone;
(37) Phenampromide;
(38) Phenomorphan;
(39) Phenoperidine;
(40) Piritramide;
(41) Properidine;
(42) Properidine;
(43) Propiram;
(44) Racemoramide;
(45) Tilidine;
(46) Trimeperidine.

(c) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine (except HCl Salt);
(11) Heroin;
(12) Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methyisulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Phoclodine;
Thebacon.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of the salts, isomers and salts of isomers of any thereof whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation and for the purposes of this subsection only, "isomer" includes the optical position and geometric isomers:

(1) 2,5-dimethoxyamphetamine; also known by these trade or other names: 2,5-dimethoxy-a-methylphenethyl-amine; 2,5-DMA;
(2) 3,4-methylenedioxyamphetamine;
(3) 4-bromo-2, 5-dimethoxyamphetamine or 4-bromo-2,5-dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;
(4) 5-methyloxy-3, 4-methylenedioxyamphetamine;
(5) 4-methoxyamphetamine; also known by these trade or other names: 4-methoxy-amethylphenethylamine; paramenhoxyamphetamine; PMA;
(6) 3,4,5-trimethoxyamphetamine;
(7) Bufotenine; known also by these trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-
dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-
hydroxy-N-dimethyltryptamine; mappine;
(8) Diethyltryptamine; known also by these trade and
other names: N-N-Diethyltryptamine; “DET”;
(9) Dimethyltryptamine; known also by the name “DMT”;
(10) 4-methyl-2,5-dimethoxy amphetamine; known also by
these trade and other names: 4-methyl-2,5-dimethoxy-a-
methylphenethylamine; “DOM”; “STP”;
(11) Ibogaine; known also by these trade and other names:
7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-
methano-5H-pyrido (1’, 2’: 1, 2 azepino 4,5b) indole;
tabernanthe iboga;
(12) Lysergic acid diethylamide;
(13) Marihuana;
(14) Mescaline;
(15) Peyote; meaning all parts of the plant presently
classified botanically as Lophophora Williamsii Lematre,
whether growing or not; the seeds thereof; any extract from
any part of such plant; and every compound, manufacture,
salt, derivative, mixture or preparation of such plant, its seeds
or extracts;
(16) N-ethyl-3-piperidyl benzilate;
(17) N-methyl-3-piperidyl benzilate;
(18) Psilocybin;
(19) Psilocyn;
(20) Tetrahydrocannabinols; including synthetic equivalent-
ts of the substances contained in the plant or in the resinous
extractives of Cannabis or synthetic substances, derivatives
and their isomers with similar chemical structure and
pharmacological activity such as the following:
Delta 1
Cis or trans tetrahydrocannabinol, and their optical isomers;
Delta 6
Cis or trans tetrahydrocannabinol, and their optical isomers;
Delta 3, 4
Cis or trans tetrahydrocannabinol tetrahydrocannabinol, and their optical isomers;

(21) Thiophene analog of phencyclidine; also known by these trade or other names: (A) (1-(2-thienyl) cyclohexyl) piperidine; (B) Thienyl analog of phencyclidine; TPCP;

(22) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)ethylamine, N-(1 phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(24) N-ethylamphetamine;

(25) Parahexyl.

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

§60A-2-206. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding nalorphine,

*Clerks Note: This section was also amended by H. B. 1082, which passed prior to this act.
naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium;
(B) Opium extracts;
(C) Opium fluid extracts;
(D) Powdered opium;
(E) Granulated opium;
(F) Tincture of opium;
(G) Codeine;
(H) Ethylmorphine;
(I) Ethorphine HCL;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
(P) Thebaine;

(2) Any salt, compound, isomer derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:
CONTROLLED SUBSTANCES

50 (1) Alphaprodine;
51 (2) Anileridine;
52 (3) Bezitramide;
53 (4) Dextrorphan — excepted;
54 (5) Dihydrocodeine;
55 (6) Diphenoxylate;
56 (7) Fentanyl;
57 (8) Isomethadone;
58 (9) Levopropoxyphene — excepted;
59 (10) Levomethorphan;
60 (11) Levorphanol;
61 (12) Metazocine;
62 (13) Methadone;
63 (14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
65 (15) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
67 (16) Pethidine; (meperidine);
68 (17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
70 (18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-ethyl-4-phenylpiper-idin-4-carboxylate;
72 (19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
74 (20) Phenazocine;
75 (21) Piminodine;
76 (22) Racemethorphan;
77 (23) Racemorphan;
78 (24) Bulk Dextropropoxyphene (nondosage forms);
79 (25) Sufentanil.
(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

1. Methamphetamine, including its salts, isomers and salts of isomers;
2. Amphetamine, its salts, optical isomers and salts of its optical isomers;
3. Phenmetrazine and its salts;

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Amobarbital;
2. Secobarbital;
3. Pentobarbital;
4. Phencyclidine.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine:
   (i) Phenylacetone
   Some trade or other names: phenyl-2-propanone; P2P; benzylmethyl ketone; methyl benzyl ketone.

2. Immediate precursors to phencyclidine (PCP):
   (i) 1-phenylcyclohexylamine
   (ii) 1-piperidinocyclohexanecarbonitrile (PCC).
§60A-2-212. Schedule V.

(a) The controlled substances listed in this section are included in Schedule V.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams and not more than 10 milligrams per dosage unit;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams and not more than 5 milligrams per dosage unit;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Amyl nitrite, isobutyl nitrite and the other organic nitrites are controlled substances and no product containing these compounds as a significant component shall be possessed, bought or sold other than pursuant to a bona fide prescription, or for industrial or manufacturing purposes.
ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-308. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the said appropriate department, board or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of section 306. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medicinal purpose: Provided, That buprenorphine shall be dispensed only by prescription pursuant to subsections (a), (b) and (c) of this section.

CHAPTER 45
(H. B. 1082—By Speaker, Mr. Albright)

[Passed March 4, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four and two hundred six, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to controlled substances; changing certain substances between schedules.
Be it enacted by the Legislature of West Virginia:

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

§60A-2-204. Schedule I.
§60A-2-206. Schedule II.

*§60A-2-204. Schedule I.

1 (a) The controlled substances listed in this section are included in Schedule I.
2 (b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

8 (1) Acetylmethadol;
9 (2) Allylprodine;
10 (3) Alphacetylmethadol;
11 (4) Alphameprodine;
12 (5) Alphamethadol;
13 (6) Alpha-methylfentanyl;
14 (7) Benzethidine;
15 (8) Betacetylmethadol;
16 (9) Betameprodine;
17 (10) Betamethadol;
18 (11) Betaprodine;
19 (12) Clonitazene;
20 (13) Dextromoramide;
21 (14) Diampromide;
22 (15) Diethylthiambutene;
23 (16) Difenoxin;
24 (17) Dimenoxadol;
25 (18) Dimepheptanol;
26 (19) Dimethylthiambutene;
27 (20) Dioxaphetylbutyrate;
28 (21) Dipipanone;
29 (22) Ethylmethylthiambutene;
30 (23) Etonitazene;
31 (24) Etoxeridine;

* Clerk’s Note: This section was also amended by H. B. 2042, which passed subsequent to this act.
32 (25) Fenethylline;  
33 (26) Furethidine;  
34 (27) Hydroxypethidine;  
35 (28) Ketobemidone;  
36 (29) Levomoramide;  
37 (30) Levophenacylmorphan;  
38 (31) Morpheridine;  
39 (32) Noracymethadol;  
40 (33) Norlevorphanol;  
41 (34) Normethadone;  
42 (35) Norpipanone;  
43 (36) Phenadoxone;  
44 (37) Phenampromide;  
45 (38) Phenomorphan;  
46 (39) Phenoperidine;  
47 (40) Piritramide;  
48 (41) Proheptazine;  
49 (42) Properidine;  
50 (43) Propiram;  
51 (44) Racemoramide;  
52 (45) Tilidine;  
53 (46) Trimeperidine.

(c) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

59 (1) Acetorphine;  
60 (2) Acetyldihydrocodeine;  
61 (3) Benzylmorphine;  
62 (4) Codeine methylbromide;  
63 (5) Codeine-N-Oxide;  
64 (6) Cyprenorphine;  
65 (7) Desomorphine;  
66 (8) Dihydromorphine;  
67 (9) Droterbanol;  
68 (10) Etorphine (except HCl Salt);  
69 (11) Heroin;  
70 (12) Hydromorphanol;  
71 (13) Methyldesorphine;  
72 (14) Methyldihydromorphine;
73  (15) Morphine methylbromide;  
74  (16) Morphine methylsulfonate;  
75  (17) Morphine-N-Oxide;  
76  (18) Myrophine;  
77  (19) Nicocodeine;  
78  (20) Nicomorphine;  
79  (21) Normorphine;  
80  (22) Phoclodine;  
81  (23) Thebacon.  
82  (d) Unless specifically excepted or unless listed in another  
83  schedule, any material, compound, mixture or preparation,  
84  which contains any quantity of the following hallucinogenic  
85  substances, or which contains any of the salts, isomers and  
86  salts of isomers of any thereof whenever the existence of such  
87  salts, isomers and salts of isomers is possible within the specific  
88  chemical designation and for the purposes of this subsection  
89  only, “isomer” includes the optical position and geometric  
90  isomers:  
91  (1) 2,5-dimethoxyamphetamine; also known by these trade  
92  or other names: 2,5-dimethoxy-a-methylphenethyl-amine; 2,5-  
93  DMA;  
94  (2) 3,4-methylenedioxyamphetamine;  
95  (3) 4-bromo-2,5-dimethoxyamphetamine or 4-bromo-2,5-  
96  dimethoxy-a-methylphenethylamine, or 4-bromo-2,5-DMA;  
97  (4) 5-methyloxy-3, 4-methylenedioxyamphetamine;  
98  (5) 4-methoxyamphetamine; also known by these trade or  
99  other names: 4-methoxy-amethylphenethylamine; paramen-  
100  hoxyamphetamine; PMA;  
101  (6) 3,4,5-trimethoxyamphetamine;  
102  (7) Bufotenine; known also by these trade and other  
103  names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-  
104  dimethylamino-ethyl)-5 indolol; N-N-dimethylserotonin; 5-  
105  hydroxy-N-dimethyltryptamine; mappine;  
106  (8) Diethyltryptamine; known also by these trade and  
107  other names: N-N-Diethyltryptamine; “DET”;  
108  (9) Dimethyltryptamine; known also by the name “DMT”;
109  (10) 4-methyl-2,5-dimethoxy amphetamine; known also by these trade and other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM"; "STP";
110  (11) Ibogaine; known also by these trade and other names: 7-Ethyl-6, 6a, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1', 2': 1, 2 azepino 4,5b) indole; tabernanthe iboga;
111  (12) Lysergic acid diethylamide;
112  (13) Marihuana;
113  (14) Mescaline;
114  (15) Peyote; meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lematre, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or extracts;
115  (16) N-ethyl-3-piperidyl benzilate;
116  (17) N-methyl-3-piperidyl benzilate;
117  (18) Psilocybin;
118  (19) Psilocyn;
119  (20) Tetrahydrocannabinols; including synthetic equivalents of the substances contained in the plant or in the resinous extractives of Cannabis or synthetic substances, derivatives and their isomers with similar chemical structure and pharmacological activity such as the following:
120  Delta 1
121  Cis or trans tetrahydrocannabinol, and their optical isomers;
122  Delta 6
123  Cis or trans tetrahydrocannabinol, and their optical isomers;
124  Delta 3, 4
125  Cis or trans tetrahydrocannabinil tetrahydrocannabinol, and their optical isomers;
126  (21) Thiophene analog of phencyclidine; also known by
these trade or other names: (A) (1-(2-thienyl) cyclohexyl) piperidine; (B) Thienyl analog of phencyclidine; TPCP;

(22) Ethylamine analog of phencyclidine... Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylec- llohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(23) Pyrrolidine analog of phencyclidine... Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(24) N-ethylamphetamine;

(25) Parahexyl.

(e) Unless specifically excepted or unless listed in another schedule, any of the following depressants, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone.

(2) Methaqualone.

*§60A-2-206. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative or preparation of opium or opiate excluding nalorphine, naloxone and naltrexone and their respective salts, but including the following:

(A) Raw opium;

(B) Opium extracts;

(C) Opium fluid extracts;

(D) Powdered opium;

(E) Granulated opium;

(F) Tincture of opium;

* Clerk's Note: This section was also amended by H. B. 2042, which passed subsequent to this act.
(G) Codeine;
(H) Ethylmorphine;
(I) Ethrophine HCL;
(J) Hydrocodone;
(K) Hydromorphone;
(L) Metopon;
(M) Morphine;
(N) Oxycodone;
(O) Oxymorphone;
(P) Thebaine;

(2) Any salt, compound, isomer derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (1) of this subsection, except that these substances shall not include the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine;

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).

(c) Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Alphaprodine;
(2) Anileridine;
(3) Bezitramide;
(4) Dextrorphan — excepted;
(5) Dihydrocodeine;
CONTROLLED SUBSTANCES

(6) Diphenoxylate;
(7) Fentanyl;
(8) Isomethadone;
(9) Levopropoxyphene — excepted;
(10) Levomethorphan;
(11) Levorphanol;
(12) Metazocine;
(13) Methadone;
(14) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(15) Moramide-Intermediate, 2-methyl-3-morpholino-1, l-diphenyl-propane-carboxylic acid;
(16) Pethidine; (meperidine);
(17) Pethidine-Intermediate-A, 4-cyano-l-methyl-4-phenylpiperidine;
(18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-ethyl-4-phenylpiper-idin-4-carboxylate;
(19) Pethidine-Intermediate-C, l-methyl-4-phenylpiperidine-4-carboxylic acid;
(20) Phenazocine;
(21) Piminodine;
(22) Racemethorphan;
(23) Racemorphan;
(24) Bulk Dextropropoxyphene (nondosage forms);
(25) Sufentanil.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Methamphetamine, including its salts, isomers and salts of isomers:
(2) Amphetamine, its salts, optical isomers and salts of its optical isomers;
(3) Phenmetrazine and its salts;
(4) Methylphenidate and its salts.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

1. Amobarbital;
2. Secobarbital;
3. Pentobarbital;
4. Phencyclidine.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

1. Immediate precursor to amphetamine and methamphetamine:
   (i) Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P; benzylmethyl ketone; methyl benzyl ketone.

2. Immediate precursors to phencyclidine (PCP):
   (i) 1-phenylcyclohexylamine;
   (ii) 1-piperidinocyclohexanecarbonitrile (PCC).

CHAPTER 46

(Com. Sub. for H. B. 1344—By Delegate Faircloth and Delegate Shanholtz)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
thirty-one, as amended, relating generally to the sheriff as keeper of the jail; appointment of jailer; care of jail; authorizing the jailer to inquire as regards and obtain assignments of the right to reimbursement for medical benefits; authorizing county commissions and municipalities to seek reimbursement from prisoners, said prisoners insurers, agencies providing such prisoners medical benefits, and persons liable by law for the costs of medical care received in county jails; authorizing county commissions and municipalities to seek reimbursement for certain clothing from such prisoners; limiting reimbursement for certain injuries or illnesses; limiting reimbursement in cases of undue hardship; authorizing suit after one year; requiring funds to be deposited in the general fund.

*Be it enacted by the Legislature of West Virginia:*

That section two, article eight, 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 8. JAIL AND JAILER.**

§7-8-2. Sheriff to be keeper of jail; appointment of jailer; care of jail; authorizing county commissions and municipalities to seek reimbursement of medical care and certain clothing provided by county jails.

(a) The sheriff of every county shall be the keeper of the jail thereof, but he may, with the assent of the county commission, appoint a jailer of the said county, and may take from him a bond with security conditioned for the faithful performance of his duties. The jailer may be a deputy sheriff and shall take an oath of office like other officers. He shall keep the jail in a clean, sanitary and healthful condition. When any prisoner is sick the jailer shall see that he has adequate medical and dental attention and nursing, and so far as possible keep him separate from other prisoners. Any such medical and nursing care as the jailer may be required to furnish shall be paid for by the county commission. A failure on the part of the jailer to perform any of the duties herein required with respect to any prisoner in his jail shall be a contempt of any court of record under whose commitment such prisoner is confined, and shall be punished as other
contempts of such court. The jailer or his agents are authorized to inquire of every prisoner at any time whether he has medical insurance or is covered by a public medical benefit, to further inquire of the prisoner sufficient information to enable the county commission to seek reimbursement of health care costs as provided by this section and to take an assignment of the right to reimbursement from said third parties.

(b) The county commission is hereby authorized to seek reimbursement from every person who receives medical, dental, hospital or eye care or any type of nursing care while incarcerated in the jail at the rate at which the care is generally available in the community for those persons not incarcerated, from their private health care insurers, if any, to the extent of the coverage in effect, from any public agency then providing medical benefits to the person incarcerated to the extent that said public agency would have reimbursed the cost of the care rendered if the person receiving the care was not then incarcerated so long as said reimbursement is not inconsistent with the lawful provisions of the agency’s benefit program, or from persons who are liable pursuant to section twenty-two, article three, chapter forty-eight of this code: Provided, That no reimbursement for care shall be required when any medical, dental, hospital or eye care or any type of nursing care has been rendered for injuries or illnesses sustained as a result of an act by another prisoner, injuries or illnesses sustained where an act or omission by the jailer or any deputy sheriff has been a contributing factor, or injuries or illnesses resulting from fire or other catastrophic hazard, all without fault on the part of the prisoner: Provided, however, That no reimbursement for the care received from the person receiving the care or from the person made liable for the care by section twenty-two, article three, chapter forty-eight of this code shall be sought unless that person is able to pay without undue hardship considering the financial resources of the person, the ability to pay of the person and the nature of the burden that reimbursement will impose: Provided further, That the determination of undue hardship by the commission does not preclude the commission from subsequently ordering reimbursement should the person’s financial circumstances change: And provided further, That whenever the county commission seeks reimbursement from a
municipality for medical, dental, hospital, eye or nursing care authorized by this subsection then the municipality shall also be hereby authorized to seek reimbursement as provided for in this subsection for counties under the same conditions.

(c) The county commission is hereby authorized to seek reimbursement from every prisoner for the costs of any shoes and clothing furnished by the jailer and retained by the prisoner after his release from incarceration: Provided, That no reimbursement for the goods authorized by this subsection shall be sought unless the former prisoner is able to pay without undue hardship, considering the financial resources of the person, said persons ability to pay and the nature of the burden that reimbursement will impose: Provided, however, That the determination of undue hardship by the county commission does not preclude the county commission from subsequently ordering repayment should the financial circumstances of such person change: Provided further, That whenever the county commission seeks reimbursement from a municipality for the goods then the municipality shall also be hereby authorized to seek reimbursement for the goods authorized by this subsection as provided for in this subsection for counties under the same conditions.

(d) Subject to any statutes of limitation, if reimbursement pursuant to this section was sought at or within a reasonable time after the release from incarceration of the person receiving the goods or care and if the reimbursement authorized by this section has not been received within one year the county commission or municipality, as the case may be, may prosecute a civil action against any liable person and against any insurer or agency the assignment of whose obligation to pay for care was obtained by the jailer. Any funds paid to or collected by the county commission or municipality pursuant to the provisions of this section shall be deposited to its general fund.

CHAPTER 47

(Com. Sub. for H. B. 1523—By Delegate Ashley)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article eight, chapter seven of the code of West Virginia, one thousand nine hundred
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thirty-one, as amended, relating to the feeding and care of prisoners in the county jails and the powers and duties of the county commissions relating thereto; allowing county commissions to provide for the feeding of prisoners by contracting with county, state or municipal governmental agencies; allowing county commissions to contract for such purpose with private vendors upon competitive bidding; procedure for solicitation of such bidding; purchase of certain supplies for jails; requiring maintenance of certain records and inspection thereof; requiring that all entities providing food services to prisoners be subject to health department inspection; and source of funds for feeding and care of prisoners.

Be it enacted by the Legislature of West Virginia:

That section two-a, article eight, 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 8. JAIL AND JAILER.

§7-8-2a. Feeding and care of prisoners; purchase of food and supplies; contract for feeding of prisoners; records; inspection by health officer; payment of costs.

1 (a) On and after the first day of January, one thousand nine hundred forty-nine, the county commission of each county shall provide wholesome and sufficient food and clean and sufficient bedding for all prisoners confined in the county jail, and shall furnish the soaps, disinfectants and other supplies needed by the jailer in the performance of his duties.

(b) The county commission may require the jailer to act as its agent for the purpose of purchasing, preparing and serving food for prisoners. If, however, the jailer is not named as such agent, he may be required to make available to the county commission for use in the preparation and serving of food for prisoners, the services of prisoners, to the number requested by the county commission. The county commission may employ a cook and such other employees as may be necessary in the performance of duties required of it by this article.

(c) The county commission may provide for the feeding of prisoners on a contract basis with any other county, state or municipal governmental agency which at the time of entering
into said contract is required or authorized to provide food
services for other purposes.

(d) The county commission may provide for the feeding of
prisoners on a contract basis with any private provider upon
competitive bidding procedures. Solicitation of competitive
bids shall be accomplished by publication of a Class II legal
advertisement in compliance with article three, chapter fifty-
nine of this code. The publication area for such legal
advertisement shall be the county in which the affected jail is
situate.

(e) All purchases of food, bedding and other supplies shall
whenever practicable be made at wholesale. Invoices or
itemized statements of account from each vendor of food,
bedding and other supplies shall be obtained, and payment of
such statements or invoices may not be authorized by the
county commission unless and until the county commission
has ascertained that the merchandise has been received and
that the terms of the purchase have been complied with on
the part of the vendor.

(f) The county commission shall keep or cause to be kept
a daily record showing the total number of prisoners confined
in the jail of the county, the number of prisoners admitted,
the number released and the time of each such admittance and
of each such release. Such record shall show such information
separately as to the prisoners of the county, of each
municipality and of the United States. The county commission
shall also keep or cause to be kept such other accounts and
records as will enable it to show the per capita daily cost of
the feeding and care of prisoners in each calendar month.

(g) The county commission shall require to be kept a daily
record of food served prisoners and, in all counties having a
county health officer, said health officer shall, at least once
a month, inspect such lists and make such recommendations
and suggestions as he may deem proper regarding daily diets
and foods regardless of how the feeding services are provided.

(h) The sheriff, the jailer or any entity contracting with the
county commission to provide food services for prisoners shall
be subject to inspection and regulation by the department of
health in the same manner as any commercial food service.
58 (i) All actual costs incurred by the county commission for
59 salaries, for the purchase of food, bedding and other supplies
60 or for services shall be paid out of the same funds as payments
61 to sheriffs of fees for the feeding and care of prisoners were
62 made immediately prior to the effective date of this section.
63 In counties having thirty thousand population or less, the
64 sheriff, or the jailer duly appointed as provided in section two,
65 article eight, chapter seven of this code, shall, if so directed
66 by the county commission, furnish each prisoner with
67 wholesome and sufficient food.

CHAPTER 48
(H. B. 1237—By Delegate Wooton and Delegate Hamilton)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section seven, article fourteen,
chapter seven 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
seventeen-c, all relating to civil service for deputy sheriffs; rules
and regulations issued by each county civil service commission
and notice thereof; increasing the probationary period of
deputy sheriffs from six months to twelve months; expiration
of such probationary period; and providing an incremental
salary increase for deputy sheriffs with one year or more of
service.

Be it enacted by the Legislature of West Virginia:

That section seven, article fourteen, chapter seven 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 seventeen-c, all
to read as follows:

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§ 7-14-7. Rules and regulations of commission; notice and distribution
thereof; probationary period for appointees.
§ 7-14-17c. Salary increment.
§7-14-7. Rules and regulations of commission; notice and distribution thereof; probationary period for appointees.

The civil service commission in each such county shall make rules and regulations providing for both competitive and medical examinations for the position of deputy sheriff in each such county subject to the provisions of this article, for appointments to the position of deputy sheriff and for promotions and for such other matters as are necessary to carry out the purposes of this article. Any such commission has the power and authority to require by rules and regulations a physical fitness examination as part of its competitive examination or as a part of its medical examination. Due notice of the contents of all rules and regulations and of any modifications thereof shall be given, by mail, in due season to the appointing officer; and said rules and regulations and any modifications thereof shall also be printed for public distribution. All original appointments on and after the effective date of this article to any position of deputy sheriff in any county subject to the provisions of this article shall be for a probationary period of twelve months: Provided, That at any time during the probationary period the probationer may be discharged for just cause, in the manner provided in section seventeen of this article. If, at the close of this probationary period, the conduct or capacity of the probationer has not been satisfactory to the appointing sheriff, the probationer shall be notified, in writing, that he will not receive absolute appointment, whereupon his employment shall cease; otherwise, his retention in the position of deputy sheriff beyond the probationary term shall be equivalent to his absolute appointment.

§7-14-17c. Salary increment.

Beginning on and after the effective date of this section, every deputy sheriff with one year or more of service shall receive an annual salary increase in the sum of five dollars per month for each year of service up to a maximum of sixteen years of service. Any incremental salary increase in effect prior to the effective date of this section that is more favorable to the deputy sheriffs entitled to such increase shall remain in full force and effect to the exclusion of the provisions of this section.
AN ACT to amend and reenact section eight, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to civil service for correctional officers; receipt of application; removing certain age requirements and exceptions thereto.

Be it enacted by the Legislature of West Virginia:

That section eight, article fourteen-b, 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 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-8. Form of application; age requirements; exceptions.

1 The civil service commission in each such county shall require persons applying for admission to any competitive examination provided for under this article or under the rules and regulations of the commission to file in its office, within a reasonable time prior to the proposed competitive examination a formal application in which the applicant shall state under oath or affirmation:

8 (1) His full name, residence and post-office address;

9 (2) His United States citizenship, age and the place and date of his birth;

11 (3) His health and his physical capacity for the position of correctional officer;

13 (4) His business, employments and residences for at least three previous years; and

15 (5) Such other information as may reasonably be required, relative to the applicant's qualifications and fitness for the position of correctional officer.

Blank forms for such applications shall be furnished by the commission, without charge, to all persons requesting the
same. The commission may require, in connection with the
application, such certificates of citizens, physicians or others,
having pertinent knowledge concerning the applicant, as the
good of the service may require.

No application for original appointment shall be received on
and after the effective date of this article, if the person
applying is less than eighteen years of age at the date of his
application: Provided, That in the event any applicant
formerly served as a correctional officer for a period of more
than one year in the county to which he makes application,
and resigned as a correctional officer at a time when there were
no charges of misconduct or other misfeasance pending against
him, within a period of two years preceding the date of his
application, and at the time of his application resides within
the county in which he seeks appointment by reinstatement,
then such applicant shall be eligible for appointment by
reinstatement in the discretion of the civil service commission
provided he is not sixty-five years of age or over, and such
applicant, providing his former term of service as a correc-
tional officer so justifies, may be reappointed by reinstatement
without a competitive examination, but such applicant shall
undergo a medical examination; and if such applicant shall be
so appointed by reinstatement as aforesaid, he shall be the
lowest in rank in the jail next above the probationers of the
office.

CHAPTER 50
(Com. Sub. for H. B. 1773—By Delegate Ryan)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter
fifty-nine of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to and increasing
certain fees to be charged by the sheriff.

Be it enacted by the Legislature of West Virginia:

That section fourteen, 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:
§59-1-14. Fees to be charged by sheriffs.

A sheriff shall charge and collect the following fees:

1. For serving on any person a declaration in ejectment, or an order, notice, summons or other process where the body is not taken, except a subpoena served on a witness, and making return thereof .............................................. $5.00

2. For summoning a witness ........................................... 5.00

3. For serving on any person an attachment or other process under which the body is taken ............... 5.00

4. For levying an attachment on real estate and making the return .............................................. 5.00

5. For making any other levy ........................................... 5.00

6. For conveying a prisoner to or from jail, for each mile of necessary travel either in going or returning ........................................... 0.15

7. For taking any bond ................................................... 1.00

8. When a jury is sworn in court, for summoning and impaneling such jury ........................................... 1.00

9. For serving a writ of possession ........................................... 5.00

10. For issuing receipt to purchaser at delinquent tax sale ........................................... 1.00

The county commission, giving due regard to the cost thereof, may from time to time prescribe the amount which the sheriff may charge for keeping any property or in removing any property. When, after distraining or levying, he neither sells nor receives payment, and either takes no bond or takes one which is not forfeited, he shall, if guilty of no default, have (in addition to the one dollar for a bond, if one was taken) a fee of three dollars, unless this be more than half of what his commission would have amounted to if he had received payment; in which case he shall (whether a bond was taken or not) have a fee of one dollar at the least, and so much more as is necessary to make the said half of his commission. The
commission to be included in a forthcoming bond (when one is taken) shall be five percent on the first three hundred dollars of the money for which the distress or levy is made, and two percent on the residue of such money; but such commission shall not be received, in whole or in part, except as hereinbefore provided, unless the bond be forfeited, or the amount (including the commission) be paid to the plaintiff. An officer receiving payment in money, or selling property, shall have the like commission of five percent on the first three hundred dollars of the money paid or proceeds from such sale, and two percent on the residue, except that when such payment or sale is on an execution on a forthcoming bond, his commission shall be only half what it would be if the execution were not on such bond.

CHAPTER 51

(H. B. 1197—By Delegate Shaffer and Delegate Conley)

[Passed March 4, 1955; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1z. Twenty-sixth circuit.

1 For the county of Lewis, on the first Monday in March, the second Monday in July and the first Monday in November. For the County of Upshur, on the second Monday in January, May and September.
AN ACT to amend and reenact article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to crime victims compensation; changing the title of the act, the name of the fund and references to certain personnel; making new findings and providing for continuation of the program; modifying the definitions of claimant, collateral source, dependent, allowable expense, noneconomic detriment and victim, and defining contributory misconduct; providing that commissioners serve under the supervision of judges of the court; clarifying that expenses necessary in obtaining reports may be paid from the fund; modifying the application requirements; removing the limit to state officers and employees as those persons subject to penalty for knowingly and willfully participating or assisting in preparation of false or fraudulent applications; requiring the investigator to apply to court for leave to discontinue investigation when he believes it will interfere with or jeopardize prosecution of a case and requiring court to grant such leave when satisfied that an investigation will interfere with or jeopardize the investigation or prosecution of a case; providing for compensation for emotional distress and pain and suffering in certain cases and limiting the amount of such compensation; increasing the maximum award payable in cases of death to the victim and providing for compensation to certain persons for sorrow, mental anguish and solace; providing for the attorney general to represent the interests of the state in hearings on claims; clarifying authority of investigator to petition court for order to take depositions; providing for payment from the fund of expenses of attorneys; eliminating the requirement for reporting the average amount of claims made; and providing for retroactive effect of amendments.

Be it enacted by the Legislature of West Virginia:

That article two-a, 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 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-2. Legislative findings; purpose and intent.
§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.
§14-2A-10. Filing of application for compensation award; contents.
§14-2A-12. Investigation and recommendations by claim investigators.
§14-2A-13. Notice to claimant of claim investigator's recommendation; evaluation of claim by judge or commissioner.
§14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress, mental anguish, etc.

§14-2A-17. Contempt sanction not available.
§14-2A-18. Effect of prosecution or conviction of offender.
§14-2A-24. Award not subject to execution or attachment; exceptions.

The act heretofore created by this article and known and cited as the "West Virginia Crime Reparation Act of 1981" shall henceforth be known and cited as the "West Virginia Crime Victims Compensation Act." Any and all funds existing under the West Virginia crime reparation act of 1981 shall continue for the purposes set forth in this article, notwithstanding the amendments to the name of the act or a redesignation of the special revenue fund in the state treasury as herein provided.
§14-2A-2. Legislative findings; purpose and intent.

The Legislature finds and declares that a primary purpose of government is to provide for the safety of citizens and the inviolability of their property. To the extent that innocent citizens are victims of crime, particularly violent crime, and are without adequate redress for injury to their person or property, this primary purpose of government is defeated. The people of West Virginia are demonstrably peaceful, and, in comparison to the citizens of other states, suffer a lower crime rate. In establishing the West Virginia crime reparation act of 1981, the Legislature stated its findings that the provision of governmental services to prevent crime is not wholly effective and expressed its intent to establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government.

The Legislature now finds that the system of compensation established by the act as an experimental effort by the Legislature of this state on behalf of its people, after having been reviewed and perfected in its initial stages, should be continued and retained in the legislative branch of government as an expression of a moral obligation of the state to provide partial compensation to the innocent victims of crime for injury suffered to their person or property.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim,
(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him, from any of the following sources:

(1) The offender, except any restitution received from the offender pursuant to an order by a court of law sentencing the offender or placing him on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states;

(3) Social security, medicare and medicaid;

(4) State-required, temporary, nonoccupational disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability;

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds twenty-five thousand dollars.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state which by its nature poses a substantial threat of personal injury or death, and is punishable by fine or imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent
homicide, driving under the influence of alcohol, controlled substances or drugs, or reckless driving.

(d) "Dependent" means an individual who received over half of his support from the victim. For the purpose of determining whether an individual received over half of his support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself supplied. The term "support" includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term "dependent" includes a child of the victim born after his death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment.

(f) "Allowable expense" means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.

Allowable expense includes a total charge not in excess of one thousand two hundred fifty dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(g) "Work loss" means loss of income from work that the injured person would have performed if he had not been injured and expenses reasonably incurred or to be incurred by him to obtain services in lieu of those he would have performed for income, reduced by any income from substitute work actually performed or to be performed by him, or by
income he would have earned in available appropriate substitute work that he was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or his family, if he had not been injured.

(i) "Dependent's economic loss" means loss after a victim's death of contributions of things of economic value to his dependents, not including services they would have received from the victim if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent’s economic loss.

(k) "Noneconomic detriment" means sorrow, mental anguish and solace which may include society, companionship, comfort, guidance, kindly offices and advice.

(l) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct, or who such injured person has reasonable cause to believe has engaged in such criminally injurious conduct immediately prior to the attempted apprehension.

(m) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

1. Every person within the state who is convicted of or pleads guilty to a misdemeanor or felony offense, other than a traffic offense that is not a moving violation, shall pay the sum of three dollars as costs in the case, in addition to any other court costs that the court is required by law to impose upon such convicted person. The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this article to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the “Crime Victims Compensation Fund,” which is hereby created. All moneys heretofore collected and received under the prior enactment or reenactments of this article and deposited or to be deposited in the “Crime Victims Reparation Fund” are hereby transferred to the crime victims compensation fund, and the treasurer shall so deposit such moneys in the state treasury. All moneys collected and received under this article and paid into the state treasury and credited to the crime victims compensation fund in the manner prescribed in section two, article two, chapter twelve of this code, shall be kept and maintained for the specific purposes of this article, and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

Moneys in the crime victims compensation fund shall be available for the payment of the costs of administration of this article in accordance with the budget of the court approved therefor.


1. Any judge of the court of claims individually, or the court of claims en banc, or any court of claims commissioner appointed pursuant to section six of this article, shall have jurisdiction to approve awards of compensation arising from criminally injurious conduct, in accordance with the provisions of this article, if satisfied by a preponderance of the evidence that the requirements for an award of compensation have been met.
§14-2A-6. Appointment and compensation of commissioners and judges serving under this article.

(a) The court of claims, with the approval of the president of the Senate and the speaker of the House of Delegates, may appoint court of claims commissioners to hear claims for awards of compensation and to approve awards of compensation pursuant to the provisions of this article. Each commissioner shall serve at the pleasure of the court of claims and under the supervision of the judges of the court of claims.

(b) The court of claims shall fix the compensation of the court of claims commissioners in an amount not exceeding the compensation for judges of the court of claims. Compensation of judges and commissioners for services performed under this article, and actual expenses incurred in the performance of duties as judges and commissioners under this article shall be paid out of the crime victims compensation fund.

(c) The limitation period of one hundred days in section eight, article two of this chapter pertaining to time served by the judges of the court of claims shall not apply to the provisions of this article.


Each commissioner appointed by the court of claims shall be an attorney-at-law, licensed to practice in this state, and shall have been so licensed to practice law for a period of not less than three years prior to his appointment as commissioner. A commissioner shall not be an officer or an employee of any branch of state government, except in his capacity as commissioner of the court. A commissioner shall not hear or participate in the consideration of any claim in which he is interested personally, either directly or indirectly. When practicable, the commissioners should be selected from different congressional districts and be geographically located, with reference to their counties of residence, to facilitate the appearance of claimants and witnesses at hearings held pursuant to this article.


Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath prescribed by section five, article four of the constitution of the state. The oath shall be filed with the clerk.

The court of claims is hereby authorized to hire not more than two claim investigators to be employed within the office of the clerk of the court of claims, who shall carry out the functions and duties set forth in section twelve of this article. Claim investigators shall serve at the pleasure of the court of claims and under the administrative supervision of the clerk of the court of claims. The compensation of claim investigators shall be fixed by the court, and such compensation, together with travel, clerical and other expenses of the clerk of the court of claims relating to a claim investigator carrying out his duties under this article, including the cost of obtaining reports required by the investigator in investigating a claim, shall be payable from the crime victims compensation fund as appropriated for such purpose by the Legislature.

§14-2A-10. Filing of application for compensation award; contents.

(a) A claim for an award of compensation shall be commenced by filing an application for an award of compensation with the clerk of the court of claims. The application shall be in a form prescribed by the clerk of the court of claims and shall contain the information specified in subdivisions (1) through (6) of this subsection and, to the extent possible, the information in subdivisions (7) through (10) of this subsection:

(1) The name and address of the victim of the criminally injurious conduct, the name and address of the claimant and the relationship of the claimant to the victim;

(2) The nature of the criminally injurious conduct that is the basis for the claim and the date on which the conduct occurred;

(3) The law-enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported;

(4) Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

(5) A release authorizing the court of claims, the court of claims commissioners and the claim investigator to obtain any report, document or information that relates to the determination of the claim for an award of compensation;
(6) If the victim is deceased, the name and address of each dependent of the victim and the extent to which each is dependent upon the victim for care and support;

(7) The nature and extent of the injuries that the victim sustained from the criminally injurious conduct for which compensation is sought, the name and address of any person who gave medical treatment to the victim for the injuries, the name and address of any hospital or similar institution where the victim received medical treatment for the injuries, and whether the victim died as a result of the injuries;

(8) The total amount of the economic loss that the victim, a dependent or the claimant sustained or will sustain as a result of the criminally injurious conduct, without regard to the financial limitation set forth in subsection (g), section fourteen of this article;

(9) The amount of benefits or advantages that the victim, a dependent or other claimant has received or is entitled to receive from any collateral source for economic loss that resulted from the criminally injurious conduct, and the name of each collateral source;

(10) Any additional relevant information that the court of claims may require. The court of claims may require the claimant to submit, with the application, materials to substantiate the facts that are stated in the application.

(b) All applications for an award of compensation shall be filed within two years after the occurrence of the criminally injurious conduct that is the basis of the application. Any application so filed which contains the information specified in subdivisions (1) through (6), subsection (a) of this section may not be excluded from consideration on the basis of incomplete information specified in subdivisions (7) through (10) of said subsection if such information is completed after reasonable assistance in the completion thereof is provided under procedures established by the court of claims.

(c) A person who knowingly and willfully presents or attempts to present a false or fraudulent application, or who knowingly and willfully participates, or assists in the preparation or presentation of a false or fraudulent applica-
tion, shall be guilty of a misdemeanor. A person convicted, in a court of competent jurisdiction, of a violation of this section shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, in the discretion of such court. If the convicted person is a state officer or employee, he shall, in addition, forfeit his office or position of employment, as the case may be.


The clerk of the court of claims shall establish a procedure for the filing, recording and processing of applications for an award of compensation.

§14-2A-12. Investigation and recommendations by claim investigator.

(a) The clerk of the court of claims shall transmit a copy of the application to the claim investigator within seven days after the filing of the application.

(b) The claim investigator, upon receipt of an application for an award of compensation from the clerk of the court of claims, shall investigate the claim. After completing the investigation, the claim investigator shall make a written finding of fact and recommendation concerning an award of compensation. He shall file with the clerk the finding of fact and recommendation and all information or documents that he used in his investigation: Provided, That the claim investigator shall not file information or documents which have been the subject of a protective order entered under the provisions of subsection (c) of this section.

(c) The claim investigator, while investigating the claim, may require the claimant to supplement the application for an award of compensation with any further information or documentary materials, including any medical report readily available, which may lead to any relevant facts aiding in the determination of whether, and the extent to which, a claimant qualifies for an award of compensation.

The claim investigator, while investigating the claim, may also require law-enforcement officers and prosecuting attorneys employed by the state or any political subdivision thereof, to provide him with reports, information, witness statements or other data gathered in the investigation of the
criminal injuries to that is the basis of any claim to enable him to determine whether, and the extent to which, a claimant qualifies for an award of compensation. The prosecuting attorney and any officer or employee of the prosecuting attorney or of the law-enforcement agency shall be immune from any civil liability that might otherwise be incurred as the result of providing such reports, information, witness statements or other data relating to the criminally injurious conduct to the claim investigator.

Upon motion of any party, court or agency from whom such reports, information, witness statements or other data is sought, and for good cause shown, the court may make any order which justice requires to protect a witness or other person, including, but not limited to, the following: (1) That the reports, information, witness statements or other data not be made available; (2) that the reports, information, witness statements or other data may be made available only on specified terms and conditions, including a designation of time and place; (3) that the reports, information, witness statements or other data may be made available only by a different method than that selected by the claim investigator; (4) that certain matters not be inquired into, or that the scope of the claim investigator’s request be limited to certain matters; (5) that the reports, information, witness statements or other data be examined only by certain persons designated by the court; (6) that the reports, information, witness statements or other data, after being sealed, be opened only by order of the court; (7) that confidential information or the identity of confidential witnesses or informers not be disclosed, or disclosed only in a designated manner.

However, in any case wherein the claim investigator has reason to believe that his investigation may interfere with or jeopardize the investigation of a crime by law-enforcement officers, or the prosecution of a case by prosecuting attorneys, he shall apply to the court of claims, or a judge thereof, for an order granting leave to discontinue his investigation for a reasonable time in order to avoid such interference or jeopardization. When it appears to the satisfaction of the court, or judge, upon application by the claim investigator or in its own discretion, that the investigation of a case by the claim investigator will interfere with or jeopardize the
investigation or prosecution of a crime, the court, or judge, shall issue an order granting the claim investigator leave to discontinue his investigation for such time as the court, or judge, deems reasonable to avoid such interference or jeopardization.

(d) The finding of fact that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

1. Whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred and the exact nature of the conduct;

2. If the criminally injurious conduct was reported to a law-enforcement officer or agency, the date on which the conduct was reported and the name of the person who reported the conduct; or, the reasons why the conduct was not reported to a law-enforcement officer or agency; or, the reasons why the conduct was not reported to a law-enforcement officer or agency within seventy-two hours after the conduct occurred;

3. The exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct;

4. If the claim investigator is recommending that an award be made, a specific itemization of the economic loss that was sustained by the victim, the claimant or a dependent as a result of the criminally injurious conduct;

5. If the claim investigator is recommending that an award be made, a specific itemization of any benefits or advantages that the victim, the claimant or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct;

6. Whether the claimant is the spouse, parent, child, brother or sister of the offender, or is similarly related to an accomplice of the offender who committed the criminally injurious conduct;

7. Any information which might be a basis for a reasonable reduction or denial of a claim because of contributory misconduct of the claimant or of a victim through whom he or she claims;
(8) Any additional information that the claim investigator deems to be relevant to the evaluation of the claim.

(e) The recommendation that is issued by the claim investigator pursuant to subsection (b) of this section shall contain the following:

(1) Whether an award of compensation should be made to the claimant and the amount of the award;

(2) If the claim investigator recommends that an award not be made to the claimant, the reason for his decision.

(f) The claim investigator shall file his finding of fact and recommendation with the clerk within six months after the filing of the application: Provided, That where there is active criminal investigation or prosecution of the person or persons alleged to have committed the criminally injurious conduct which is the basis for the claimant’s claim, the claim investigator shall file his finding of fact and recommendation within six months after the first of any final convictions or other final determinations as to innocence or guilt, or any other final disposition of criminal proceedings. In any case, an additional time period may be provided by order of any court of claims judge or commissioner upon good cause shown.

§14-2A-13. Notice to claimant of claim investigator’s recommendation; evaluation of claim by judge or commissioner.

(a) The clerk of the court of claims, upon receipt of the claim investigator’s finding of fact and recommendation, shall forward a copy of the finding of fact and recommendation to the claimant with a notice informing the claimant that any response, in the form of objections or comments directed to the finding of fact and recommendation, must be filed with the clerk within thirty days of the date of the notice. After the expiration of such thirty-day period, the clerk shall assign the claim to a judge or commissioner of the court.

(b) The judge or commissioner to whom the claim is assigned shall review the finding of fact and recommendation and any response submitted by the claimant and, if deemed appropriate, may request the claim investigator to comment in writing on the claimant’s response. The judge or commissioner shall, within forty-five days after assignment by the
clerk, evaluate the claim without a hearing and either deny the claim or approve an award of compensation to the claimant.

§14-2A-14. Grounds for denial of claim or reduction of award; maximum awards; awards for emotional distress, mental anguish, etc.

(a) Except as provided in subsection (b), section ten of this article, the judge or commissioner shall not approve an award of compensation to a claimant who did not file his application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he is seeking an award of compensation.

(b) An award of compensation shall not be approved if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency within seventy-two hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct within the seventy-two hour period.

(c) The judge or commissioner shall not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his accomplice. Unless a determination is made that the interests of justice require that an award be approved in a particular case, an award of compensation shall not be made to the spouse of, or to a person living in the same household with, the offender or accomplice of the offender, or the parent, child, brother or sister of the offender or his accomplice.

(d) A judge or commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies, or the claim investigator, may deny a claim, reduce an award of compensation and may reconsider a claim already approved.

(e) An award of compensation shall not be approved if the injury occurred while the victim was confined in any state, county or city jail, prison or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing such approval, the
judge or commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the clerk of the court of claims. The judge or commissioner shall reduce an award of compensation or deny a claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if such reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant’s economic loss being recouped by the collateral source: Provided, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g) Except in the case of death, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim shall not exceed twenty thousand dollars in the aggregate. Compensation payable to a victim of criminally injurious conduct which would constitute an offense under the provisions of article eight-b, chapter sixty-one of this code which causes serious permanent injury may include, in addition to economic loss, an amount up to five thousand dollars for emotional distress and pain and suffering. Compensation payable to all claimants because of the death of the victim shall not exceed fifty thousand dollars in the aggregate, but may include, in addition to economic loss, compensation to the claimants specified in paragraph (2), subdivision (a), section three of this article, for sorrow, mental anguish and solace.


(a) If either the claim investigator or the claimant disagrees with the approval of an award or the denial of a claim in the summary manner set forth in the preceding sections of this
article, the claim investigator or the claimant, or both, shall
file with the clerk a request for hearing. Such request shall
be filed within twenty-one days after notification by the judge
or commissioner of his decision.

(b) Upon receipt of a request for hearing, the clerk shall
place the claim upon the regular docket of the court for
hearing, shall advise the attorney general and the claimant of
the receipt of the request and docketing of the claim, and shall
request the attorney general to commence negotiations with
the claimant.

(c) During the period of negotiations and pending hearing,
the attorney general, shall, if possible, reach an agreement with
the claimant regarding the facts upon which the claim is based
so as to avoid the necessity for the introduction of evidence
at the hearing. If the parties are unable to agree upon the facts,
an attempt shall be made to stipulate the questions of fact in
issue.

(d) The hearing held in accordance with this section shall
be before a single judge or commissioner to whom the claim
has not been previously assigned. Hearings before a judge or
commissioner may, in the discretion of such hearing officer,
be held at such locations throughout the state as will facilitate
the appearance of the claimant and witnesses.

(e) The hearing shall be conducted so as to disclose all
material facts and issues. The judge or commissioner may
examine or cross-examine witnesses. The judge or commis-
sioner may call witnesses or require evidence not produced by
the parties; may stipulate the questions to be argued by the
parties; and may continue the hearing until some subsequent
time to permit a more complete presentation of the claim.

(f) After the close of the hearing the judge or commissioner
shall consider the claim and shall conclude his determination,
if possible, within thirty days.

(g) The court shall adopt and may from time to time amend
rules of procedure to govern proceedings before the court in
accordance with the provisions of this article. The rules shall
be designed to assure a simple, expeditious and inexpensive
consideration of claims. The rules shall permit a claimant to
appear in his own behalf or be represented by counsel and
provide for interests of the state to be represented by the attorney general in any hearing under this section at no additional cost to the fund or the state.

Under its rules, the court shall not be bound by the usual common law or statutory rules of evidence. The court may accept and weigh, in accordance with its evidential value, any information that will assist the court in determining the factual basis of a claim.


(a) There is no privilege, except the privilege arising from the attorney-client relationship, as to communications or records that are relevant to the physical, mental or emotional condition of the claimant or victim in a proceeding under this article in which that condition is an element.

(b) If the mental, physical or emotional condition of a victim or claimant is material to a claim for an award of compensation, the court, judge or commissioner may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown and upon notice to the person to be examined and to the claimant and the claim investigator. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person who performs the examination or autopsy to file with the clerk of the court of claims a detailed written report of the examination or autopsy. The report shall set out the findings, including the results of all tests made, diagnosis, prognosis and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the clerk of the court of claims shall furnish him a copy of the report. If the victim is deceased, the clerk of the court of claims, on request, shall furnish the claimant a copy of the report.

(c) The court, or a judge or commissioner thereof, may order law-enforcement officers employed by the state or any political subdivision thereof to provide it or the claim investigator with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and
the extent to which, a claimant qualifies for an award of compensation.

(d) The court, or a judge or commissioner thereof, may require the claimant to supplement the application for an award of compensation with any reasonably available medical or psychological reports relating to the injury for which the award of compensation is claimed.

(e) The court, a judge or commissioner thereof, or the claim investigator, in a claim arising out of a violation of article eight-b, chapter sixty-one of this code, shall not request the victim or the claimant to supply any evidence of specific instances of the victim's activity, or reputation evidence of the victim's sexual activity, unless it involves evidence of the victim's past sexual activity with the offender, and then only to the extent that the court, the judge, the commissioner or the claim investigator finds that the evidence is relevant to a fact at issue in the claim.

(f) Notwithstanding any provision of this code to the contrary relating to the confidentiality of juvenile records, the court of claims, a judge or commissioner thereof, or the claim investigator shall have access to the records of juvenile proceedings which bear upon an application for compensation under this article. The court of claims, a judge or commissioner thereof, and the claim investigator, shall, to the extent possible, maintain the confidentiality of juvenile records.

§14-2A-17. Contempt sanction not available.

If a person refuses to comply with an order under this article, or asserts a privilege, except privileges arising from the attorney-client relationship, so as to withhold or suppress evidence relevant to a claim for an award of compensation, the court, judge or commissioner may make any just order, including denial of the claim, but shall not find the person in contempt. If necessary to carry out any of his powers and duties, the claim investigator may petition the court of claims for an appropriate order, including an order authorizing the investigator to take the depositions of witnesses by oral examination or written interrogatory, but the court of claims shall not find a person in contempt for refusal to submit to a mental or physical examination.
§14-2A-18. Effect of prosecution or conviction of offender.

The court, or a judge or commissioner thereof, may approve an award of compensation whether or not any person is prosecuted or convicted for committing the conduct that is the basis of the award. Proof of conviction of a person whose conduct gave rise to a claim is conclusive evidence that the crime was committed, unless an application for rehearing, an appeal of the conviction or certiorari is pending, or a rehearing or new trial has been ordered.

The court, or a judge or commissioner thereof, shall suspend, upon a request of the claim investigator, the proceedings in any claim for an award of compensation pending disposition of a criminal prosecution that has been commenced or is imminent.


(a) As part of an order, the court, or a judge or commissioner thereof, shall determine and award reasonable attorney's fees, commensurate with services rendered, and reimbursement for reasonable and necessary expenses actually incurred, to be paid from the crime victims compensation fund to the attorney representing a claimant in a proceeding under this article. Attorney's fees and reimbursement may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees and reimbursement shall be in addition to awards of compensation, and attorney's fees and reimbursement may be awarded whether or not an award of compensation is approved. An attorney shall not contract for or receive any larger sum than the amount allowed under this section.

(b) Each witness called by the court to appear in a hearing on a claim for an award of compensation shall receive compensation and expenses in an amount equal to that received by witnesses in civil cases as provided in section sixteen, article one, chapter fifty-nine of this code to be paid from the crime victims compensation fund.


(a) The clerk shall certify to the department of finance and administration, on or before the twentieth day of November of each year, a list of all claims pursuant to this article for
which the court has made a final determination and approved an award since the last such certificate.

(b) The governor shall include in his proposed budget bill and revenue estimates:

(1) An estimate of the balance and receipts anticipated in the crime victims compensation fund,

(2) An itemized report of the approved awards recommended by the court to the Legislature,

(3) Such recommendations to the Legislature for appropriations from the crime victims compensation fund as he may deem appropriate for the payment of fees, costs and expenses incurred, due or payable at any time from such fund, and

(4) Such recommendations to the Legislature for appropriations for the payment of claims arising under this article, whether accrued and determined by the court and included in the itemization of awards mentioned in this section or arising during the ensuing fiscal year.

(c) The Legislature shall, by general law, provide for the authorization to pay the itemized awards arising under this article or so much thereof as may be deemed appropriate or for awards arising during the ensuing fiscal year and provide by appropriation from the crime victims compensation fund for the payment of such awards authorized and for the payment of fees, costs and expenses as from time to time may be appropriate. The clerk shall certify each authorized award and the amount thereof and make requisition upon the crime victims compensation fund relating thereto to the auditor. The auditor shall issue his warrant to the treasurer without further examination or review of the claim except for the question of a sufficient unexpended balance in the appropriation.


The court of claims shall prepare and transmit annually to the governor and the Legislature a report of the activities of the court of claims under this article. The report shall include the number of claims filed, the number of awards made and the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the crime victims compensation fund with a listing by source and amount of the

If an award of compensation is made under the provisions of this article and is not reduced on account of the availability of payment by a collateral source, the state, upon the payment of the award or a part of the award, shall be subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of compensation was made from such source if it were a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of compensation. The claimant may join with the attorney general as co-plaintiff in any action against the offender. All moneys that are collected by the state pursuant to its rights of subrogation as provided in this section shall be deposited in the crime victims compensation fund.


Subrogation rights which a collateral source may have shall not extend to a recovery from a claimant of all or any part of an award made under this article. A collateral source may not apply, in the name of a claimant or otherwise, for an award of compensation based upon injury to a claimant to whose rights the collateral source may be subrogated.

§14-2A-24. Award not subject to execution or attachment; exceptions.

An award is not subject to execution, attachment, garnishment or other process, except that, upon receipt of an award by a claimant, the part of the award that is for allowable expense is not exempt from such action by a creditor to the extent that he provides products, services or accommodations the costs of which are included in the award and the part of the award that is for work loss shall not be exempt from such action to secure payment of alimony, maintenance or child support.

(a) The clerk of the court of claims shall prepare an information brochure for the benefit of the general public, outlining the rights of claimants and procedures to be followed under this article. Copies of such brochure shall be distributed to law-enforcement agencies in the state, and be made available to other interested persons.

(b) Any law-enforcement agency that investigates an offense committed in this state involving personal injury shall make reasonable efforts to provide information to the victim of the offense and his dependents concerning the availability of an award of compensation and advise such persons that an application for an award of compensation may be obtained from the clerk of the court of claims.


The court of claims may promulgate rules and regulations to implement the provisions of this article.


The provisions of this article shall not apply to any injury or death resulting from criminally injurious conduct which occurred on or before the thirty-first day of December, one thousand nine hundred eighty-one.


Amendments made to the provisions of this article during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to all cases pending before the court of claims on the effective date of the act of the Legislature which effects such amendment.

CHAPTER 53
(Com. Sub. for S. B. 43—By Senator Holliday)

[Passed March 18, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-
one, as amended, by adding thereto two new sections, designated sections one-a and three, relating to sentencing alternatives; required findings; custody of sheriff; costs of confinement; continuing jurisdiction; attestation by physician of health status; personnel status; and limitation on liability of public officials and county and community service work agencies.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.


(a) Any person who has been convicted in a court of record under any criminal provision of this code of a misdemeanor or felony, which may be punishable by confinement in the county jail, may, in the discretion of the sentencing judge, as an alternative to the sentence imposed by statute for such crime, be sentenced under one of the following programs:

(1) The weekend jail program under which persons would be required to spend weekends or other days normally off from work, in jail;

(2) The work program under which sentenced persons would be required to spend the first two or more days of their sentence in jail and then, in the discretion of the judge, would be assigned to a county agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, roads, including orphaned roads used by the general public, and public works within the county. Eight hours of such labor shall be credited as one day of the sentence imposed. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes; or
(3) The community service program under which persons sentenced would spend no time in jail but would be sentenced to a number of hours or days of community service work with tax supported agencies. Eight hours of service work shall be credited as one day of the sentence imposed. Persons sentenced under this program may be required to provide their own transportation to and from the work site, lunch and work clothes.

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

(2) The person sentenced is not a habitual criminal within the meaning of sections eighteen and nineteen, article eleven, chapter sixty-one of this code;

(3) That adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff; and

(4) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) Persons sentenced under the provisions of this article shall remain under the administrative custody and supervision of the court's probation officers or the county sheriff.

(e) Persons sentenced under the provisions of this section may be required to pay the costs of their confinement, including meal costs, at the discretion of the court.

(f) Persons sentenced under the provisions of this section remain under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that
62 the remainder of the sentence be served in the county jail: *Provided*, That no alternative sentence directed by the sentencing judge or administered under the supervision of the sheriff, his deputies, a jailer or a guard, shall require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested by a physician.


1 (a) No person sentenced under any provision of this article shall be regarded as an employee of the sheriff, county commission or the county or community service work agency to which the person sentenced is assigned for any purpose, including, but not limited to, workers' compensation, civil service, unemployment compensation, public employees insurance or public employees retirement.

2 (b) Neither the sheriff, the county commission or community service agency to which the person is assigned shall be liable for injury or damage to third parties intentionally committed by the person so sentenced or for any action on behalf of the person so sentenced except in the case of gross negligence on the part of the sheriff, county commission or community service agency or the supervisor of the person so sentenced: *Provided*, That nothing herein shall bar a claim by a third party for injury or damage resulting from the negligent act of the person so sentenced committed outside the confines of a county jail and within the scope of the work required by the alternative sentence.

CHAPTER 54

(Com. Sub. for S. B. 59—By Senators Rogers and Tucker)

[Passed April 2, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter thirty-eight of the code of West Virginia, one thou-
sand nine hundred thirty-one, as amended, relating to property sold under a deed of trust; notification of subordinate lienholders.

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.

1 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 two thousand dollars, the trustee shall publish a notice of a trustee's 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 is of less value than two thousand 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 is to be sold, and at three other public places in the county, one of which shall be as near as practicable to the premises to be sold if the sale is of real estate. In all cases, whether the notice is 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 are 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; and shall be served by certified mail, at least twenty days prior to the sale, upon any subordinate lienholder who has previously notified the primary lienholder by certified mail of the existence of a subordinate lien: Provided, That notice need not be given to a subordinate lienholder for sales for which notice has been posted or published prior to the effective date of
this section. 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, however, That except as expressly provided in this section, no trust deed shall waive the requirements of publication of notice as required by this section. Notice to a subordinate lienholder shall be complete when such notice is mailed in accordance with the provisions of this section, directed to the address of the subordinate lienholder as provided by such subordinate lienholder in the notice of existence of a subordinate lien.

An individual who purchases property at a trustee’s sale is under no duty to ascertain whether notice was given to subordinate lienholders in accordance with the provisions of this section, and such right, title and interest as the purchaser may acquire shall not be affected by defects in such notice or the service thereof, if the purchaser is otherwise a bona fide purchaser for value.

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CHAPTER 55
(Com. Sub. for H. B. 1652—By Delegate Underwood)

[Passed April 10, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right to sue for a divorce; residency requirements.

Be it enacted by the Legislature of West Virginia:

That section seven, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:
ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-7. Right to sue for divorce.
1 No action for divorce shall be maintainable:
2 (a) If the cause for divorce is adultery, whether the cause
3 of action arose in or out of this state, unless one of the parties,
4 at the commencement of the action, is a bona fide resident
5 of this state. In such case if the defendant is a nonresident
6 of this state and cannot be personally served with process
7 within this state, such action shall not be maintainable unless
8 the plaintiff has been an actual bona fide resident of this state
9 for at least one year next preceding the commencement of the
10 action; or
11 (b) If the cause for divorce is other than adultery, unless
12 one of the parties was, at the time the cause of action arose,
13 or has since that time become, an actual bona fide resident
14 of this state and has continued so to be for at least one year
15 next preceding the commencement of the action: Provided,
16 That if the marriage sought to be dissolved was entered into
17 within this state, the action shall be maintainable if one of the
18 parties is an actual bona fide resident of this state at the time
19 of commencement of the action, without regard to the length
20 of time residency has continued.

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CHAPTER 56
(H. B. 1286—By Delegates Shaffer and Shepherd)

[Passed March 4, 1985; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty-nine, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the advertising of an offer to obtain divorces.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§1. Repeal of section relating to prohibiting the advertising of any offer to obtain divorces.
1 Section twenty-nine, article two, chapter forty-eight of the
2 code of West Virginia, one thousand nine hundred thirty-one,
3 as amended, is hereby repealed.
CHAPTER 57
(H. B. 2089—By Delegate Pino and Delegate Yanni)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, section four, article five, and sections five, six, eight and ten, article nine-a, all of chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections two, three, four, five, five-c and eight-a, article four, chapter eighteen-a of said code, all relating to public school support generally; increasing compensation of county board and state board of education members; changing from ten to twenty percent the limitation on the increase in the number of service personnel; providing for such limitation in the years succeeding any year in which a county has fewer than thirty-four service personnel per one thousand students; changing that part of the foundation allowance for fixed charges which related to unemployment contribution to a multiplier of three and two-tenths percent; providing for a foundation allowance for administrative cost for distribution to regional educational service agencies in accordance with regulations of the state board; guaranteeing one hundred thousand dollars to each county from the foundation allowance to improve instructional programs prior to allocation in accordance with basic resources per pupil; increasing moneys allocated to professional educators and service personnel by approximately five percent to be paid in accordance with article nine-a, chapter eighteen of this code; providing additional moneys to classroom teachers with more than twenty years of teaching experience; increasing the increment rate for principals and assistant principals; providing for advanced salary classification for certain teachers having specialized training; providing for equity allocations based on county supplements in effect on the first day of January, one thousand nine hundred eighty-four, and providing certain exceptions thereto; requiring that the first ten million dollars of surplus revenue for the current fiscal year be appropriated and expended for salary equity; increasing the years of employment on the service personnel pay scale from
twenty to twenty-five years; and prohibiting changes in the
schedules of service personnel in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

Article
2. State Board of Education.
5. County Board of Education.
9A. Public School Support.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-3. Meetings; compensation and expenses of members.

1 The state board shall hold at least six meetings in every year
2 at such times and places as it may prescribe. It may meet at
3 such other times as may be necessary, such meetings to be held
4 upon its own resolution or at the call of the president of the
5 state board. The members of the state board, other than the
6 ex officio members of the board, shall be paid one hundred
7 dollars per diem each day or any part thereof spent in the
8 performance of their duties under this article, and shall be
9 reimbursed for all reasonable and necessary expenses actually
10 incurred incident to the performance of their duties. The state
11 superintendent of schools and the chancellor of the board of
12 regents shall be reimbursed for such expenses, but shall not
13 receive a per diem allowance. Upon presentation of itemized
14 sworn statements, the per diem and reimbursement payments
15 shall be made from appropriations made by the Legislature
16 to the state board.
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

The board shall meet on the first Monday of January, except that in the year one thousand nine hundred eighty-two, and every year thereafter, the board shall meet on the first Monday of July, and upon the dates provided by law for the laying of levies, and at such other times as the board may fix upon its records. At any meeting as authorized above and in compliance with the provisions of article four of this chapter, the board may employ such qualified teachers, or those who will qualify by the time of entering upon their duties, necessary to fill existing or anticipated vacancies for the current or next ensuing school year. At a meeting of the board, on or before the first Monday of May, the superintendent shall furnish in writing to the board a list of those teachers to be considered for transfer and subsequent assignment for the next ensuing school year; all other teachers not so listed shall be considered as reassigned to the positions held at the time of this meeting. Such list of those recommended for transfer shall be included in the minute record and the teachers so listed shall be notified in writing, which notice shall be delivered in writing, by certified mail, return receipt requested, to such teachers' last-known addresses within ten days following said board meeting, of their having been so recommended for transfer and subsequent assignment.

Special meetings may be called by the president or any three members, but no business shall be transacted other than that designated in the call.

In addition, a public hearing shall be held concerning the preliminary operating budget for the next fiscal year not less than ten days after such budget has been made available to the public for inspection and within a reasonable time prior to the submission of said budget to the West Virginia board of education for approval and at such hearing reasonable time shall be granted to any person or persons who wish to speak regarding parts or all of such budget. Notice of such hearing shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code.
A majority of the members shall constitute the quorum necessary for the transaction of official business.

Board members may receive compensation at a rate not to exceed eighty dollars per meeting attended. But they shall not receive pay for more than fifty-two meetings in any one fiscal year.

Members shall also be paid, upon the presentation of an itemized sworn statement, for all necessary traveling expenses, including all authorized meetings, incurred on official business, at the order of the board.

When, by a majority vote of its members, a county board of education deems it a matter of public interest, such board may join the West Virginia school board association and the national school board association, and may pay such dues as may be prescribed by said associations and approved by action of the respective county boards. Membership dues and actual traveling expenses of board members for attending meetings of the West Virginia school board association may be paid by their respective county boards of education out of funds available to meet actual expenses of the members, but no allowance shall be made except upon sworn itemized statements.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5. Foundation allowance for service personnel.

§18-9A-6. Foundation allowance for fixed charges.


§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-5. Foundation allowance for service personnel.

1 The basic foundation allowance to the county for service personnel shall be the amount of money required to pay the annual state minimum salaries in accordance with the provisions of article four, chapter eighteen-a of the code, to such service personnel employed: Provided, That no county shall receive an allowance for an amount in excess of thirty-four service personnel per one thousand students in adjusted enrollment; for any county which has in excess of thirty-four service personnel per one thousand students in adjusted enrollment, such allowance shall be computed based upon the
average state minimum pay scale salary of all service personnel
in such county: Provided, however, That for any county
having fewer than thirty-four service personnel per one
thousand students in adjusted enrollment, in any one year, the
number of service personnel used in making this computation
may be increased the succeeding years by no more than twenty
percent per year of its total potential increase under this
provision, except that in no case shall such limit be fewer than
two service personnel until the county attains the maximum
ratio set forth: Provided further, That where two or more
counties join together in support of a vocational or compre-
hensive high school or any other program or service, the
service personnel for such school or program may be prorated
among the participating counties on the basis of each one's
enrollment therein and that such personnel shall be considered
within the above-stated limit.

§18-9A-6. Foundation allowance for fixed charges.

The total allowance for fixed charges shall be the sum of
the following:

1. The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
the current social security rate of contribution; plus

2. The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
three and two-tenths percent; plus

3. The sum of the foundation allowance for professional
educators and the foundation allowance for other personnel,
as determined in sections four and five above, multiplied by
the rate which is derived by dividing the total contributions
for workers’ compensation for professional educators and
other personnel by the total of the state minimum salaries. The
computation of this rate shall be determined by using data of
the most recent year for which available.


The allowance for administrative cost shall be equal to
ninety-five one hundredths of one percent of the allocation for
professional educators, as determined in section four of this article.

Distribution of the computed allowance shall be made as follows:

(1) Seven tenths of the allowance shall be distributed to the counties in equal amounts; and

(2) Twenty-five one hundredths of the allowance shall be distributed to the regional education service agencies in accordance with rules and regulations adopted by the state board. The allowance for regional education service agencies shall be excluded from the computation of total basic state aid as provided for in section twelve of this article.

§18-9A-10. Foundation allowance to improve instructional programs.

(a) Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-five, and thereafter, funds which accrue from allocations due to increase in total local share above that computed for the school year beginning on the first day of July, one thousand nine hundred eighty-one, from balances in the general school fund, or from appropriations for such purpose shall be allocated to increase state support of counties as follows:

(1) Twenty percent of these funds shall be allocated to the counties proportional to adjusted enrollment, and

(2) Each county whose allocation in subsection (1) is less than one hundred thousand dollars in any fiscal year shall then receive an amount which equals the difference between such amount received and one hundred thousand dollars.

(b) The remainder of these funds shall be allocated according to the following plan for progress toward basic resources per pupil equity:

Beginning with the county which has the lowest basic resources per pupil and progressing through the counties successively to and beyond the county with the highest basic resources per pupil, the funds available shall be allocated in amounts necessary to increase moneys available to the county or counties to the basic resources per pupil level, as nearly as is possible, of the county having the next higher basic resources per pupil: Provided, That to be eligible for its
allocation under this section, a county board shall lay the
maximum regular tax rates set out in section six-c, article
eight, chapter eleven of this code: Provided, however. That
moneys allocated by provision of this section shall be used to
improve instructional programs according to a plan for
instructional improvement which the affected county board
shall file with the state board by the first day of August of
each year, to be approved by the state board by the first day
of September of that year if such plan substantially complies
with standards to be adopted by the state board: Provided
further, That no part of this allocation may be used to employ
professional educators in counties until and unless all
applicable provisions of sections four and fourteen of this
article have been fully utilized. Such instructional improve-
ment plan shall be made available for distribution to the public
at the office of each affected county board.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.
§18A-4-3. State minimum annual salary increments for principals and assistant
principals.
§18A-4-4. Minimum salary schedule for teachers having specialized training.
§18A-4-5. Salary equity among the counties; state salary supplemen.
§18A-4-5c. Equity appropriation from surplus revenues.
§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

STATE MINIMUM SALARY SCHEDULE

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On and after the first day of July, one thousand nine hundred eighty-five, each teacher shall receive the amount prescribed in the "state minimum salary schedule" as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

On and after the first day of July, one thousand nine hundred eighty-five, six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. Such payments shall be in addition to any amounts prescribed in the "state minimum salary schedule," shall be paid in equal monthly installments, and shall be deemed a part of the state minimum salaries for teachers.

§18A-4-3. State minimum annual salary increments for principals and assistant principals.

In addition to any salary increments for principals and assistant principals, in effect on the first day of January, one thousand nine hundred eighty-five, and paid from local funds, and in addition to the county schedule in effect for teachers, the county board shall pay each principal a principal's salary increment and each assistant principal an assistant principal's salary increment as prescribed by this section commencing on the first day of July, one thousand nine hundred eighty-five, from state funds appropriated therefor.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code.

The salary increment herein for each principal shall be
determined by multiplying the basic salary for teachers in accordance with the classification of certification and of training of said principal as prescribed in this article, by the appropriate percentage rate prescribed herein according to the number of teachers supervised.

STATE MINIMUM SALARY INCREMENT RATES FOR PRINCIPALS

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<td>58 and up</td>
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The salary increment herein for each assistant principal shall be determined in the same manner as that for principals, utilizing the number of teachers supervised by the principal under whose direction the assistant principal works, except that the percentage rate shall be fifty percent of the rate prescribed for said principal.

Salaries for employment beyond the minimum employment term shall be at the same daily rate as the salaries for the minimum employment terms.

For the purpose of determining the number of teachers supervised by a principal, the county board shall use data for the second school month of the prior school term and the number of teachers shall be interpreted to mean the total number of professional educators assigned to each school on a full-time equivalency basis: Provided, That due to a change in circumstances because of consolidation or catastrophe, the county board of education shall determine what is a reasonable number of supervised teachers in order to establish the appropriate increment percentage rate.

No county shall reduce local funds allocated for salary increments for principals and assistant principals in effect on the first day of January, one thousand nine hundred eighty-
five, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

Nothing herein shall prevent a county board from providing, in a uniform manner, salary increments greater than those required by this section.

§18A-4-4. Minimum salary schedule for teachers having specialized training.

The state board of education shall establish the minimum salary schedule for teachers where specialized training may be required for vocational, technical and adult education, and such other permits as may be authorized by said board.

On and after the first day of July, one thousand nine hundred eighty-five, vocational industrial, technical, occupational home economics and health occupations teachers who do not hold professional certificates, but who are paid a salary equivalent to the amount prescribed for “A.B. + 15” training classification in the state minimum salary schedule for teachers under section two of this article, shall, upon application therefor, receive advanced salary classification and be entitled to increased compensation on and after such date in respect to and based upon additional semester hours, approved by the state board of education and completed either prior to or subsequent to such date. All such hours earned must be from a regionally accredited institution of higher education.

The advanced salary classification shall be as follows:

(1) Those who have earned fifteen such additional semester hours shall receive an amount equal to that prescribed for the “M.A.” training classification under section two of this article.

(2) Those who have earned thirty such additional semester hours shall receive an amount equal to that prescribed for the “M.A. + 15” training classification under section two of this article.

(3) Those who have earned forty-five such additional
semester hours shall receive an amount equal to that prescribed for the "M.A. + 30" training classification under section two of this article.

Any such teacher who has earned or earns a bachelor's degree prior or subsequent to the effective date aforesaid shall be entitled to receive the amount prescribed for the "M.A. + 30" training classification on and after the first day of July, one thousand nine hundred eighty-five.

No teacher holding a valid professional certificate shall have his salary reduced as a result of being assigned out of his teaching field by the superintendent, with the approval of the county board, under any authorization or regulation of the state board.

§18A-4-5. Salary equity among the counties; state salary supplement.

To assist the state in meeting its objective of salary equity among the counties, on and after the first day of July, one thousand nine hundred eighty-four, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive a supplemental amount in addition to the amount from the state minimum salary schedules provided for in this article.

State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four and five, article nine-a, chapter eighteen of this code: Provided, That in making such division an adequate amount of state equity funds shall be reserved to finance the appropriate foundation allowances and staffing incentives provided for in said article nine-a.

Pursuant to this section, each teacher and school service personnel shall receive the amount that is the difference between their authorized state minimum salary and ninety-five percent of the maximum salary schedules prescribed in sections...
Provided, That no amount received pursuant to this section shall be decreased as a result of any county supplement increase instituted after the first day of January, one thousand nine hundred eighty-four, unless and until the objective of salary equity is reached: Provided, however, That, in the event any county reduces funds allocated for salary supplements as provided for in sections five-a and five-b of this article, the amount received for equity pursuant to this section, if any, shall continue to be reduced by any amount provided by the county as a salary supplement in effect on the first day of January, one thousand nine hundred eighty-four, if any, unless and until the objective of salary equity among the counties having no such reduction is reached pursuant to this section: Provided further, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose.

No county may reduce any salary supplement that was in effect on the first day of January, one thousand nine hundred eighty-four, except as permitted by sections five-a and five-b of this article.

§18A-4-5c. Equity appropriation from surplus revenues.

The first ten million dollars of surplus funds from the state fund, general revenue, that have accrued as of the thirtieth day of June, one thousand nine hundred eighty-five, shall be appropriated and shall be expended during fiscal year one thousand nine hundred eighty-five—eighty-six, in accordance with section five of this article, subject to the terms and conditions set forth in this section and in said section five.

In the event that the surplus revenues as of the thirtieth day of June, one thousand nine hundred eighty-five, are not sufficient to meet all of the appropriation mandated by this section, then the appropriation shall be available only to the extent of the total actual surplus accrued as of said date.
§18A-4-8a. Service personnel minimum monthly salaries.

STATE MINIMUM PAY SCALE PAY GRADE

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| Accountant III     | F  |
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| Aide II             | B  |
| Aide III            | C  |
| Aide IV             | D  |
| Audiovisual Technician | C |
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<td>50</td>
<td>Computer Operator</td>
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<td>51</td>
<td>Cook I</td>
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<td>Cook III</td>
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<td>54</td>
<td>Crew Leader</td>
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<td>Custodian I</td>
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<td>Custodian III</td>
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<td>58</td>
<td>Custodian IV</td>
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<td>59</td>
<td>Director or Coordinator of Services</td>
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<td>Draftsman</td>
<td>D</td>
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<td>Electrician I</td>
<td>F</td>
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<td>Electrician II</td>
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<td>63</td>
<td>Electronic Technician I</td>
<td>F</td>
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<td>64</td>
<td>Electronic Technician II</td>
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<td>Executive Secretary</td>
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<td>Food Services Supervisor</td>
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<td>67</td>
<td>Foreman</td>
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<td>71</td>
<td>Groundsman</td>
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<td>72</td>
<td>Handyman</td>
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<tr>
<td>73</td>
<td>Heating and Air Conditioning Mechanic I</td>
<td>E</td>
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<tr>
<td>74</td>
<td>Heating and Air Conditioning Mechanic II</td>
<td>G</td>
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<td>75</td>
<td>Heavy Equipment Operator</td>
<td>E</td>
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<td>76</td>
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<td>D</td>
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<td>Key Punch Operator</td>
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<td>Locksmith</td>
<td>G</td>
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<td>79</td>
<td>Lubrication Man</td>
<td>C</td>
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<td>80</td>
<td>Machinist</td>
<td>F</td>
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<td>81</td>
<td>Mail Clerk</td>
<td>D</td>
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<tr>
<td>82</td>
<td>Maintenance Clerk</td>
<td>C</td>
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On and after the first day of July, one thousand nine hundred eighty-five, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the "state minimum pay scale" as set forth in this section, and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one half the amount indicated in the "state minimum pay scale" set forth in this section.

Any service employee required to work on any legal school holiday shall be paid at a rate one and one-half times his usual hourly rate.

No service employee shall have his daily work schedule changed during the school year without his written consent, and his required daily work hours shall not be changed to prevent the payment of time and one-half wages or the employment of another employee.
AN ACT to repeal section twelve, article two, and section five-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-five-a, relating to higher education and sabbatical leave; reducing years of service required upon return; and providing for reinstatement.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, and section five-a, article eleven, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-five-a, to read as follows:

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-25a. Authority to grant sabbatical leaves.

1 The West Virginia board of regents shall have authority
to grant sabbatical leaves to faculty members at the edu-
cational institutions under its control for the purpose
of permitting them to engage in graduate study, research
or other activities calculated to improve their teaching
ability. Such leaves shall be granted only in accordance
with a uniform plan adopted by the board and shall be
subject to such reasonable rules and regulations as the
board may prescribe. Any plan adopted by the board
shall not provide for the granting of sabbatical leave to
any faculty member who has served fewer than six
years at the institution where presently employed, nor
shall such leave be for more than one half the contract
period at full pay or a full contract period at half pay. Any
faculty member receiving a sabbatical leave shall be
required to return and serve for at least one year at the
institution from which he was granted the leave or to repay to the institution the compensation received by him during his leave. Any faculty member returning from leave shall be reinstated at the academic rank held prior to such sabbatical unless promoted to a higher rank and shall be entitled to such salary and any increases thereto appropriate to the rank and years of experience of such faculty member. Compensation to a faculty member on sabbatical leave shall be paid from the regular personal services appropriations of the institution where employed.

CHAPTER 59
(Com. Sub. for H. B. 1025—By Delegate Prunty)

[Passed April 9, 1985; 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; and to amend and reenact section two, article twenty of said chapter, all relating to teacher aides employed to assist in teaching exceptional children; requiring such aides to complete a course of training in education of exceptional children prior to assuming such duties; requiring the training to occur during normal working hours; and providing that opportunity for such training be provided by county boards prior to filling of vacancies in accordance with rules and regulations of the state board of education.

Be it enacted by the Legislature of West Virginia:

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

Article

5. County Board of Education.
20. Education of Exceptional Children.
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 April, 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, however, 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 further, 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 (8) of this section;

(7) To lease school buses operated only by drivers regularly employed by the board to public and private nonprofit organizations or private corporations to transport school-age children to and from camps or educational activities in accordance with rules and regulations established by the board. All costs and expenses incurred by or incidental to the transportation of such children shall be borne by the lessee;

(8) 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;

(9) 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;

(10) To employ teacher aides, to provide in-service training
for teacher aides, the training to be in accordance with rules
and regulations of the state board and, in the case of service
personnel assuming duties as teacher aides in exceptional
children's programs, to provide a four-clock-hour program of
training prior to such assignment which shall, in accordance
with rules and regulations of the state board, consist of
training in areas specifically related to the education of
exceptional children;

(11) 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;

(12) To employ legal counsel;

(13) To provide appropriate uniforms for school service
personnel;

(14) To provide at public expense and under regulations as
established by any county board of education for the payment
of traveling expenses incurred by any person invited to appear
to be interviewed concerning possible employment by such
county board of education;

(15) To allow or disallow their designated employees to use
publicly provided carriage to travel from their residences to
their workplace and return: Provided, That such usage is
subject to the supervision of such board and is directly
connected with and required by the nature and in the
performance of such employee's duties and responsibilities;
and

(16) 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 curricular 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.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.
§18-20-2. Providing suitable educational facilities, equipment and services.

The board of education of each county is empowered and is responsible for providing suitable educational facilities, special equipment and such special services as may be necessary. Special services include provisions and procedures for finding and enumerating exceptional children of each type, diagnosis by appropriate specialists who will certify the child's need and eligibility for special education and make recommendations for such treatment and prosthesis as may alleviate his disability, special teaching by qualified and especially trained teachers, transportation, lunches and remedial therapeutic services. Qualifications of teachers and therapists shall be in accordance with standards prescribed or approved by the state board of education.

Counties may provide for educating their resident exceptional children by contracting with other counties or other educational agencies which maintain such special education
facilities. Fiscal matters will follow policies approved by the state board of education.

Any teacher aide employed to assist teachers in providing services to exceptional children under this article shall, prior to assuming such duties, complete a four-clock-hour course of training in areas specifically related to the education of exceptional children, to be provided by the county in accordance with rules and regulations of the state board of education. Such training shall occur during normal working hours and an opportunity to be trained shall be provided such employee prior to the filling of a vacancy in accordance with the provisions of section eight-b, article four, chapter eighteen-a of this code.

CHAPTER 60
(Com. Sub. for H. B. 1968—By Delegate Leary)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to school closing or consolidation; requiring that written reasons therefor be available for public inspection; requiring and providing for public hearings and notice thereof; requiring that such closing or consolidation be in accordance with current rules and regulations of the state board; providing for requirements as to subsequent rules and regulations; providing for an immediate effective date to affect any school not physically closed or consolidated prior thereto; and providing for compliance with this section by counties affected by such effective date.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section thirteen-a, to read as follows:
§18-5-13a. School closing or consolidation.

In addition to the provisions of section thirteen of this article, prior to any final decision of a county board of education on any proposal to close or consolidate any school, the county board of education shall:

1. Prepare and reduce to writing its reasons and supporting data regarding such school closing or consolidation. The written reasons required under this section shall be available for public inspection in the office of the county school superintendent during the four successive weeks before the date of the public hearing required by this section; and

2. Provide for a public hearing, notice of which shall be advertised by publication in a newspaper of general circulation in the locality of the affected school at least once a week for four successive weeks prior to the date of the hearing. The notice shall contain the time and place of the hearing and the proposed action of the school board. A copy of such notice shall be posted at the affected school in conspicuous working places for all professional and service personnel to observe, and such notice shall remain posted for four successive weeks prior to the date of the required public hearing. At least a quorum of the school board members and the county superintendent from the county wherein the affected school is located shall attend and be present at the public hearing. Members of the public shall have the right to be present, to submit statements and testimony, and to question county school officials at the public hearing.

Any such proposal to close or consolidate any school by any county board of education shall be further subject to any current rules and regulations of the state board of education relating to school closing or consolidation: Provided, That after the effective date of this section the state board shall promulgate rules and regulations which shall prescribe in detail the type of supporting data a county board of education shall include as part of its written statement of reasons required by this section for school closing or consolidation, and which shall include any data required by the state board of education to amend a county's comprehensive educational facilities plan.
This section shall take effect on the date of passage and shall affect any school not physically closed or consolidated as of that date: Provided, That as to any school closing or consolidation proceeding pursuant to a decision adopted prior to the effective date of this section, county boards of education shall have until the first day of July, one thousand nine hundred eighty-five, to comply with the provisions of this section and the provisions of section thirteen of this article relating to school closing or consolidation: Provided, however, That the written reasons shall include all supporting data required by the state board of education to amend a county’s comprehensive educational facilities plan.

CHAPTER 61

(Com. Sub. for H. B. 1437—By Delegate Hamilton and Delegate Louisos)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the transfer of pupils from one school district to another; requiring official board action prior to such transfer; and providing for the mandatory transfer of pupils in certain instances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.

Whenever, in the opinion of the board of education of any county, the education and welfare of a pupil will be enhanced, the board of education of such county shall have the authority
to transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: Provided, That the boards of education of both the transferor and the transferee districts agree to the same by official action of both boards as reflected in the minutes of their respective meetings.

Any pupil attending a school in a district of this state adjacent to the district of residence during the school year one thousand nine hundred eighty-four—eighty-five, is authorized to continue such attendance in the adjacent district, and, upon written request therefor by the parent or guardian, any person who is entitled to attend the public schools of this state and who resides in the same household and is a member of the immediate family of such pupil is authorized to enroll in such adjacent district. The transferor and transferee school districts shall effectuate any transfer herein authorized in accordance with the provisions of this section.

Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of education of the school district in which the pupil is a bona fide resident shall pay to the board of education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

For purposes of net enrollment as defined in section two, article nine-a of this chapter: (1) Whenever a pupil is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the pupil is transferred shall include such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from one school district to another school district pursuant to the provisions of this section, the county in which the student is a bona fide resident shall count the pupil in its net enrollment.
CHAPTER 62

(S. B. 253—By Senator White)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to exempting classrooms used for instruction in choral, band or orchestra music from the maximum teacher-pupil ratio.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.


1 County boards of education shall provide, by the school year one thousand nine hundred eighty-three-eighty-four, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each first and second grade classroom, or classrooms having two or more grades that include either the first or second grades, shall not have more than twenty-five pupils for each teacher of the grade or grades and shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefor by a county board of education.

2 County boards of education shall provide by the school year one thousand nine hundred eighty-four-eighty-five, and continue thereafter, sufficient personnel, equipment and facilities as will ensure that each third, fourth, fifth and sixth grade classroom, or classrooms having two or more grades that include one or more of the third, fourth, fifth and sixth grades, shall not have more than twenty pupils for each kindergarten teacher per session, unless the state superintendent has excepted a specific classroom upon application therefor by a county board of education.

3 Beginning with the school year one thousand nine hundred eighty-six—eighty-seven, and thereafter, no county shall maintain a greater number of classrooms
having two or more grades that include one or more of the
grade levels referred to in this section than were in
existence in said county as of the first day of January, one
thousand nine hundred eighty-three: Provided, That for the
prior school years, and only if there is insufficient
classroom space available in the school or county, a county
may maintain one hundred ten percent of such number of
classrooms.

During the school year one thousand nine hundred
eighty-four—eighty-five, and thereafter, the state
superintendent is authorized, consistent with sound
educational policy, (a) to permit on a statewide basis in
grades four through six, more than twenty-five pupils per
teacher in a classroom for the purposes of instruction in
physical education, and (b) to permit more than twenty
pupils per teacher in a specific kindergarten classroom and
twenty-five pupils per teacher in a specific classroom in
grades one through six during a school year in the event of
extraordinary circumstances as determined by the state
superintendent after application by a county board of
education.

The state board of education shall establish guidelines for
the exceptions authorized in this section, but in no event
shall the superintendent except classrooms having more
than three pupils above the teacher-pupil ratio as set forth
in this section.

No provision of this section is intended to limit the
number of pupils per teacher in a classroom for the purpose
of instruction in choral, band or orchestra music.

CHAPTER 63
(Com. Sub. for H. B. 1283—By Delegate Murphy and Delegate Rogers)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eighteen of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section eighteen-
b, relating to requiring county boards of education to provide
for school counselors in public schools; defining school

counselor; requiring county boards of education to develop

comprehensive school drop-out prevention programs; and

requiring or authorizing certain activities of such counselor.

Be it enacted by the Legislature of West Virginia:

That article five, chapter eighteen of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be amended by

adding thereto a new section, designated section eighteen-b, to read

as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18b. School counselors in public schools.

1 A school counselor means a professional educator who

2 holds a valid school counselor's certificate in accordance with

3 article three of chapter eighteen-a of this code.

4 Each county board of education, by the school year one

5 thousand nine hundred eighty-seven—eighty-eight, shall

6 provide counseling services for each pupil enrolled in the

7 public schools of the county.

8 The school counselor shall work with individual pupils and

9 groups of pupils in providing developmental, preventive and

10 remedial guidance and counseling programs to meet academic,

11 social, emotional and physical needs; including programs to

12 identify and address the problem of potential school dropouts.

13 The school counselor may also provide consultant services for

14 parents, teachers and administrators and may use outside

15 referral services when appropriate if no additional cost is

16 incurred by the county board.

17 The state board may adopt rules and regulations regarding

18 the activities of the school counselor, and the school counselor

19 is authorized to perform such services as are not inconsistent

20 therewith. Each county board of education shall develop a

21 comprehensive drop-out prevention program utilizing the

22 expertise of school counselors and any other appropriate

23 resources available.

24 School counselors shall be full-time professional personnel,

25 shall spend at least seventy-five percent of work time in a

26 direct counseling relationship with pupils, and shall devote no
more than one fourth of the work day to administrative
activities: Provided, That such activities are counselor related.

Nothing herein shall prohibit a county board from exceeding
the provisions of this section.

CHAPTER 64
(S. B. 707—Originating in the Committee on the Judiciary)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]
§18-10A-14. Duties of assistant director of social security disability determination section.

1 In addition to duties imposed by other federal and state laws, the assistant director shall:

2 (1) Ensure that each client of the agency who is denied benefits is

3 (a) Advised of his right to appeal an agency decision to an administrative law judge,

4 (b) Advised of proper procedures for filing and pursuing an appeal, and

5 (c) Encouraged to exercise his right of appeal when he feels a decision was made in error and is unjust;

6 (2) Promulgate rules establishing criteria for granting promotion and salary increases which are to be based on merit;

7 (3) Prepare and submit to the state board, and the social security disability board, an annual report showing compliance and noncompliance with the provisions of this section. A copy of the report shall be filed with the secretary of state's office to be made available for public inspection;

8 (4) Ensure that physicians evaluating medical impairments are qualified by experience and educational specialty to make proper medical judgments on the medical impairments they are assigned to evaluate; and

9 (5) Ensure that the evaluation of the claimant's personal physician is given due consideration in the disability determination process.

CHAPTER 65

(Com. Sub. for S. B. 297—By Senators Whitacre and Lucht)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section one, article seventeen, chapter eighteen of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to the West
Virginia schools for the deaf and blind; and providing a
minimum salary schedule for nonprofessional employees in
accordance with that provided service personnel in the public
schools.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. WEST VIRGINIA SCHOOLS FOR THE DEAF AND
THE BLIND.

§18-17-1. Continuation; management; minimum salary scale
for all employees.

The West Virginia schools for deaf pupils and blind
pupils heretofore established and located at Romney, in
Hampshire County, shall be continued and shall be
known as the "West Virginia schools for the deaf and the
blind." The schools shall be maintained for the care and
education of the deaf youth and blind youth of the state.
The educational or business affairs of the schools shall be
under the control, supervision and management of the
state board of education, and the state board shall employ
the superintendent, principals, teachers and other em-
ployees and shall fix the yearly or monthly salary to be
paid to each person so employed.

The minimum salary scale for said principals, teachers
and other employees shall be the same as set forth in
sections two, three and eight-a, article four, chapter eigh-
ten-a of this code.

CHAPTER 66

(Com. Sub. for H. B. 1092—By Delegate Givens and Delegate Shanholtz)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]
amended, by adding thereto a new section, designated section one-a, relating to requiring special education programs for preschool severely handicapped children between the ages of three and five to the extent legislative appropriation is made therefor; requiring each county to develop a plan in accordance with state standards; providing a schedule for the establishment and maintenance of such programs; defining the term "severely handicapped children"; requiring adoption of rules and regulations by the state board of education to advance this program; and permitting county boards of education to exceed the provisions of this section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-la. Preschool programs for severely handicapped children; rules and regulations.

(a) During the school year beginning on the first day of July, one thousand nine hundred eighty-five, each county board of education shall develop a coordinated service delivery plan in accordance with standards for preschool programs for severely handicapped children to be developed by the state board of education and begin services where plans are already developed.

(b) Only in any year in which funds are made available by legislative appropriation, and only to the extent of such funding, each county board of education shall establish and maintain a special educational program, including, but not limited to, special classes and home-teaching and visiting-teacher services for all severely handicapped children between the ages of three and five according to the following schedule:

(1) By the school year beginning on the first day of July, one thousand nine hundred eighty-six, and thereafter, for severely handicapped children who are age four before the first day of September, one thousand nine hundred eighty-six;
(2) By the school year beginning on the first day of July, one thousand nine hundred eighty-seven, and thereafter, for severely handicapped children who are age three before the first day of September, one thousand nine hundred eighty-seven.

As used in this section, the term “severely handicapped children” means those children who fall in any one of the following categories as defined or to be defined in the state board of education standards for the education of exceptional children: Severe behavioral disorders, severely speech and language impaired, deaf-blind, hearing impaired, autistic, physically handicapped, profoundly mentally retarded, trainable mentally retarded or visually impaired.

Before the first day of August, one thousand nine hundred eighty-five, the state board of education shall adopt rules and regulations to advance and accomplish this program and to assure that an appropriate educational program is available to all such children in the state, including children in mental health facilities, residential institutions and private schools.

This section does not prevent county boards of education from providing special education programs, including, but not limited to, special schools, classes, regular class programs and home-teaching or visiting-teacher services for severely handicapped preschool children prior to such times as are required by this section. In addition, county boards of education may provide these services to preschool exceptional children in disability categories other than those listed above.

CHAPTER 67

(Com. Sub. for H. B. 1664—By Mr. Speaker, Mr. Albright, and Delegate Sattes)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-two-a, relating to establishing the eminent scholars endowment trust fund;
providing definitions; establishing a corporation; designating the board of directors; designating powers and duties of the board and of the board of regents; specifying how the fund shall be administered; providing for the selection of scholars; authorizing and providing for the solicitation of private moneys; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22A. EMINENT SCHOLARS ENDOWMENT TRUST FUND ACT.

§18-22A-1. Legislative findings.


§18-22A-3. Establishment of fund; corporation to administer; board of directors.

§18-22A-4. Corporate powers.


§18-22A-6. Administration of fund.

§18-22A-7. Selection of scholars.

§18-22A-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.


§18-22A-1. Legislative findings.

1 The Legislature hereby finds that the essence of excellence in higher education is the attraction and retention of outstanding faculty; that however necessary modern facilities and efficient and effective administration may be, the faculty provides the catalyst by which all the elements of higher education combine to offer a quality education. The Legislature further finds that the attraction and retention of outstanding faculty at all state colleges and universities, particularly those who have attained distinction as scholars and teachers, requires a long-term and permanent commitment from both public and private sources, that private support will help strengthen the commitment of citizens and organizations to the promotion of excellence in higher education and will provide moneys for salaries competitive with those paid to scholars of similar eminence working for this country’s leading colleges and universities.
The Legislature further finds that the appropriations of public moneys to attract and retain outstanding faculty and to encourage the commitment of private moneys with a view toward the accumulation of such moneys in a trust fund for such purposes is a proper annual expense of the state, and that the establishment of an eminent scholars trust fund is a proper means of providing for the advancement of public higher education in this state.


Whenever the following terms are used in this article, they shall have the meanings described below:

(a) “Board of directors” or “board” means the members of the board of directors of the eminent scholars endowment trust fund.

(b) “Endowed chair” or “chair” means the position created pursuant to section six of this article to which an eminent scholar shall be appointed.

(c) “Fund” means the eminent scholars endowment trust fund.

(d) “Contract salary” means that portion of the scholar’s financial compensation paid from state moneys but shall not be construed to include moneys from the eminent scholars endowment trust fund.

§18-22A-3. Establishment of fund; corporation to administer; board of directors.

There is hereby established the eminent scholars endowment trust fund, a public corporation, for the purpose of administering the fund described in this article. The board of directors of this corporation shall be those persons appointed and serving as members of the board of regents.

§18-22A-4. Corporate powers.

(a) The officers of the corporation shall be the officers of the board of regents. The procedural rules of the board of regents shall be used in conducting meetings.

(b) The corporation is hereby expressly authorized to receive appropriations of public moneys and private or public
grants, gifts or bequests. It may hold, invest or reinvest such
moneys and expend the income therefrom as hereinafter
provided. The board may determine which of the properties
and moneys received by it, other than public appropriations,
grants, bequests and specific gifts, are income and which are
additions to principal.

(c) The board shall be exempt from liability for any loss
or decrease in value of the assets or income of the fund, except
as such losses or decreases in value are shown to be the result
of bad faith, gross negligence or intentional misconduct.

For the purpose of valuing assets, the board may use any
commonly accepted techniques of appraisal or commonly
accepted principles of accounting. No agency of government
nor any person, natural or corporate, may charge or collect
any fee or receive any part of the principal or income from
any appropriation, grant, gift or bequest as a fee for the
acquisition or administration of the appropriation, grant, gift
or bequest.

(d) The board shall adhere at all times to the terms and
limitations of any appropriation, grant, gift or bequest
received. However, the board may refuse to receive any grant,
gift or bequest which incorporates terms and limitations which
they deem to be unacceptable.

(e) The board may in its sole discretion borrow money when
necessary in order to avoid the untimely sale of assets. At no
time, however, may the board incur any debt obligation for
such purpose which exceeds twelve months in duration.


The board of regents shall provide to the fund all necessary
secretarial services, office space, staff and other assistance
required without charge or appropriation therefor.

§18-22A-6. Administration of fund.

(a) The board shall use any state moneys appropriated to
the fund solely for the purpose of establishing endowed chairs
at state colleges and universities.

The board may allocate state appropriations to an account
only when private moneys have also been allocated to that
The Legislature further finds that the appropriations of public moneys to attract and retain outstanding faculty and to encourage the commitment of private moneys with a view toward the accumulation of such moneys in a trust fund for such purposes is a proper annual expense of the state, and that the establishment of an eminent scholars trust fund is a proper means of providing for the advancement of public higher education in this state.


Whenever the following terms are used in this article, they shall have the meanings described below:

(a) “Board of directors” or “board” means the members of the board of directors of the eminent scholars endowment trust fund.

(b) “Endowed chair” or “chair” means the position created pursuant to section six of this article to which an eminent scholar shall be appointed.

(c) “Fund” means the eminent scholars endowment trust fund.

(d) “Contract salary” means that portion of the scholar’s financial compensation paid from state moneys but shall not be construed to include moneys from the eminent scholars endowment trust fund.

§18-22A-3. Establishment of fund; corporation to administer; board of directors.

There is hereby established the eminent scholars endowment trust fund, a public corporation, for the purpose of administering the fund described in this article. The board of directors of this corporation shall be those persons appointed and serving as members of the board of regents.

§18-22A-4. Corporate powers.

(a) The officers of the corporation shall be the officers of the board of regents. The procedural rules of the board of regents shall be used in conducting meetings.

(b) The corporation is hereby expressly authorized to receive appropriations of public moneys and private or public
grants, gifts or bequests. It may hold, invest or reinvest such
moneys and expend the income therefrom as hereinafter
provided. The board may determine which of the properties
and moneys received by it, other than public appropriations,
grants, bequests and specific gifts, are income and which are
additions to principal.

(c) The board shall be exempt from liability for any loss
or decrease in value of the assets or income of the fund, except
as such losses or decreases in value are shown to be the result
of bad faith, gross negligence or intentional misconduct.

For the purpose of valuing assets, the board may use any
commonly accepted techniques of appraisal or commonly
accepted principles of accounting. No agency of government
nor any person, natural or corporate, may charge or collect
any fee or receive any part of the principal or income from
any appropriation, grant, gift or bequest as a fee for the
acquisition or administration of the appropriation, grant, gift
or bequest.

(d) The board shall adhere at all times to the terms and
limitations of any appropriation, grant, gift or bequest
received. However, the board may refuse to receive any grant,
gift or bequest which incorporates terms and limitations which
they deem to be unacceptable.

(e) The board may in its sole discretion borrow money when
necessary in order to avoid the untimely sale of assets. At no
time, however, may the board incur any debt obligation for
such purpose which exceeds twelve months in duration.


The board of regents shall provide to the fund all necessary
secretarial services, office space, staff and other assistance
required without charge or appropriation therefor.

§18-22A-6. Administration of fund.

(a) The board shall use any state moneys appropriated to
the fund solely for the purpose of establishing endowed chairs
at state colleges and universities.

The board may allocate state appropriations to an account
only when private moneys have also been allocated to that
account. The board shall endeavor, whenever possible, to allocate one dollar of state appropriations for every two dollars of private moneys allocated. The board may also allocate only private moneys to an account.

Unless otherwise directed by executive order, the payment of state appropriations to the fund shall be made in twelve equal monthly installments, beginning on the last day of the first month of the fiscal year.

(b) The board may, for purposes of investment, commingle any moneys constituting principal received from whatever source to the extent allowed under the terms of the granting of such moneys and shall endeavor to obtain the highest possible rate of return consistent with the preservation of the principal. Consistent with the terms of the appropriation, grant, gift or bequest, and the provisions of this section, the board may use any income, principal or combination of income and principal as it may deem prudent to finance the establishment of each endowed chair.

(c) The board shall designate endowed chairs at the various colleges and universities as it may deem appropriate. For each chair so established it shall designate a separate account administered by the board to which moneys from the fund shall be deposited. Such moneys may continue to be deemed principal for purposes of investment and commingling pursuant to subsection (b) of this section, and any income, loss or gain, or increase or decrease in value may be allocated by the board on such reasonable basis as is prescribed by the board.

(d) For the purpose of encouraging the donation of private moneys to the fund, the board may designate specific chairs or specific areas of academic study as subjects of challenge grants. A specific chair, or a chair in a designated academic area, shall be established whenever the total amount of principal and interest dedicated to it reaches one hundred fifty thousand dollars, with at least one half of the principal being from private sources.

When one hundred fifty thousand dollars has accumulated in the account dedicated to any one chair, the board shall notify the president of the appropriate college or university that an appointment to that chair shall be made.
(e) The president of the college or university shall use at least two thirds of the income from moneys allocated to an account to supplement the salary of the person appointed to the endowed chair created by such account. The sum paid from the fund to the person so appointed shall be in addition to the contract salary except as otherwise provided in this section. Such president may allocate one third or any part thereof to provide or assist in providing secretarial or other support services for the endowed chair or may return one third or any part thereof to the board with the direction that such amount be added to the principal amount in the account of the endowed chair from which such income was derived to protect its future yield.

(f) Whenever the endowed chair's salary supplement received pursuant to this subsection equals fifty percent of the contract salary, the president of the college or university may return all or a portion of the excess amount to the fund, and the board shall designate a new account for the purpose of establishing another chair at the same institution or an existing account at the same institution for receipt of the moneys so returned: Provided, That when the principal amount of any chair reaches the sum of one million dollars or more, no state salary may be paid to the holder of the chair, but such person's entire salary shall be paid from the interest income.

(g) When the total allocations designated for a chair from both public and private sources do not equal or exceed one hundred fifty thousand dollars within five years from the date of the establishment of the account, the board may designate a new or existing chair as the recipient of the moneys, regardless of the terms of the appropriation, grant, gift or bequest, except where return of the moneys is required by the terms of the grant, gift or bequest.

§18-22A-7. Selection of scholars.

Each college or university shall establish criteria for the selection of persons to be appointed to the chairs established pursuant to this article. Endowed positions may be filled from either within or outside the faculty of the college or university. At each college or university at least one half of all chairs funded pursuant to this article shall be dedicated exclusively to teaching, and outstanding teaching ability shall be part of the criteria for appointment to such teaching chair.
Appointees shall have a record of distinguished academic or professional work in an appropriate field, such to be judged in national terms and verified by the department or college benefitting from such chair. Appointees shall submit to peer review at such department or college and such other review procedures as may be established by the college or university.

The board, or the college or university, may establish criteria which exceeds the provisions of this section.

§18-22A-8. Authorization to solicit private moneys; terms of grants; reports to board of directors; handling of moneys.

Each college and university, and each dean and department chair within each college or university, is hereby authorized to solicit moneys for the endowment of chairs pursuant to this article. In order to maximize the effective use of moneys raised, persons or institutions soliciting moneys shall endeavor, insofar as is possible, to secure private grants, gifts or bequests which are unlimited as to their use. All persons and institutions engaged in soliciting moneys shall apprise the board of their actions and provide periodic reports, at least once each fiscal year, regarding the amounts secured and, upon receipt of any moneys, shall forward them forthwith to the board for deposit in accordance with section six of this article.


The board shall make an annual report to the joint committee on government and finance of the West Virginia Legislature no later than the first day of December of each year setting forth with specificity the sources of all moneys, the allocations of all moneys and such other information as the joint committee may require.

CHAPTER 68
(S. B. 634—Originating in the Committee on Education)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]
thousand nine hundred thirty-one, as amended, relating to the faculty improvement fee; requiring that such fees on deposit as of the effective date of this section be distributed in accordance with this section; and requiring that the funds generated by such fee be used to fund faculty salaries in accordance with article twenty-two, chapter eighteen of this code.

Be it enacted by the Legislature of West Virginia:

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

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

§18-24-1b. Faculty improvement fee.

In addition to the fees specifically provided for in sections one and one-a of this article, all students enrolled for credit at the state's public colleges and universities shall pay a faculty improvement fee. The West Virginia board of regents shall fix the fee rates for the various institutions and classes of students and may from time to time change these rates: Provided, That the fee for each class of students shall be uniform throughout the state and shall be no less than fifteen dollars per semester for residents and no less than fifty dollars per semester for out-of-state students. The amount of the fee charged at each institution shall be prorated for part-time students. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education.

All faculty improvement fees collected shall be deposited in a special fund in the state treasury. The board of regents shall use such fees to the extent available to implement sections two and three, article twenty-two of this chapter. Notwithstanding prior enactments of this section, any such fees on deposit as of the effective date of
CHAPTER 69

(Com. Sub. for S. B. 442—By Senators R. Williams, Burdette, Spears, Cook, Nelson, Ash, Parker and Holliday)

[Passed April 8, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-c; and to amend article twenty-six of said chapter by adding thereto a new section, designated section twenty-nine, all relating to establishing a medical education fee; providing for the collection, disposition and use of such fee; establishing a medical student loan program and fund; authorizing the board of regents to promulgate rules and regulations for administration of the loan program; establishing minimum eligibility requirements; and providing for loan forgiveness in certain instances.

Be it enacted by the Legislature of West Virginia:

That article twenty-four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-c; and that article twenty-six of said chapter be amended by adding thereto a new section, designated section twenty-nine, all to read as follows:

Article
24. Fees and Other Money Collected at State Institutions of Higher Education.
26. West Virginia Board of Regents.
ARTICLE 24. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18-24-1c. Medical education fee.

1 In addition to the fees specifically provided for in sections one, one-a and one-b of this article, all medical students enrolled for credit at the West Virginia University school of medicine, Marshall University school of medicine and the West Virginia school of osteopathic medicine shall pay a medical education fee. The board of regents shall fix the fee rates for students at each institution and may from time to time change these rates. The fee imposed by this section is in addition to the maximum fees allowed to be collected under the provisions of section one of this article and is not limited thereby. Refunds of the fee may be made in the same manner as any other fee collected at state institutions of higher education. Medical education fees collected shall be deposited in a special revenue account which is hereby created in the state treasury for the school at which the fees are collected and shall be used by the school to offset general operating costs: Provided, That the board of regents may deposit a portion of the total fees collected therein into the medical student loan fund account in accordance with the provisions of section twenty-nine, article twenty-six of this chapter. Before the first day of July of each year, the board of regents shall provide the legislative auditor with a report of the projected fee collections for each of the schools of medicine.

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-29. Medical student loan program; establishment; administration; eligibility; loan forgiveness.

1 There is hereby created a medical student loan program to be administered by the board. The purpose of this program is to provide loans to state residents who demonstrate financial need, meet academic standards and are enrolled or accepted for enrollment at the West Virginia University school of medicine, Marshall University school
of medicine or the West Virginia school of osteopathic medicine.

(a) There is hereby established a special revolving fund account under the board in the state treasury to be known as the medical student loan fund which shall be used to carry out the purposes of this section. The fund shall consist of: (1) Amounts allocated by the board from the medical education fee as established by section one-c, article twenty-four of this chapter: Provided, That the board may transfer to this fund for student loans an amount not to exceed thirty-three percent of the total collections from the medical education fee in any one year; (2) appropriations provided by the Legislature; (3) principal and interest repaid by medical student loan recipients; and (4) other amounts which may be available from external sources. Balances remaining in the fund at the end of the fiscal year shall not expire or revert. No loans may be awarded under the provisions of this section until the first day of July, one thousand nine hundred eighty-six. All costs associated with the administration of this section shall be paid from the medical student loan fund.

(b) The board shall promulgate rules and regulations for the administration of the medical student loan program. Such rules and regulations shall include, but not be limited to, the areas of academic standards, financial need, loan amounts, residency requirements, loan repayment requirements, loan forgiveness provisions, interest rates, collection procedures and financial management. Loans shall be awarded at the institutional level in a manner consistent with rules and regulations promulgated by the board.

(c) An individual shall be eligible for loan consideration if he is a resident of this state as defined by the board, demonstrates financial need, meets established academic standards and is enrolled or accepted for enrollment at one of the aforementioned schools of medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.): Provided, That the individual has not yet received one of these degrees and is not in default of any previous student loan.
(d) The board, in conjunction with the state department of health, shall determine qualifying medically underserved areas and medical specialties in which there is a shortage of physicians.

At the end of each fiscal year, any individual who has received a medical student loan and who has actually rendered services as a medical doctor or doctor of osteopathy in this state in a designated medically underserved area or in a designated medical specialty in which there is a shortage of physicians, may submit to the board a statement of service on a form provided for that purpose. Upon receipt of such statement in proper form, the board shall cancel appropriate portions of the outstanding loan or loans in accordance with rules and regulations promulgated by the board.

CHAPTER 70
(Com. Sub. for H. B. 1854—By Delegate Givens and Delegate E. Martin)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-six, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty, relating to higher education; authority to establish faculty and classified employee continuing education and development programs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. WEST VIRGINIA BOARD OF REGENTS.

§18-26-30. Faculty and classified employee continuing education and development program.

Each state college or university shall have the authority to
establish and operate a faculty and classified employee continuing education and development program under rules and regulations adopted by the board. Funds allocated or made available may be used to compensate and pay expenses for faculty or classified employees who are pursuing additional academic study or training to better equip themselves for their duties at the college or university.

Rules and regulations for this activity may include reasonable provisions for the continuation or return of any faculty or classified employee receiving the benefits of such education or training, or for reimbursement by the state for expenditures incurred on behalf of such faculty or classified employee.

CHAPTER 71

(Com. Sub. for H. B. 1970—By Delegate Murphy and Delegate Rogers)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]
suspended or dismissed for certain reasons have opportunity to request a hearing pursuant to said article twenty-nine; providing for recovery of attorney's fees and court costs by an employee prevailing in either circuit court or supreme court of appeals; and setting limitations upon such attorney's fees.

Be it enacted by the Legislature of West Virginia:

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

Chapter
18. Education.
18A. School Personnel.

CHAPTER 18. EDUCATION.

ARTICLE 29. GRIEVANCE PROCEDURE.

§18-29-1. Legislative purpose and intent.
§18-29-2. Definitions.
§18-29-4. Procedural levels and procedure at each level.
§18-29-5. Education employees grievance board; hearing examiners.
§18-29-6. Hearings generally.
§18-29-7. Enforcement and reviewability.
§18-29-8. Allocation of costs.

§18-29-1. Legislative purpose and intent.

The purpose of this article is to provide a procedure for employees of the board of regents, state board of education, county boards of education, regional educational service agencies and multi-county vocational centers and their employer or agents of the employer to reach solutions to problems which arise between them within the scope of their respective employment relationships to the end that good morale may be maintained, effective job performance may be enhanced and the citizens of the community may be better served. This procedure is intended to provide a simple, expeditious and fair process for resolving problems at the lowest possible administrative level and shall be construed to effectuate this purpose. Nothing herein shall prohibit the informal disposition of grievances by stipulation or settlement.
agreed to in writing by the parties, nor the exercise of any
hearing right provided in article two, chapter eighteen-a of this
code or any other section of chapter eighteen or eighteen-a of
this code: Provided, That employees of the board of regents
or of state institutions of higher education shall have the
option of filing grievances in accordance with the provisions
of this article or in accordance with the provisions of policies,
rules and regulations of the board of regents regarding such
employees. Any board decision pursuant to such sections may
be appealed in accordance with the provisions of this article
unless otherwise provided in such section.

§18-29-2. Definitions.

For the purpose of this article:

(a) "Grievance" means any claim by one or more affected
employees of the board of regents, state board of education,
county boards of education, regional educational service
agencies and multi-county vocational centers alleging a
violation, a misapplication or a misinterpretation of the
statutes, policies, rules, regulations or written agreements
under which such employees work, including any violation,
misapplication or misinterpretation regarding compensation,
hours, terms and conditions of employment, employment
status or discrimination; any discriminatory or otherwise
aggrieved application of unwritten policies or practices of the
board; any specifically identified incident of harassment or
favoritism; or any action, policy or practice constituting a
substantial detriment to or interference with effective
classroom instruction, job performance or the health and
safety of students or employees.

Any pension matter or other issue relating to the state
teachers retirement system in accordance with article seven-a
of this chapter or other retirement system administered outside
the jurisdiction of the applicable governing board, any matter
relating to public employees insurance in accordance with
article sixteen, chapter five of this code, or any other matter
in which authority to act is not vested with the employer shall
not be the subject of any grievance filed in accordance with
the provisions of this article.

(b) "Days" means days of the employee’s employment term
or prior to or subsequent to such employment term exclusive
of Saturday, Sunday, official holidays or school closings in accordance with section two, article five, chapter eighteen-a of this code.

(c) "Employee" means any person hired by an institution either full or part time. A substitute is considered an employee only on matters related to days worked for an institution or when there is a violation, misapplication or misinterpretation of a statute, policy, rule, regulation or written agreement relating to such substitute.

(d) "Grievant" means any named employee or group of named employees filing a grievance as defined in subsection (a) of this section.

(e) "Institution" means any state institution of higher education, the board of regents, any institution whose employees are hired by the state board of education including the department of education, and any public school, regional educational service agency or multi-county vocational center.

(f) "Employer" means that institution contracting the services of the employee.

(g) "Immediate supervisor" means that person next in rank above the grievant possessing a degree of administrative authority and designated as such in the employee's contract, if any.

(h) "Chief administrator" means the president of a state institution of higher education, the chancellor of the board of regents only as to those employees not assigned to a state institution of higher education, the state superintendent of schools as to employees hired by the state board of education, the county superintendent, the executive director of a regional educational service agency or the director of a multi-county vocational center.

(i) "Governing board" means the administrative board of any state or county educational institution, including institutions whose employees are hired by the state board of education, and refers, as is applicable, to the board of regents, state board of education, county boards of education, the school board members of any board of directors of a regional educational service agency or the school board members of any administrative council of a multi-county vocational center.
(j) "Grievance evaluator" means that individual or governing board authorized to render a decision on a grievance.

(k) "Board" means the education employees grievance board.

(l) "Hearing examiner" means the individual or individuals employed by the board in accordance with section five of this article.

(m) "Discrimination" means any differences in the treatment of employees unless such differences are related to the actual job responsibilities of the employees or agreed to in writing by the employees.

(n) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee which would be contrary to the demeanor expected by law, policy and profession.

(o) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of another or other employees.

(p) "Reprisal" means the retaliation of an employer or agent toward a grievant or any other participant in the grievance procedure either for an alleged injury itself or any lawful attempt to redress it.

(q) "Employee organization" means any employee advocacy organization whose membership includes employees as defined in this section which has filed with the board the name, address, chief officer and membership criteria of the organization.

(r) "Representative" means any employee organization, fellow employee, legal counsel or other person or persons designated by the grievant as the grievant's representative.


(a) A grievance must be filed within the times specified in section four of this article and shall be processed as rapidly as possible. The number of days indicated at each level specified in section four of this article shall be considered as the maximum number of days allowed and, if a decision is not rendered at any level within the prescribed time limits, the
grievant may appeal to the next level: Provided, That the specified time limits may be extended by mutual written agreement and shall be extended whenever a grievant is not working because of such circumstances as provided for in section ten, article four, chapter eighteen-a of this code.

(b) If the employer or agent intends to assert the applicability of any statute, policy, rule, regulation or written agreement or submits any written response to the filed grievance at any level, a copy thereof shall be forwarded to the grievant and any representative of the grievant so named in the filed grievance. Anything so submitted and the grievant's response thereto, if any, shall become part of the record. Failure to assert such statute, policy, rule, regulation or written agreement at any level shall not prevent the subsequent submission thereof in accordance with the provisions of this subsection.

(c) The grievant may file the grievance at the level vested with authority to grant the requested relief if each lower administrative level agrees in writing thereto. In the event a grievance is filed at a higher level, the employer shall provide copies to each lower administrative level.

(d) An employee may withdraw a grievance at any time by notice, in writing, to the level wherein the grievance is then current. Such grievance may not be reinstated by the grievant unless such reinstatement is granted by the grievance evaluator at the level where the grievance was withdrawn. If more than one employee is named as grievant in a particular grievance, the withdrawal of one employee shall not prejudice the rights of any other employee named in the grievance. In the event a grievance is withdrawn or an employee withdraws from a grievance, such employer shall notify in writing each lower administrative level.

(e) Grievances may be consolidated at any level by agreement of all parties.

(f) An employee may have the assistance of one or more fellow employees, an employee organization representative or representatives, legal counsel or any other person in the preparation and presentation of the grievance. At the request of the grievant, such person or persons may be present at any step of the procedure.
(g) If a grievance is filed which cannot be resolved within the time limits set forth in section four of this article prior to the end of the employment term, the time limit set forth in said section shall be reduced as agreed to in writing by both parties so that the grievance procedure may be concluded within ten days following the end of the employment term or an otherwise reasonable time.

(h) No reprisals of any kind shall be taken by any employer or agent of the employer against any interested party, or any other participant in the grievance procedure by reason of such participation. A reprisal constitutes a grievance, and any person held to be responsible for reprisal action shall be subject to disciplinary action for insubordination.

(i) Except for the informal attempt to resolve the grievance as provided for in subsection (a), section four of this article, decisions rendered at all levels of the grievance procedure shall be dated, shall be in writing setting forth the decision or decisions and the reasons therefor, and shall be transmitted within the time prescribed to the grievant and any representative named in the grievance. If the grievant is denied the relief sought, the decision shall include the name of the individual at the next level to whom appeal may be made.

(j) Once a grievance has been filed, supportive or corroborative evidence may be presented at any conference or hearing conducted pursuant to the provisions of this article. Whether evidence substantially alters the original grievance and renders it a different grievance is within the discretion of the grievance evaluator at the level wherein the new evidence is presented. If the grievance evaluator rules that the evidence renders it a different grievance, the party offering the evidence may withdraw same, the parties may consent to such evidence, or the grievance evaluator may decide to hear the evidence or rule that the grievant must file a new grievance. The time limitations for filing the new grievance shall be measured from the date of such ruling.

(k) Any change in the relief sought by the grievant shall be consented to by all parties or may be granted at level four within the discretion of the hearing examiner.

(l) Forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary
documents shall be made available by the immediate supervisor to any employee upon request. Such forms shall include information as prescribed by the board. The grievant shall have access to the institution's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of such equipment.

(m) Notwithstanding the provisions of section three, article nine-a, chapter six of this code, or any other provision relating to open proceedings, all conferences and hearings pursuant to this article shall be conducted in private except that, upon the grievant's request, conferences and hearings at levels two and three shall be public. Within the discretion of the hearing examiner, conferences and hearings may be public at level four.

(n) No person or governing board to which appeal has been made shall confer or correspond with a grievance evaluator at a previous level regarding the merits of the grievance unless all parties to the grievance are present.

(o) Grievances may be processed at any reasonable time, but attempts shall be made to process the grievance in a manner which does not interfere with the normal operation of the institution or with employees' normal working hours. Grievances processed on work time shall not result in any reduction in salary, wages, rate of pay or other benefits of the employee and shall be counted as time worked.

Should any employer or the employer's agent cause a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, such employees will not suffer any loss in pay for work time lost.

(p) Any grievance evaluator may be excused from participation in the grievance process for reasonable cause, including, but not limited to, conflict of interest or incapacitation, and in such case the grievance evaluator at the next higher level shall designate an alternate grievance evaluator if such is deemed reasonable and necessary.

(q) No less than one year following resolution of a grievance at any level, the grievant may by request in writing have removed any record of the grievance from any file kept by the employer.
(r) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and shall not become a part of such personnel file, but shall remain confidential except by mutual written agreement of the parties.

(s) The number of grievances filed against an employer or agent or by an employee shall not, per se, be an indication of such employer's or agent's or such employee's job performance.

(t) Any chief administrator or governing board of an institution in which a grievance was filed may appeal such decision on the grounds that the decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner's statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative and substantial evidence on the whole record, or (5) was arbitrary or capricious or characterized by abuse of discretion. Such appeal shall follow the procedure regarding appeal provided the grievant in section four of this article and provided both parties in section seven of this article.

§18-29-4. Procedural levels and procedure at each level.

(a) Level one.

(1) Before a grievance is filed and within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date on which the event became known to the grievant or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance, the grievant or the designated representative shall schedule a conference with the immediate supervisor to discuss the nature of the grievance and the action, redress or other remedy sought.

The conference with the immediate supervisor concerning the grievance shall be conducted within three days of the request therefor, and any discussion shall be by the grievant in the grievant's own behalf or by both the grievant and the designated representative.

(2) The immediate supervisor shall respond to the grievance within two days of the conference.
(3) Within ten days of receipt of the response from the immediate supervisor following the informal conference, a written grievance may be filed with said supervisor by the grievant or the designated representative on a form furnished by the employer or agent.

(4) The immediate supervisor shall state the decision to such filed grievance within five days after the grievance is filed.

(b) Level two.

Within five days of receiving the decision of the immediate supervisor, the grievant may appeal the decision to the chief administrator, and such administrator or his or her designee shall conduct a hearing in accordance with section six of this article within five days of receiving the appeal and shall issue a written decision within five days of such hearing. Such decision may affirm, modify or reverse the decision appealed from.

(c) Level three.

Except as to faculty and classified employees of the board of regents or any state institution of higher education who shall have the option to proceed directly to level four, within five days of receiving the decision of the chief administrator, the grievant may appeal the decision to the governing board of the institution. Within five days of receiving the appeal, such governing board may conduct a hearing in accordance with section six of this article, may review the record submitted by the chief administrator and render a decision based on such record, or may waive the right granted herein and shall notify the grievant of such waiver. Any decision by the governing board, including a decision to waive participation in the grievance, must be in writing, and, if a hearing be held under the provisions of this subsection, the governing board shall issue a decision affirming, modifying or reversing the decision of the chief administrator within five days of such hearing.

(d) Level four.

(1) If the grievant is not satisfied with the action taken by the governing board, within five days of the written decision the grievant may request, in writing, on a form furnished by
the employer, that the grievance be submitted to a hearing
examiner as provided for in section five of this article, such
hearing to be conducted in accordance with section six of this
article within ten days following the request therefor:

Provided, That such hearing may be held within thirty days
following the request, or within such time as is mutually agreed
upon by the parties, if the hearing examiner gives reasonable
cause, in writing, as to the necessity for such delay.

(2) Within thirty days following the hearing, the hearing
examiner shall render a decision in writing to all parties setting
forth findings and conclusions on the issues submitted. Subject
to the provisions of section seven of this article, the decision
of the hearing examiner shall be final upon the parties and
shall be enforceable in circuit court.

§18-29-5. Education employees grievance board; hearing examiners.

(a) There is hereby created and shall be an education
employees grievance board which shall consist of three
members who shall be citizens of the state appointed by the
governor by and with the advice and consent of the Senate
for overlapping terms of three years, except that the original
appointments shall be for a period of one, two and three years,
respectively, commencing on the first day of July, one
thousand nine hundred eighty-five. No two members shall be
from the same congressional district, and no more than two
of the appointed members shall be from the same political
party. No person shall be appointed to membership on the
board who is a member of any political party executive
committee or holds any other public office or public
employment under the federal government or under the
government of this state. Members shall be eligible for
reappointment, and any vacancy on the board shall be filled
within thirty days of the vacancy by the governor by
appointment for the unexpired term.

A member of the board may not be removed from office
except for official misconduct, incompetence, neglect of duty,
gross immorality or malfeasance, and then only in the manner
prescribed in article six, chapter six of this code for the
removal by the Governor of state elected officers.

The board shall hold at least two meetings yearly at such
times and places as it may prescribe and may meet at such
other times as may be necessary, such meetings to be agreed
to in writing by at least two of the members. Members of the
board shall each be paid seventy-five dollars for each calendar
day devoted to the work of the board, but not more than seven
hundred and fifty dollars during any one fiscal year. Each
member shall be reimbursed for all reasonable and necessary
expenses actually incurred in the performance of board duties,
but shall submit a request therefor upon sworn itemized
statement.

The board is hereby authorized and required to administer
the grievance procedure at level four as provided for in section
four of this article and shall employ at least two full-time
hearing examiners on an annual basis and such clerical help
as is necessary to implement the legislative intent expressed in
section one of this article.

The board shall hire hearing examiners who reside in
different regional educational service agency areas unless and
until the number of hearing examiners exceeds the number of
such areas, at which time two hearing examiners may be from
the same such area. These hearing examiners shall serve at the
will and pleasure of the board.

The board shall submit a yearly budget and shall report
annually to the governor and Legislature regarding receipts
and expenditures, number of level four hearings conducted,
synopses of hearing outcomes and such other information as
the board may deem appropriate. The board shall further
evaluate on an annual basis the level four grievance process
and the performance of all hearing examiners and include such
evaluation in the annual report to the governor and
Legislature. In making such evaluation, the board shall notify
all institutions, employee organizations and all grievants
participating in level four grievances in the year for which
evaluation is being made and shall provide for the submission
of written comment and/or the hearing of testimony regarding
the grievance process. The board shall provide suitable office
space for all hearing examiners in space other than that
utilized by any institution as defined in section two of this
article and shall ensure that reference materials are generally
available.

The board is authorized to promulgate rules and regulations
consistent with the provisions of this article, such rules and regulations to be adopted in accordance with chapter twenty-nine-a of this code.

(b) Hearing examiners are hereby authorized and shall have the power to consolidate grievances, allocate costs among the parties in accordance with section eight of this article, subpoena witnesses and documents in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code, provide such relief as is deemed fair and equitable in accordance with the provisions of this article, and such other powers as will provide for the effective resolution of grievances not inconsistent with any rules or regulations of the board or the provisions of this article.

§18-29-6. Hearings generally.

The chief administrator or his or her designee, the governing board or the hearing examiner shall conduct all hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process. All parties shall have an opportunity to present evidence and argument with respect to the matters and issues involved, to cross examine and to rebut evidence. Notice of a hearing shall be sent to all parties and their named representative and shall include the date, time and place of the hearing.

The institution that is party to the grievance shall produce prior to such hearing any documents, not privileged, and which are relevant to the subject matter involved in the pending grievance, that has been requested by the grievant, in writing.

The superintendent, the president of the state or county board of education or the state or county board member designated by such president, the executive director of the regional educational service agency, the director of the multi-county vocational center, the chancellor of the board of regents, the president of any state institution of higher education, the chief administrator or his or her designee, each member of the governing board or the hearing examiner shall have the power to (1) administer oaths and affirmations, (2) regulate the course of the hearing, (3) hold conferences for the settlement or simplification of the issues by consent of the parties, (4) exclude immaterial, irrelevant or repetitious
evidence, (5) sequester witnesses, (6) restrict the number of advocates, and take any other action not inconsistent with the rules and regulations of the board or the provisions of this article.

All the testimony and evidence at any hearing shall be recorded by mechanical means, and all recorded testimony and evidence at such hearing shall be transcribed and certified at the request of any party to the institution or board. The institution shall be responsible for promptly transcribing the testimony and evidence and for providing a copy of the certified transcription to the party requesting same. The hearing examiner may also request and be provided a transcript upon appeal to level four and allocate the costs therefor as prescribed in section eight of this article.

Formal rules of evidence shall not be applied, but parties shall be bound by the rules of privilege recognized by law.

All materials submitted in accordance with section three of this article; the mechanical recording of all testimony and evidence or the transcription thereof, if any; the decision; and any other materials considered in reaching the decision shall be made a part and shall constitute the record of a grievance. Such record shall be submitted to any level at which appeal has been made, and such record shall be considered, but the development of such record shall not be limited thereby.

Every decision pursuant to a hearing shall be in writing and shall be accompanied by findings of fact and conclusions of law.

Prior to such decision any party may propose findings of fact and conclusions of law.

§18-29-7. Enforcement and reviewability.

The decision of the hearing examiner shall be final upon the parties and shall be enforceable in circuit court: Provided, That either party may appeal to the circuit court of the county in which the grievance occurred on the grounds that the hearing examiner’s decision (1) was contrary to law or lawfully adopted rule, regulation or written policy of the chief administrator or governing board, (2) exceeded the hearing examiner’s statutory authority, (3) was the result of fraud or deceit, (4) was clearly wrong in view of the reliable, probative
and substantial evidence on the whole record, or (5) was
arbitrary or capricious or characterized by abuse of discretion
or clearly unwarranted exercise of discretion. Such appeal shall
be filed in the circuit court of Kanawha County or in the
circuit court of the county in which the grievance occurred
within thirty days of receipt of the hearing examiner's decision.
The decision of the hearing examiner shall not be stayed,
automatically, upon the filing of an appeal, but a stay may
be granted by the circuit court upon separate motion therefor.

The court's ruling shall be upon the entire record made
before the hearing examiner, and the court may hear oral
arguments and require written briefs. The court may reverse,
vacate or modify the decision of the hearing examiner or may
remand the grievance to the chief administrator of the
institution for further proceedings.

§18-29-8. Allocation of costs.

Any expenses incurred relative to the grievance procedure
at levels one through three shall be borne by the party
incurring such expenses.


Any institution failing to comply with the provisions of this
article may be compelled to do so by mandamus proceeding
and shall be liable to any party prevailing against the
institution for court costs and attorney fees, as determined and
established by the court.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.
§18A-2-11. Employee's right to attorney's fees and costs.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

Notwithstanding any other provisions of law, a board may
suspend or dismiss any person in its employment at any time
for: Immorality, incompetency, cruelty, insubordination,
temperance or willful neglect of duty, but the charges shall
be stated in writing served upon the employee within two days
of presentation of said charges to the board. The employee
so affected shall be given an opportunity, within five days of
§18A-2-11. Employee's right to attorney's fees and costs.

1 If an employee shall appeal to a circuit court an adverse decision of either a county board of education or of a hearing examiner rendered in a grievance or other proceeding pursuant to provisions of chapters eighteen and eighteen-a of this code and such person shall substantially prevail, the adverse party or parties shall be liable to such employee, upon final judgment or order, for court costs, and for reasonable attorney's fees, to be set by the court, for representing such employee in all administrative hearings and before the circuit court and the supreme court of appeals, and shall be further liable to such employee for any court reporter's costs incurred during any such administrative hearings or court proceedings: Provided, That in no event shall such attorney's fees be awarded in excess of a total of one thousand dollars for the administrative hearings and circuit court proceedings nor an additional one thousand dollars for supreme court proceedings: Provided, however, That the requirements of this section shall not be construed to limit the school employee's right to recover reasonable attorney's fees in a mandamus proceeding brought under section eight, article four, chapter eighteen-a of this code.

CHAPTER 72
(Com. Sub. for S. B. 630—By Senator Palumbo)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
two, article four; sections nine, eleven, twelve, thirteen, sixteen, twenty-two, twenty-three and thirty, article four-a, all of said chapter; to further amend said article four-a by adding thereto a new section, designated section ten-a; to amend and reenact sections one, five, seven and nine, article five; sections two, six and nine, article six; sections five, five-a, seven and twelve, article eight, all of said chapter; and to further amend said article eight by adding thereto a new section, designated section five-f, all relating to elections; voting precincts, number of voters in precincts and exceptions relating thereto; precinct maps; preparation of paper ballots and time requirements relating thereto; notification of certain candidates of drawing by lot for ballot position; duty of county commissions to arrange and equip polling places; minimum number of voting booths; delivery and receipt of election supplies and time requirements relating thereto; delivery of supplies by special messenger; receipt and return of municipal precinct registration records and time requirements relating thereto; procedures for voters to receive, prepare and deposit ballots at the polling place; disposition of spoiled ballots; voters qualified to receive assistance in voting; procedures for rendering assistance to such voters; persons qualified to render assistance to such voters; challenge of ballots cast with assistance; requiring affidavit of person rendering assistance to a voter and oaths to be contained therein; recordation of certain information relating to assisted voters; receipt and preservation of certain election materials by the clerks of the county commissions; penalties for false swearing; penalties for allowing an unqualified voter to receive unchallenged assistance in voting; report on and disposition of ballots spoiled or unused; preservation of unused ballots; penalties for failure to account for all ballots delivered; disposition of certain election papers; procedure for voter registration; procedure for registration and transfer of registration by mail; form required for registration by mail and distribution thereof; information to be provided and excluded from such form; requiring validation of registration by mail and certain exceptions thereto; application and procedures for voting an absent voter's ballot by personal appearance in the offices of the circuit clerks; voters qualified to vote an absent voter's
ballot by personal appearance; duties of the clerks of the circuit court in conducting voting of absent voter's ballots by personal appearance; voters qualified to receive assistance in voting an absent voter's ballot by personal appearance; persons qualified to render assistance to such voters; challenge of absent voter's ballots cast with assistance; requiring affidavit of person rendering assistance to a voter, voting an absent voter's ballot and oaths to be contained therein; recordation of certain information relating to assisted voters voting an absent voter's ballot; penalties for false swearing; penalties for assistance of a voter by unqualified person; penalties for allowing an unqualified voter to vote an absent voter's ballot; definitions of certain terms; application and procedures for voting an absent voter's ballot by mail; voters qualified to vote an absent voter's ballot by mail; assistance to voters in voting an absent voter's ballot by mail; requiring affidavit of person rendering assistance to such a voter and oaths to be contained therein; definitions of certain terms; duties of circuit clerks in preparation of absent voter's ballots; handling of ballots received by mail and recordation of information relating thereto; delivery and receipt of election supplies in counties using voting machines and time requirements relating thereto; assistance in voting by voting machine; persons qualified to render assistance in voting by voting machine; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting machines, certain exceptions thereto and penalties therefor; minimum requirements of electronic voting systems; requiring proportional distribution of voting devices at a primary election; preparation of ballot labels and certain supplies for electronic voting and time requirements relating thereto; ballot label arrangement in vote recording devices; requiring uniform numbering for candidates for certain offices; requiring drawing by lot to determine position of certain candidates on ballot labels; duties of the clerks of the circuit courts and clerks of the county commissions in the preparation of ballot labels; providing for inspection, maintenance, removal and certification of vote recording devices and ballot cards; delivery and receipt of election supplies used in electronic voting and time requirements relating thereto; assistance in
voting by electronic voting device; persons qualified to render assistance in voting by electronic voting device; affidavits required of such persons and oaths to be contained therein; prohibiting all persons from area about voting devices, certain exceptions thereto and penalties therefor; voting precincts in counties using electronic voting systems and the maximum number of voters therein; time and place of holding primary elections and hours polls open; announcements of candidacy for county boards of education and time requirements for filing thereof; announcements of candidacy for other offices and time requirements for filing thereof; certification and posting of candidacies by the secretary of state and time requirements relating thereto; preparation and form of general election ballots and information contained thereon; ballot counting procedures; canvass of election returns; declaration and certification procedures for recount of ballots; preservation and destruction of certain election papers; requiring accounts of financial transactions; filing of reports relating thereto with certain exceptions; time requirements for such filing; definitions of certain terms; information required in reports of financial transactions; prohibiting anonymous contributions and providing for distribution thereof; requiring written loan agreements and reporting thereof; penalties relating to filing reports of financial transactions; prohibiting certain activities related to campaigns and elections; and prohibiting any person from soliciting campaign contributions unless such person reveals the compensation to be received if such contribution is successfully collected and penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Article.
2. Registration of Voters.
3. Voting By Absentees.
4. Voting Machines.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
7. Regulation and Control of Elections.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map.


§3-1-23. County commission to arrange polling places and equipment; requirements.

§3-1-24. Obtaining and delivering election supplies.

§3-1-25. Supplies by special messenger.

§3-1-27. Municipal precinct registration records.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

§3-1-36. Report on and disposition of ballots spoiled or not used.

§3-1-43. Disposition of miscellaneous election papers.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map.

1 The precinct shall be the basic territorial election unit.
2 The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.
3 Each precinct within any urban center shall contain not less than three hundred nor more than eight hundred registered voters. Each precinct in a rural or less thickly
settled area shall contain not less than two hundred nor more than seven hundred registered voters, unless, upon a written finding by the county commission that establishment of or retention of a precinct of less than two hundred voters would prevent undue hardship to the voters, the secretary of state determines that such precinct be exempt from the two hundred voter minimum limit. If, at any time the number of registered voters shall exceed the maximum number in either case herein specified, it shall be the duty of the county commission to, and it shall, rearrange the precincts within the political division so that the new precincts formed therefrom, or from any part thereof, shall each contain a number of registered voters within the limits above provided. If such county commission fails to so act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty.

In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other political subdivisions of the municipality except in instances where found by the county commission to be wholly impracticable so to do. The provisions of this section shall be subject to the provisions of section twenty-eight, article four of this chapter relating to the number of voters in precincts in which voting machines are used.

The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county with the current boundaries of all precincts.


It shall be the duty of the board of ballot commissioners for each county to provide printed ballots for every election for public officers in which the voters or any of the voters within the county participate, and cause to be printed, on the appropriate ballot, the name of every candidate, but in no case shall the ballot contain any title, position, rank, degree, or such, including, but not limited to, doctor, reverend, Ph D., or the equivalent, whose name has been
certified to or filed with the clerk of the circuit court of the county in any manner provided for in this chapter. In any case wherein the constitution or statutes limit or prescribe the number of candidates or elected officers to be selected by the voters in any district or other governmental subdivision, the ballot commissioners, in the preparation of such ballots, shall cause to be printed thereon, in plainly worded language, the number of candidates to be voted for in each district or other governmental subdivision.

The clerk of the circuit court shall appoint a time at which all candidates for the office of delegate to a political party national convention are to appear in his office for the purpose of drawing by lot to determine where their names will appear on the ballots. The clerk shall give due notice of such time to each such candidate by United States mail, directed to the address given by the candidate in his or her announcement of candidacy. At the time appointed, all such candidates for the office of delegate to a political party national convention shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots.

The printing of the ballots, and all other printing caused to be done by the board of ballot commissioners, shall be contracted for with the lowest responsible bidder. Ballots other than those caused to be printed by the respective boards of ballot commissioners, according to the provisions of this chapter, shall not be cast, received or counted in any election.

For each such election to be held in their county and at least forty-two days before the date of such election, the board of ballot commissioners shall cause to be printed official ballots to not more than one and one-fifth times the number of registered voters in the county. Provisions of article five of this chapter shall govern the printing of
ballots for primary elections. The ballots so printed shall be wrapped and tied in packages, one for each precinct in their county, containing ballots to the number of one and one-twentieth times the number of registered voters in such precinct. Each package of ballots shall be sealed with wax, and plainly marked with the number of ballots therein, the name of the magisterial district, and the number of the voting place therein, to which it is intended to be sent. The names of the ballot commissioners shall also be endorsed thereon.

§3-1-23. County commission to arrange polling places and equipment; requirements.

1 The county commission in each county, before each election, shall secure, for each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two. Such room or building shall be located in such precinct: Provided, That upon a determination of the county commission that a suitable room or building in which to hold the election is not reasonably available in such precinct then the county commission may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in said county, in a location as near as may be to the territory of the precinct for which such room or building is provided. At any polling place for which parking spaces are available nearby, at least one parking space shall be reserved for handicapped voters and clearly designated as such.

*§3-1-24. Obtaining and delivering election supplies.

1 It shall be the duty of the board of ballot commissioners to appoint one or more of the commissioners of election at each precinct of the county to attend at the offices of the clerks of the circuit court and county commission, as the case may be.

*Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.
at least one day before each election to receive the ballots, ballot boxes, pollbooks, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerks shall take a receipt for the respective materials delivered to the above commissioner or commissioners of election, and shall file such receipt in their respective offices. It shall be the duty of such commissioners to receive such supplies and materials from the respective clerks and to deliver the same with the seal of all sealed packages unbroken, at the election precinct in time to open the election.

Such commissioner or commissioners, if they perform such services, shall receive the per diem and mileage rate prescribed by law for this service.

Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the ballots so delivered shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of such party in the election precinct.

For primary elections one copy of the pollbooks, including the forms for oaths of commissioners of election and poll clerks written or printed thereon, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

*§3-1-25. Supplies by special messenger.

In case any commissioner of election so appointed shall fail to appear at the offices of the clerks of such county commission and circuit court, by the close of the clerk’s office on the day prior to any election, as required by the preceding section, the board of ballot commissioners, or the chairman thereof, shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, *Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.
pollbooks and other supplies for such precinct. Such messenger, if not a county employee, shall be allowed five dollars for this service and, even if his be a county employee, twenty cents a mile for the distance necessary to be traveled by him, and shall promptly report to the clerks of the circuit court and county commission, respectively, and file with such clerks the receipts of the person to whom he delivered such ballots and other supplies, and his affidavit, stating when and to whom he delivered them.

*§3-1-27. Municipal precinct registration records.

At least one day prior to every municipal election, it shall be the duty of the appropriate officer designated by the municipality to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the appropriate officer or officers designated by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the officer or tribunal empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The clerk of the county commission shall acknowledge the release and return of the registration records under this section by the issuance of appropriate receipts.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the municipality to pay for such replacement.

§3-1-34. Voting procedures generally; assistance to voters; voting records; penalties.

Any person offering to vote in an election shall, upon

*Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.
entering the election room, clearly state his name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If such person is found to be duly registered as a voter at that precinct, he shall be required to sign his name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If such person be physically or otherwise unable to sign his name, his mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under such affixation. No ballot shall be given to such person until he so signs his name on the pollbook or his signature is so affixed thereon.

The county clerk shall be authorized, upon verification that the precinct at which such person is registered is not handicap accessible, to transfer such person's registration to the nearest polling place in the county which is handicap accessible. Requests by such persons for a transfer of registration shall be received by the county clerk no later than thirty days prior to the date of the election.

When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and shall deliver the ballot to the voter to be voted by him then without leaving the election room. If he returns the ballot spoiled to the clerks, they shall immediately mark such ballot "spoiled" and the same shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side as before done. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his ballot, using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

It shall be the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark inserted in the appropriate place on the registration record of each voter
the fact that such voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, such fact shall be indicated by the poll clerks on the registration record together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

No voter shall receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance.

Any voter qualified to receive assistance in voting under the provisions of this section may: (1) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided, and, on request, shall read over to such voter the names of candidates on the ballot as so prepared; or (2) require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his ballot in the manner hereinbefore provided; or (3) be assisted by any person of the voter’s choice. Provided, That such assistance may not be given by the voter’s present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member.

Any voter who requests assistance in voting but who is believed not to be qualified for such assistance under the provisions of this section shall nevertheless be permitted to vote a challenged ballot with the assistance of any person herein authorized to render assistance.

Any one or more of the election commissioners or poll clerks in the precinct may challenge such ballot on the ground that the voter thereof received assistance in voting it when in his or their opinion that the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or
commissioners or poll clerks making such challenge shall
enter the challenge and reason therefor on the form and in
the manner prescribed or authorized by article three of this
chapter.
An election commissioner or other person who assists a
voter in voting (1) shall not in any manner request, or seek to
persuade, or induce the voter to vote any particular ticket or
for any particular candidate or for or against any public
question, and shall not keep or make any memorandum or
entry of anything occurring within the voting booth or
compartment, and shall not, directly or indirectly, reveal to
any person the name of any candidate voted for by the voter,
or which ticket he had voted, or how he had voted on any
public question, or anything occurring within the voting
booth or compartment or voting machine booth, except
when required pursuant to law to give testimony as to such
matter in a judicial proceeding; (2) shall sign a written oath
or affirmation before assisting such voter on a form
prescribed by the secretary of state stating that he or she
will not override the actual preference of the voter being
assisted, attempt to influence the voter's choice or mislead
the voter into voting for someone other than the candidate
of voter's choice. Such person assisting the voter shall also
swear or affirm that he or she believes that the voter is
voting free of intimidation or manipulation.
In accordance with instructions issued by the secretary of
state, the clerk of the county commission shall provide a
form entitled "List of Assisted Voters," the form of which
list shall likewise be prescribed by the secretary of state.
The commissioners shall enter the name of each voter
receiving assistance in voting the ballot, together with the
poll slip number of that voter and the signature of the
person or the commissioner from each party who assisted
the voter. If no voter shall have been assisted in voting the
ballot as herein provided, the commissioners shall likewise
make and subscribe to an oath of that fact on such list.
After preparing the ballot the voter shall fold the same so
that the face shall not be exposed and so that the names of
the poll clerks thereon shall be seen. The voter shall then
announce his name and present his ballot to one of the
commissioners who shall hand the same to another
commissioner, of a different political party, who shall
128 deposit it in the ballot box, if such ballot is the official one 
129 and properly signed. The commissioner of election may 
130 inspect every ballot before it is deposited in the ballot box, 
131 to ascertain whether it is single, but without unfolding or 
132 unrolling it, so as to disclose its content. When the voter has 
133 voted, he shall retire immediately from the election room, 
134 and beyond the sixty-foot limit thereof, and shall not 
135 return, except by permission of the commissioners.

136 Following the election, the affidavits required by this 
137 section from those assisting voters together with the “List 
138 of Assisted Voters,” shall be returned by the election 
139 commissioners to the clerk of the county commission along 
140 with the election supplies, records and returns, who shall 
141 make such oaths and list available for public inspection and 
142 who shall preserve the same for a period of twenty-two 
143 months or until disposition is authorized or directed by the 
144 secretary of state, or court of record.

145 Any person making an affidavit required under the 
provisions of this section who shall therein knowingly 
swear falsely, or any person who shall counsel, or advise, 
aid or abet another in the commission of false swearing 
under this section, shall be guilty of a misdemeanor, and, 
upon conviction thereof, shall be fined not more than one 
thousand dollars, or imprisoned in the county jail for a 
period of not more than one year, or both.

153 Any election commissioner or poll clerk who authorizes 
or provides unchallenged assistance to a voter when such 
voter is known to such election commissioner or poll clerk 
not to require assistance in voting shall be guilty of a felony, 
and, upon conviction thereof, shall be fined not more than 
five thousand dollars, or imprisoned in the penitentiary for 
a period of not less than one year nor more than five years, 
or both fined and imprisoned.

§3-1-36. Report on and disposition of ballots spoiled or not 
used.

1 Any voter who shall spoil, deface or mutilate the ballot 
delivered to him, on returning the same to the poll clerks, 
shall receive another in place thereof. Every person who 
does not vote any ballot delivered to him shall, before 
leaving the election room, return such ballot to the poll 
clerks. When a spoiled or defaced ballot is returned, the poll
clerks shall make a minute of the fact on the pollbooks, at
the time, and the word “spoiled” shall be written across the
face of the ballot and such ballot shall be placed in an
envelope for spoiled ballots.

Immediately on closing the polls, the commissioners of
election shall ascertain the number of ballots spoiled during
the election and the number of ballots remaining not voted.
The commissioners of election shall also ascertain from the
pollbooks the number of persons who voted and shall
report, over their signatures, to the clerk of the county
commission, the number of votes cast, the number of ballots
spoiled during the election and the number of ballots not
voted. All unused ballots shall at the same time be returned
to the clerk of the county commission, who shall separately
package the unused ballots from each precinct, mark the
name and number of the precinct on the package and retain
them securely along with other election materials.

Each commissioner who is a member of an election board
which fails to account for every ballot delivered to it is
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not more than one thousand dollars or confined in
the county jail for not more than one year, or both fined and
imprisoned.

The board of ballot commissioners of each county, or the
chairman thereof, shall preserve the ballots that are left
over in their hands, after supplying the precincts as
provided, until twenty-two months after the election.

§3-1-43. Disposition of miscellaneous election papers.

At the expiration of twenty-two months after any
election, the affidavits taken and returned by any registrar
or any election officer, applications for absent voters’
ballots, rejected absent voters’ ballots, certificates of
nominations of candidates, and the written designations of
election officers and of ballot commissioners shall be
destroyed. If the further preservation of any of the
documents mentioned in this section shall be required by
the order of the court, the same shall be destroyed at the
expiration of the time fixed for the further preservation
thereof by such order.
ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-20. Completing registration forms; registration receipts.

§3-2-41. Registration and transfer by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

§3-2-20. Completing registration forms; registration receipts.

1 Each applicant for voter registration shall fill in and complete only one registration form, except in those cases where a separate record for municipal elections is required, in which cases those registrants who are required to be listed in separate municipal record lists shall fill in and complete two forms. The signature of the applicant on all forms shall be written in ink. Upon the completion of the registration of any person and the presentation of valid identification and proof of age, the registration official shall issue to such person a signed and dated receipt of such registration. The form for such receipt shall be prescribed by the secretary of state.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by county clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by county clerk; form of application and information required.

(a) In addition to any procedures which may be used in effecting the biennial checkup as provided under section twenty-one of this article, central registration and transfer as provided under sections twenty-two and twenty-seven of this article, and the provision with respect to registration of absentee voters under section twenty-three of this article, any qualified person may register or transfer his registration by mail.

(b) Completed applications, when received by any county clerk not later than forty-two days and by the appropriate county clerk not later than thirty days before the following primary, general or special election, entitle
the applicant to vote in such election if he is otherwise
qualified. Any county clerk receiving an application from a
person who does not reside in his county but who does
reside elsewhere in the state shall forthwith forward such
application to the proper county clerk. Each county clerk
shall make an entry on such application of the date it is
received by such clerk, and the application shall remain on
file in the office of the clerk for at least two years from the
date it was received.

(c) Applications for use pursuant to this section shall be
made available by the county clerk to every adult person of
the county, not registered, and to any registered voter of the
county upon request. The application for use pursuant to
this section shall be a uniform statewide application in a
form to be prescribed by the secretary of state and shall
include the information required under the form provisions
of section nineteen of this article. The form, which shall be
self-addressed, is to be as widely and freely distributed as
possible and shall be a bifold self-mailer which shall be
compatible with local systems of voter registration data
collection and storage.

(d) In addition to the information required under the
form provisions of section nineteen of this article, the form
shall contain such other information as the secretary of
state may reasonably require and shall also include the
following information:

(1) Notice that those currently registered do not need to
reregister unless they have moved or failed to vote at least
once during a period covering two statewide primary and
two general elections as indicated by their registration
records;

(2) Instructions on how to fill out and submit the form
and that the form must be received by the appropriate
county clerk at least thirty days prior to the election at
which the applicant may vote;

(3) Notice that registration or transfer is not complete
until the form is received by the appropriate county clerk;

(4) Notice of a voter’s right to register centrally;

(5) A warning to the voter that it is a crime to procure a
false registration and notice of the felony offenses provided
for in section forty-two of this article;

(6) Notice that political party enrollment is optional
but, in order to vote in a primary election of a political
party, a voter must enroll in that political party;
(7) Notice that the applicant must be a citizen of the
United States, at least seventeen years old and will be
eighteen years old on or before the next general election,
and a resident of the county to which application is made;
(8) Notice that a voter notification form will be mailed
to those applicants whose complete form is received;
(9) A space for the applicant to indicate whether or not
he has ever been registered before and, if so, his name and
address at the time of prior registration;
(10) A space for the applicant to indicate his choice of
party, if any, in which space the names of all parties are
provided so that the applicant can check one with a clear
alternative provided for an applicant to decline to affiliate
with any party;
(11) A space for the applicant to indicate his social
security number; and
(12) A space for the applicant to execute the application
on a line which is clearly labeled “signature of applicant”
and contained in the following specific form of oath or
affirmation:
“I do solemnly swear or affirm that the information
provided in the preceding uniform statewide application is
true to the best of my knowledge, information and belief,
and I understand that if I willingly provide false
information concerning a material matter or thing therein, I
shall be deemed guilty of the felony offense of perjury and
shall be subject to the penalties for perjury.

Signature of Applicant

Subscribed and sworn (or affirmed) to before me,
this ................ day of ............. , 19....

........................................

which oath or affirmation shall be administered by a person
authorized to perform notarial acts under the provisions of
article one or one-a, chapter thirty-nine of this code. The
person administering the oath or affirmation shall not
charge a fee for such act, and the uniform statewide
application shall inform the person administering such
oath or affirmation that no fee is to be charged.
(e) Any person who has registered or reregistered
pursuant to this section shall be required to make his first
vote in person at the poll or appear in person at the office of
the clerk of the circuit court to vote an absentee ballot
during a period covering two statewide primary elections
and two general elections in order to make such registration
valid: Provided, That any person who has registered or
reregistered pursuant to this section and who has qualified
for placement on the special absentee voting list pursuant to
section two-b, article three of this chapter, or who has
qualified to vote an absent voter's ballot by mail pursuant
to paragraph one, two, three or six of the application for
voting an absent voter's ballot by mail provided in section
five, article three of this chapter, shall not be required to
make his first vote in person but shall be required to vote
during a period covering two statewide primary elections
and two general elections next following his registration in
order to make such registration valid.

Any such person required by this section to make his first
vote in person in order to make his registration valid shall
present valid identification and proof of age to the clerks at
the poll or the clerk in the office of the circuit clerk of the
county in which he is registered before casting his first
ballot.

(f) The uniform statewide application prescribed by this
section may refer to various public officials by title or
official position (e.g., clerk of the county commission,
secretary of state), but in no case may the actual name of the
officeholder be printed or otherwise appear on such form:
Provided, That nothing contained in this subsection shall
administering the oath or affirmation in accordance with
the provisions of subdivision (12), subsection (d) of this
section, and affixing his signature thereto.

(g) It shall be the duty of the secretary of state to create
and commence distribution of the forms for the uniform
statewide application within six months following the
effective date of this section.

ARTICLE 3. VOTING BY ABSENTEEES.

§3-3-3. Voting absent voter's ballot by personal appearance.
§3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance.
§3-3-5. Voting an absent voter's ballot by mail.
§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.
§3-3-11. Preparation, number and handling of absent voters' ballots.

§3-3-3. Voting absent voter's ballot by personal appearance.

A person desiring to vote an absent voter's ballot by personal appearance may appear during regular business hours at the office of the clerk of the circuit court of the county in which he is registered to vote not more than fifteen days before the election and on any day thereafter up to and including the Saturday next preceding the date of the primary or general election or, in the case of special elections, up to and including the third day next preceding the day of any such special election (in computing such third day, the day of conducting the special election shall be excluded), and upon oral request receive an application for an official absent voter's ballot or ballots to be voted at such election, which application shall be prescribed by the secretary of state and shall be in substantially the following form:

APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY PERSONAL APPEARANCE

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN,

I, .................. , hereby declare that I am now, or will have been a resident of the State of West Virginia for twelve months, and of the county of ..................... for sixty days, next preceding the date of the ensuing election to be held on the ..................... , 19........ ; that I now reside at ..................... , in the magisterial district of ..................... , in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that I am registered as a ..................... ; (state political party if ballot is for primary election) and that (strike out numbered
paragraphs not applicable and complete the numbered paragraph which is applicable):

(1) I expect to be absent from the aforementioned county in which I am registered to vote during the entire time the polls are open in such election, and I am (check one applicable):

□ A member of the armed forces in the active service.
□ A spouse or dependent of a member of the armed forces in the active service.
□ A member of the merchant marine of the United States.
□ A spouse or dependent of a member of the merchant marine of the United States.
□ A citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.
□ A spouse or dependent residing with or accompanying a citizen of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia.

(2) I am required to be absent from the aforementioned county in which I am registered during the entire time the polls are open in such election for the reason or reasons hereafter stated, and I am not in any of the categories referred to in paragraph (1) above: ..........................................

(here state specific reason or reasons for required absence)

(3) I anticipate commitment to a hospital, institution or other confinement on or about the .........................

day of ........................., 19........, for the following medical reasons .........................,
as evidenced below by the statement of a duly licensed physician or chiropractor, and by reason thereof will not be able to vote in person at the polls in such election.

(4) I have been appointed ..........................

(specify whether an election commissioner or poll clerk) in precinct No. ....... in said election, which precinct is not the precinct in which I am registered to vote.

(5) My regular polling place in precinct No. ............ is inaccessible to me because of the following disability or disabilities ..........................
In consideration of the foregoing qualifications, I hereby make application for an official absent voter's ballot (or ballots if more than one are to be used) to be voted by me at such election.

I hereby declare, under the penalties for false swearing as provided in section three, article nine, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, that the statements and declarations contained in this application are true and correct to the best of my knowledge and belief.

..............................................
Signature of Applicant
(or in case the applicant is illiterate he shall make his mark and have it witnessed on the following lines):

..............................................
Mark of Applicant

..............................................
Signature of Witness

If the person applying for an absent voter's ballot by personal appearance be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is anticipated commitment to a hospital, institution or other confinement for medical reasons.

DECLARATION OF PHYSICIAN (CHIROPRACTOR)

I, ..........................................., hereby declare that I am a physician (chiropractor), duly licensed to practice in the State of ......................................; that I last examined ....................., the applicant whose signature appears on the application above on the ............... day of ............................., 19........; and that in my opinion said applicant will, because of .............................................. (state medical reasons) be committed to .............................................. (state hospital, institution or other confinement)
on or about the .......... day of .........., 19....., 
and will because of such reasons not be able to go to the 
polls on the .......... day of .........., 19....., 
the date of the election.

Signature of Physician (Chiropractor)

The application shall be completed by the applicant in his 
own handwriting, or in the handwriting of the witness to his 
mark in the event of illiteracy, in the office of the clerk of the 
circuit court; in no event shall the applicant remove an application for voting an absent voter's ballot by personal 
appearance from said office except when such is necessary 
to have a physician or chiropractor to complete and sign the 
declaration of a physician or chiropractor when such is 
required.

Immediately upon receipt of a completed application for 
voting an absent voter's ballot by personal appearance, the 
clerk of the circuit court shall determine (1) whether such 
application has been completed as required by law; (2) 
whether he has evidence that any of the statements or 
declarations contained in the application are not true; (3) 
whether the applicant is in fact duly registered in the 
precinct of his residence as provided by law and insofar as 
registration is concerned would be permitted to vote at the 
polls in such election. If the determination of the clerk of the 
circuit court as to (1) or (3) is in the negative or as to (2) is in 
the affirmative, the clerk shall, if the applicant insists, 
permit the applicant to vote an absent voter's ballot by 
personal appearance, but the clerk shall challenge the 
absent voter's ballot on the basis of such determination.

Upon determination by the clerk of the circuit court that 
the applicant is entitled to vote an absent voter's ballot by 
personal appearance or in case the applicant determines to 
vote an absent voter's ballot challenged by the clerk of the 
circuit court as provided in the immediately preceding 
paragraph, the clerk of the circuit court shall hand to him 
the following absentee voting supplies:

(a) One official absent voter's ballot (or ballots if more 
than one are to be used) which has been prepared in 
accordance with law for use in such election; such ballot in 
the case of a primary election shall be of the party of 
applicant's affiliation as indicated on his registration
record or in case the applicant is not found to be registered
by the clerk but insists upon voting a challenged ballot, the
ballot shall be of the party designated by the applicant in
his application.
(b) One Absent Voter's Ballot Envelope No. 1, unsealed,
which shall have no writing thereon except the designation
"Absent Voter's Ballot Envelope No. 1."
(c) One Absent Voter's Ballot Envelope No. 2, unsealed.
The voter shall thereupon retire alone to the booth or
compartment provided in said clerk's office for voting
absent voters' ballots and there mark his ballot: Provided,
That the voter may have assistance in voting his absent
voter's ballot in accordance with the provisions of the next
succeeding section of this article. After the voter has voted
his absent voter's ballot, he shall (1) enclose the same in
Absent Voter's Ballot Envelope No. 1, and seal that
envelope; (2) enclose sealed Absent Voter's Ballot Envelope
No. 1 in Absent Voter's Ballot Envelope No. 2 and seal that
envelope; (3) complete and sign the forms, if any, on Absent
Voter's Ballot Envelope No. 2 according to the instructions
thereon; and (4) transmit possession of sealed Absent
Voter's Ballot Envelope No. 2 to the clerk of the circuit
court.
Upon receipt of such sealed envelope, the clerk shall (1)
enter onto the envelope such information as may be
required of him according to the instructions thereon; (2)
enter his challenge, if any, to the absent voter's ballot; (3)
Enter the required information into a record of persons
making an application for and voting an absent voter's
ballot by personal appearance or by mail (the form of which
record and the information to be entered thereon shall be
prescribed by the secretary of state); and (4) place such
sealed envelope in a secure location in his office, there to
remain until delivered to the polling place in accordance
with the provisions of this article or in case of a challenged
ballot to the county court sitting as a board of canvassers.

§3-3-4. Assistance to voter in voting an absent voter's ballot by
personal appearance.

1 Any duly registered voter, who requires assistance to vote
2 by reason of blindness, disability, advanced age, or inability
3 to read and write, may be given assistance by a person of the
voter's choice: *Provided*, That such assistance may not be
given by the voter's present or former employer or agent of
that employer or by the officer or agent of a labor union of
which the voter is a past or present member.

Any voter who requests assistance in voting an absent
voter's ballot but who is determined by the clerk of the
circuit court not to be qualified for such assistance under
the provisions of this section and section thirty-four, article
one, shall nevertheless be permitted to vote a challenged
absent voter's ballot with the assistance of any person
herein authorized to render assistance. The clerk of the
circuit court shall in such case challenge the absent voter's
ballot on the basis of such determination.

Any one or more of the election commissioners or poll
clerks in the precinct to which an absent voter's ballot has
been sent may challenge such ballot on the ground that the
voter thereof received assistance in voting it when in his or
their opinion (1) the person who received the assistance in
voting the absent voter's ballot did not require such
assistance, or (2) the person who provided the assistance in
voting did not make an affidavit as required by this section.
The election commissioner or poll clerk or commissioners or
poll clerks making such challenge shall enter the challenge
and reason therefor on the form and in the manner
prescribed or authorized by this article.

Before entering the voting booth or compartment, the
person who intends to provide a voter assistance in voting
shall make an affidavit, the form of which shall be
prescribed by the secretary of state, that he or she will not in
any manner request, or seek to persuade, or induce the voter
to vote any particular ticket or for any particular candidate
or for or against any public question, and that he or she will
not keep or make any memorandum or entry of anything
occurring within the voting booth or compartment, and that
he or she will not, directly or indirectly, reveal to any person
the name of any candidate voted for by the voter, or which
ticket he had voted, or how he had voted on any public
question, or anything occurring within the voting booth or
compartment or voting machine booth, except when
required pursuant to law to give testimony as to such matter
in a judicial proceeding.
In accordance with instructions issued by the secretary of state, the clerk of the circuit court shall provide a form entitled "List of Assisted Voters," the form of which list shall likewise be prescribed by the secretary of state, which list shall be divided into two parts. Part A shall be entitled "Unchallenged Assisted Voters" and Part B shall be entitled "Challenged Assisted Voters." Under Part A the clerk shall enter the name of each voter receiving unchallenged assistance in voting an absent voter's ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absent voter's ballot, the name of the person providing the voter with assistance in voting an absent voter's ballot, the fact that the person rendering the assistance in voting made and subscribed to the oath required by this section, and the signature of the clerk of the circuit court certifying to the fact that he had determined that the voter who received assistance in voting an absent voter's ballot was qualified to receive such assistance under the provisions of this section. Under Part B the clerk shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving such challenged assistance, the reason for the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter's ballot by personal appearance, the clerk of the circuit court shall make and subscribe to an oath on such list that the list is correct in all particulars; if no voter shall have been assisted in voting an absent voter's ballot as herein provided, the clerk of the circuit court shall likewise make and subscribe to an oath of that fact on such list. The "List of Assisted Voters" shall be available for public inspection in the office of the clerk of the circuit court during regular business hours throughout the period provided for voting an absent voter's ballot by personal appearance, and unless otherwise directed by the secretary of state, the clerk of the circuit court shall transmit such list, together with the affidavits, applications and absent voters' ballots, to the precincts on election day.

Following the election, the affidavits required by this section from persons providing assistance in voting, together with the "List of Assisted Voters," shall be
returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns, who shall make such oaths and list available for public inspection and who shall preserve the same for twenty-two months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

Any person making an affidavit required under the provisions of this section who shall therein knowingly swear falsely, or any person who shall counsel, or advise, aid or abet another in the commission of false swearing under this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment.

Any person who provides a voter assistance in voting an absent voter’s ballot in the office of the clerk of the circuit court who is not qualified or permitted by this section to provide such assistance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment.

Any clerk of the circuit court, election commissioner or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absent voter’s ballot when such voter is known to the clerk of the circuit court or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county jail for a period of not more than one year, or both such fine and imprisonment.

The term “physical disability” as used in this section shall mean only blindness or such degree of blindness as will prevent the voter from seeing the names on the ballot, or amputation of both hands, or such disability of both hands that neither can be used to make cross marks on the absent voter’s ballot.
§3-3-5. Voting an absent voter's ballot by mail.

A person desiring to vote an absent voter's ballot by mail may, not earlier than the first day of January prior to the date of any primary, general or special election in the case of any person outside the continental limits of the United States and not more than eighty-four days prior to the date of any primary, general or special election in the case of any other person, make application by mail to the clerk of the circuit court of the county in which he is registered to vote for an official absent voter's ballot or ballots to be voted at such election, except that the clerk of the circuit court shall not honor any such application for an absent voter's ballot received by him after the fourth day next preceding the date of the election. In computing such fourth day, the day of conducting the election shall be excluded. The application to be used by persons who wish to vote an absent voter's ballot by mail shall be prescribed by the secretary of state and shall be in substantially the following form:

APPLICATION FOR VOTING AN ABSENT VOTER'S BALLOT BY MAIL

KNOWING THAT I CAN BE FINED NOT MORE THAN ONE THOUSAND DOLLARS OR IMPRISONED IN THE COUNTY JAIL FOR A PERIOD OF NOT MORE THAN ONE YEAR OR BOTH SUCH FINE AND IMPRISONMENT FOR KNOWINGLY MAKING A FALSE STATEMENT OR REPRESENTATION HEREIN, I, .................................................., hereby declare that I am now, or will have been a resident of the state of West Virginia for twelve months, and of the county of ..........., for sixty days next preceding the date of the ensuing election to be held on the ......................... day of ........................., 19....; that I now reside at ............................................................... .............................., (give full address) in the magisterial district of ........................., in said county; that I am a duly qualified voter entitled to vote in such election; that I am registered in the precinct of my residence as provided by law; that I am registered as a ............................................................... ; (state political party if ballot is for primary election) and that (strike out the
numbered paragraphs not applicable and complete the
numbered paragraph which is applicable):
(1) I will be unable to vote in person at the polls on
election day because of 
(state particulars of physical disability, illness or injury) as
evidenced below by the statement of a duly licensed
physician or chiropractor.
(2) I anticipate commitment to a hospital, institution or
other confinement on or about the 
 day of
 medical reasons , as evidenced
below by the statement of a duly licensed physician or
chiropractor, and by reason thereof will not be able to vote
in person at the polls in such election.
(3) I expect to be absent from the aforementioned
county in which I am registered to vote during the entire
time the polls are open in such election, and I am (check one
applicable):
☐ A member of the armed forces in the active service.
☐ A spouse or dependent of a member of the armed
forces in active service.
☐ A member of the merchant marine of the United
States.
☐ A spouse or dependent of a member of the merchant
marine of the United States.
☐ A citizen of the United States temporarily residing
outside the territorial limits of the United States and the
District of Columbia.
☐ A spouse or dependent residing with or accompanying
a citizen of United States temporarily residing outside the
territorial limits of the United States and the District of
Columbia.
(4) I am required to be absent from the aforementioned
county in which I am registered during the entire time the
polls are open in such election the reason or reasons
hereafter stated; I am not in any of the categories referred to
in paragraph three above; I am required to be absent from
said county during regular business hours of the clerk of the
circuit court of said county throughout the period or
throughout the remainder of the period of voting absent
voter's ballot by personal appearance at said office
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(5) I have been appointed ........................................
    (state whether an election
    commissioner or poll clerk)

In precinct No. ....................... in said election,
which precinct is not the precinct in which I am registered
to vote.

(6) I will be incarcerated in the county or city jail or
other detention facility located in this county on election
day but am not under sentence of treason, bribery or a
felony, as evidenced below by the statement of the county
sheriff, chief of police or authorized deputy.

In consideration of the foregoing qualifications, I hereby
make application for an official absent voter's ballot (or
ballots if more than one are to be used) to be voted by me at
such election, and request that such ballot or ballots be
mailed to me at the following address:

(give full address for mailing purposes)

(Complete the following paragraph only if assistance will
be needed in voting absent voter's ballot):

I further declare that I will need assistance in voting an
absent voter's ballot for the following reasons

(specify illiteracy or exact nature of physical
disability, illness or injury)

I hereby declare under the penalties for false swearing as
provided in section three, article nine, chapter three of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended, that the statements and declarations
contained in this application are true and correct to the best
of my knowledge and belief.

Signature of Applicant

(or in case the applicant is illiterate he
shall make his mark and have it witnessed
on the following lines):

Mark of Applicant
If the person applying for an absent voter's ballot by mail be unable to sign his application because of illiteracy, he shall make his mark on the signature line above provided for an illiterate applicant which mark shall be witnessed.

The following declaration must be completed and signed if the reason specified in the above application for being unable to vote in person at such election is physical disability, illness or injury, or is anticipated confinement in a hospital, institution or other place for medical reasons.

STATEMENT OF PHYSICIAN (CHIROPRACTOR)

I, .............................................., hereby declare that I am a physician (chiropractor) duly licensed to practice in the state of ................................................... ; that I last examined ................................................... , the applicant whose signature appears on the application above on the ........ day of ............., 19......; and that in my opinion (strike out numbered paragraph not applicable and complete the numbered paragraph which is applicable).

(1) The applicant will, because of ..............................................,
    (state particulars of physical disability, illness or injury)
    be unable to go to the polls on the .................................
    day of ................., 19...., the date of the election.

(2) The applicant will, because of ..............................................
    (state for what medical reasons)
    be confined in ...................................................
    (specify hospital, institution or other place)
    day of ................., 19...., and will because of such reasons not be able to go to the polls on the .................................
    day of ................., 19...., the date of the election.

(Complete the following paragraph if applicant for absent voter's ballot will need assistance in voting such ballot, based upon physical disability, illness or injury.)

I am of the further opinion that applicant ..................

    (will)
because of the aforementioned physical
(will not)
disability, illness or injury need assistance in voting an
absent voter’s ballot.

Signature of Physician (Chiropractor)
The following declaration must be completed and signed
if the reason specified in the above application for being
unable to vote in person at the election is incarceration in a
facility within the county for other than conviction of
treason, bribery or a felony.

STATEMENT OF SHERIFF, CHIEF OF POLICE
OR AUTHORIZED DEPUTY
I, .............................................., hereby declare that the
applicant whose signature appears on the application
above will be confined in the county or city jail or other
detention facility on the ..............................................
day of ..........................................., 19........, the date of the election,
and is not under conviction of treason, bribery or a felony.

SIGNATURE

TITLE

COUNTY

In lieu of the application for an absent voter’s ballot
provided above, those persons specified in subdivision (2),
section one of this article may use the application for
absentee ballot form recommended by and issued under
authority of The Federal Voting Assistance Act of 1955, as
amended, and any such federal postcard application does
not have to be executed pursuant to oath or attestation in
the case of a voter outside the continental limits of the
United States. Upon receipt of a properly completed copy of
such form, the clerk of the circuit court shall process it the
same as he would any other application for an absent voter’s
ballot by mail. Any such properly completed copy may be
returned only to the clerk of the circuit court of the county
in which the applicant is a registered voter.

Immediately upon receipt of a completed application for
voting an absent voter’s ballot by mail, the clerk of the
circuit court shall determine (1) whether the application for
voting such ballot has been completed as required by law;
(2) whether he has evidence that any of the statements
contained in the application are not true; and (3) whether
the applicant is in fact duly registered in the precinct of his
residence as provided by law and insofar as registration is
concerned would be permitted to vote at the polls in such
election. If the determination of the clerk of the circuit court
as to (1) or (3) is in the negative or as to (2) is in the
affirmative, the clerk shall notify the applicant at the time
he mails the absent voter's ballot to him that he will
challenge the applicant's privilege to vote an absent voter's
ballot by mail for reasons which he shall indicate and, upon
receipt of the applicant's absent voter's ballot, the clerk
shall challenge such ballot.

Upon determination by the clerk of the circuit court that
the applicant is entitled to vote an absent voter's ballot by
mail or that the applicant will be permitted to vote an
absent voter's ballot by mail with such ballot to be
challenged by the clerk, the clerk shall between the forty-
second day and the fourth day next prior to the election in
which the absent voter's ballot is to be used mail to the
applicant the following absentee voting supplies: Provided,
That the clerk mail such voting supplies to an applicant
whose address is shown to be outside the continental limits
of the United States by priority airmail on the same day the
application is received in the clerk's office or on the next
day thereafter that he has both an application and a ballot:

(a) One official absent voter's ballot (or ballots if more
than one are to be used) which has been prepared in
accordance with law for use in such election; such ballot in
the case of a primary election shall be of the party of the
applicant's affiliation as indicated on his registration card
or, in the case the applicant is not found to be registered by
the clerk but votes a ballot challenged by the clerk, the clerk
shall send to the applicant an absent voter's ballot of the
party designated by the applicant in his application;

(b) One Absent Voter's Ballot Envelope No. 1, unsealed,
which shall have no writing thereon except the designation
"Absent Voter's Ballot Envelope No. 1";

(c) One Absent Voter's Ballot Envelope No. 2, unsealed;

(d) Notice that an absent voter's ballot returned from
outside the continental limits of the United States must be mailed priority airmail; and
(e) Notice that absent voters' ballots must be received in the office of the clerk not later than the time of closing of the polls.

Upon receipt of an absent voter's ballot by mail, the voter shall mark the ballot and the voter may have assistance in voting his absent voter's ballot in accordance with the provisions of section six of this article.

After the voter has voted his absent voter's ballot, he shall (1) enclose the same in Absent Voter's Ballot Envelope No. 1, and seal that envelope, (2) enclose sealed Absent Voter's Ballot Envelope No. 1 in Absent Voter's Ballot Envelope No. 2 and seal that envelope, (3) complete and sign the forms, if any, on Absent Voter's Ballot Envelope No. 2 according to the instructions thereon, and (4) mail, postage prepaid and, if from outside the continental limits of the United States, by priority airmail, the sealed Absent Voter's Ballot Envelope No. 2 to the clerk of the circuit court of the county in which he is registered to vote.

Upon receipt of such sealed envelope, the clerk shall (1) enter onto the envelope such information as may be required of him according to the instructions thereon; (2) enter his challenge, if any, to the absent voter's ballot; (3) enter the required information into a record of persons making application for and voting an absent voter's ballot by personal appearance or by mail (the form of which record and the information to be entered therein shall be prescribed by the secretary of state); and (4) place such sealed envelope in a secure location in his office, there to remain until delivered to the polling place in accordance with the provisions of this article or, in case of a challenged ballot, to the county commission sitting as a body of canvassers.

§3-3-6. Assistance to voter in voting an absent voter's ballot by mail.

No voter shall receive any assistance in voting an absent voter's ballot by mail unless he or she shall make a declaration at the time he or she makes application for an absent voter's ballot that because of blindness, disability,
advanced age or inability to read or write he or she requires assistance in voting an absent voter's ballot.

Upon receipt of an absent voter's ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

The person providing assistance in voting an absent voter's ballot by mail shall make an affidavit on a form as may be prescribed by the secretary of state, that he will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

The term "assistance in voting" as used in this section shall mean assistance in physically marking the official absent voter's ballot for a voter, or reading or directing the voter's attention to any part of the official absent voter's ballot.

§3-3-11. Preparation, number and handling of absent voters' ballots.

Absent voters' ballots shall be in all respects like other ballots. Not less than seventy days prior to the date on which any primary, general or special election is to be held, the clerks of the circuit courts of the several counties shall estimate and determine the number of absent voters' ballots of all kinds which will be required in their respective counties for any such election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, shall be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The
several county boards of ballot commissioners shall prepare and have printed, in such number as they shall determine, such absent voters' ballots as are to be printed under their directions as hereinbefore provided, and such ballots shall be delivered to the clerk of the circuit court of the county not less than forty-two days prior to the day of the election at which they are to be used. Before any ballot is mailed or delivered, the clerk of the circuit court shall affix his official seal and he and the other members of the board of ballot commissioners shall place their signatures near the lower left-hand corner on the back thereof. An absent voter's ballot not containing such seal and signatures shall be invalid and shall be subject to challenge by any election commissioner or poll clerk.

The clerk of the circuit court shall be primarily responsible for the preparation, mailing, receiving, delivering and otherwise handling of all absent voters' ballots. He shall keep such record, as may be prescribed by the secretary of state, of all ballots so delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him, and shall deliver to the commissioner of election to whom the ballots for the precinct are delivered and at the time of the delivery of such ballots a certificate stating the number of ballots delivered or mailed to absent voters, and those marked before him, if any, and the names of the voters to whom such ballots have been delivered or mailed, or by whom they have been marked, if marked before him.

ARTICLE 4. VOTING MACHINES.

§3-4-12. Inspection of machines; duties of county commissions, ballot commissioners and election commissioners; keys and records relating to machines.

§3-4-21. Assistance to illiterate and disabled voters.

§3-4-22. Persons prohibited about voting machines; penalties.

*§3-4-12 Inspection of machines; duties of county commissions, ballot commissioners and election commissioners; keys and records relating to machines.

1 When the clerk of the county commission has completed the preparation of the voting machines, as provided in the next preceding section, and not later than seven days before

* Clerks Note: This section was also amended in H. B. 1381, which passed prior to this bill.
the day of the election, he shall notify the members of the county commission and the ballot commissioners that the machines are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk, or at such other place wherein the voting machines are stored, not later than five days before the day of the election, and shall examine the machines to determine whether the requirements of this article have been met. Any candidate, and one representative of each political party having candidates to be voted on at the election, may be present during such examination. If the machines are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the machines opposite the numbers of the precincts. The clerk shall then deliver the keys to the voting machines to the ballot commissioners who shall give a receipt for the keys, which receipt shall contain identification of such keys. Not later than one day before the election the election commissioner of each precinct who shall have been previously designated by the ballot commissioners, shall attend at the offices of the clerks of the circuit court and county commission of such county to receive the key or keys to the device covering the registering counters and such other keys as may be necessary for the operation of the machine in registering votes, and to receive the other necessary election records, books and supplies required by law. Such election commissioners shall receive the per diem mileage rate prescribed by law for this service. Such election commissioners shall give the ballot commissioners a receipt for such keys, records, books and supplies, and such receipt shall contain identification of such keys. The master key and all other keys shall remain in the possession of the clerk of the county commission.

The term "assistance in voting," as used in this section, means assistance in physically marking the official ballot for a voter, or reading or directing the voter's attention to any part of the official ballot, or physically operating the voting machine.

§3-4-21. Assistance to illiterate and disabled voters.

(a) Any duly registered voter, who requires assistance to
vote by reason of blindness, disability, advanced age, or inability to read and write, may be given assistance by one of the following means:

(1) By a person of the voter's choice: Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by the officer or agent of a labor union of which the voter is a past or present member; or

(2) If no person of the voter's choice be present at the polling place, the voter may request such assistance from the poll clerks or ballot commissioners present at the polling place, whereupon such assistance may be given by any two of such election officers of opposite political party affiliation to whom such voter shall thereupon declare his choice of candidates and his or her position on public questions appearing on the ballot labels. Such election officers, in the presence of the voter and in the presence of each other, shall thereupon cause such voter's declared choices to be registered by the voting machine as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting such voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. Such person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

§3-4-22. Persons prohibited about voting machines; penalties.

Excepting the election officials acting under authority of sections eighteen, nineteen, twenty and twenty-one of this article in the conduct of the election, and qualified persons assisting voters pursuant to the provisions of section twenty-one of this article no person other than the voter alone may be in, about or within five feet of the voting machine during the time such voter is in the process of voting at any election, and, during such time, no person may communicate in any manner with the voter and the voter may not communicate with any other person or persons. Any conduct or action of an election official about or around the voting machine while the voter is in the process
of voting, in excess of the authority vested in such official by provisions of this article, shall constitute a violation of the provisions hereof. Any person violating any provision or provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one thousand dollars or be sentenced to imprisonment in the county jail for a period not exceeding twelve months, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design shall not be approved by the state election commission or be purchased, leased or used, by any county commission unless it shall fulfill the following requirements:

1. It shall secure or ensure the voter absolute secrecy in the act of voting, or, at the voter's election, shall provide for open voting;
2. It shall be so constructed that no person except in instances of open voting, as herein provided for, can see or know for whom any voter has voted or is voting;
3. It shall permit each voter to vote at any election for all persons and offices for whom and which he is lawfully entitled to vote, whether or not the name of any such person appears on a ballot label as a candidate; and it shall permit each voter to vote for as many persons for an office as he is
lawfully entitled to vote for; and to vote for or against any question upon which he is lawfully entitled to vote. The automatic tabulating equipment used in such electronic voting systems shall reject choices recorded on any ballot card or paper ballot if the number of such choices exceeds the number to which a voter is entitled;

(4) It shall permit each voter to deposit, write in, or affix upon devices to be provided for that purpose, ballots containing the names of persons for whom he desires to vote whose names do not appear upon the ballot labels;

(5) It shall permit each voter to change his vote for any candidate and upon any question appearing upon the ballot labels up to the time when his ballot or ballot card is deposited in the ballot box;

(6) It shall contain a program deck consisting of cards that are sequentially numbered and capable of tabulating all votes cast in each election;

(7) It shall contain two standard validation test decks approved as to form and testing capabilities by the state election commission;

(8) It shall correctly record and count accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It shall permit each voter at any election other than primary elections, by one mark or punch to vote a straight party ticket, and by one mark or punch to vote for all candidates of one party for presidential electors; and to vote a mixed ticket selected from the candidates of any and all parties and from independent candidates; and it shall permit the proper counting, to the fullest-extent possible, of all votes cast for all candidates: Provided, That, in the event of cross-over voting from a straight party ticket, the system shall not discard any vote on the straight ticket, unless (i) a candidate in a single selection contest opposite the discarded vote on the straight ticket has been clearly chosen by the voter, or (ii) the voter, by mark or punch has clearly indicated which choices on each ticket, not in excess of the total number permitted, the voter has made, or (iii) the choices made by the voter are so contradictory that the voter's choice is indiscernible, in which event, all votes for the candidates for such office shall be discarded;

(10) It shall permit each voter in primary elections to
vote only for the candidates of the party with which he has declared his affiliation, and preclude him from voting for any candidate seeking nomination by any other political party, permit him to vote for the candidates, if any, for nonpartisan nomination or election, and permit him to vote on public questions;

(11) It shall be provided with means for sealing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It shall have the capacity to contain the names of candidates constituting the tickets of at least nine political parties, and to accommodate the wording of at least fifteen questions;

(13) It shall be durably constructed of material of good quality and in a workmanlike manner and in a form which shall make it safely transportable;

(14) It shall be so constructed with frames for the placing of ballot labels and with suitable means for the protection of such labels, that the labels on which are printed the names of candidates and their respective parties, titles of offices, and wording of questions shall be so reasonably protected from mutilation, disfigurement or disarrangement;

(15) It shall bear a number that will identify it or distinguish it from any other machine;

(16) It shall be so constructed that a voter may easily learn the method of operating it and may expeditiously cast his vote for all candidates of his choice, and upon any public question; and

(17) It shall be accompanied by a mechanically operated instruction model which shall show the arrangement of ballot labels, party columns or rows, and questions.

§3-4A-10a. Proportional distribution of vote recording devices.

1 The county commission of each county shall, upon the close of registration, review the total number of registered voters and the number of registered voters of each party in
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Each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total:

Provided, That a minimum of one vote recording device per party be provided, except for "independent" voters, which shall be determined under section twenty of this article.

§3-4A-11. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

The ballot commissioners of any county in which an electronic voting system is to be used in any election shall cause to be printed for use in such election the ballots or ballot labels, as appropriate, for the electronic voting system. The ballot labels so printed shall total in number one and one-half times the total number of vote recording devices 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 forty-two 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, but in no case shall the ballot contain any title, position, rank, degree, or such, including, but not limited to, "doctor," "reverend," "Ph.D.," or the equivalent, 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 vote recording devices. Arrows may be printed on the ballot labels to indicate the place to punch the ballot card, which may be to the right or left of the name or proposition.

The titles of offices may be arranged on the ballot labels in vertical columns or in a series of separate pages, and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one column or on one ballot label page, the ballot label shall be clearly marked that the list of candidates is continued on the following column or page, and so far as possible, the same number of names shall
be printed on each column or page. The names of candidates for each office shall be printed in vertical columns or on separate pages, grouped by the offices which they seek.

In elections in which voters are authorized to vote for persons whose names do not appear on the ballot card, a separate write-in ballot, which may be in the form of a paper ballot or card, shall be provided if required to permit voters to write in the title of the office and the names of persons whose names are not on the ballot, for whom he wishes to vote. The manner of voting for write-in candidates upon electronic voting devices shall be as prescribed by rules and regulations of the secretary of state.

One set of ballot labels shall be inserted in the vote recording device prior to the delivery of such device to the polling place. The remainder of such ballot labels for each device shall be retained by the clerk of the county commission for use in the event the set so inserted in such device becomes lost, mutilated or damaged.

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 vote recording device ballot and official printed ballots or ballot cards 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 voting booths, appropriate facilities for the reception and safekeeping of ballot cards, 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 voters.

§3-4A-12. Ballot label arrangement in vote recording devices; when uniform numbering required; drawing by lot to determine position of candidates on ballots or ballot labels; sealing of devices; record of identifying numbers.

When the ballot labels are printed and delivered to the clerk of the county commission, he shall place them in the vote recording devices in such manner as will most nearly conform to the arrangement prescribed for paper ballots,
and as will clearly indicate the party designation or emblem of each candidate. Each column, row or page containing the names of the office and candidates for such office shall be so arranged as to clearly indicate the office for which the candidate is running. The names of the candidates for each office indicated shall be placed on the ballot label. The ballot label and the arrangement of the ballot shall conform as nearly as practicable to the plan herein given:

<table>
<thead>
<tr>
<th>Democratic Ticket</th>
<th>Republican Ticket</th>
</tr>
</thead>
<tbody>
<tr>
<td>For House of Delegates</td>
<td>For House of Delegates</td>
</tr>
<tr>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
</tr>
<tr>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
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<tr>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
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<tr>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
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<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
</tr>
<tr>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
<td><img src="https://via.placeholder.com/150" alt="Image" /></td>
</tr>
</tbody>
</table>

The secretary of state shall assign a uniform number applicable to all counties using electronic voting for all straight party tickets and for all candidates running for offices to be voted upon by all of the voters of the state. The number so designated by the secretary of state shall be used by all counties using electronic voting systems irrespective of the fact that in one or more such counties the number or numbers so designated may result in other than strict sequential ballot arrangement. After taking into account the numbers so assigned by the secretary of state to straight party tickets and all candidates for offices to be voted upon...
by all the voters of the state, the clerk of the circuit court shall appoint a time at which all candidates whose ballot positions are to be determined by drawing by lot are to appear before the clerk for such drawing. Candidates whose ballot positions are to be determined by drawing by lot are those candidates for an office for which the voters will elect more than one person to represent the electoral districts, including, but not limited to, House of Delegates contests in multi-delegate districts, judges in multi-judge circuits, contests for the office of county board of education, magistrate and delegate to a political party national convention. The clerk shall give due notice of such time to each candidate by United States mail, directed to the address given by the candidate in his announcement of candidacy. It shall be the duty of the secretary of state to provide each circuit clerk with a list of names and addresses of candidates running for office in such clerk's county who have filed their announcement of candidacy with the secretary of state, and who are candidates whose ballot positions are to be determined by drawing by lot. At the time appointed, all such candidates whose ballot positions are to be determined by lot shall assemble in the office of such clerk and such candidates shall then proceed to draw by lot to determine where their names shall appear on the ballots or ballot labels. The number so drawn by each such candidate shall determine where his or her name shall appear on the ballots or ballot labels. In the event any candidate or candidates fail to appear at the time appointed, the clerk shall draw for such absent candidate or candidates in the presence of those candidates assembled, if any, and the number so drawn by the clerk shall determine where the name of any absent candidate or candidates shall appear on the ballots or ballot labels. The circuit clerk shall record the number drawn by each candidate and his name in an appropriate book. The ballot commissioners shall proceed to have the ballot labels printed according to the provisions of this article. After receiving the printed ballot labels, the clerk of the circuit court shall ascertain their accuracy and the clerk of the county commission shall proceed to have the ballot labels placed in the vote recording devices. The clerk of the county commission shall then seal the vote recording devices so as to prevent
tampering with ballot labels, and enter in an appropriate
book, opposite the number of each precinct, the identifying
or distinguishing number of the specific vote recording
device or devices to be used in that precinct.

§3-4A-13. Inspection of vote recording devices and ballot
cards; duties of county commission, ballot
commissioners and election commissioner;
records relating to vote recording devices.

When the clerk of the county commission has completed
the preparation of the vote recording devices as provided in
section twelve of this article and the ballot cards as
provided in section twenty-one, article one of this chapter,
and not later than seven days before the day of the election,
he shall notify the members of the county commission and
the ballot commissioners that the devices are ready for use.
Thereupon the members of the county commission and the
ballot commissioners shall convene at the office of the clerk
or at such other place wherein the vote recording devices
and ballot cards are stored, not later than five days before
the day of the election, and shall inspect the devices and the
ballot cards to determine whether the requirements of this
article have been met. Notice of the place and time of such
inspection shall be published, no less than three days prior
thereto, as a Class I-0 legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of
this code, and the publication area for such publication
shall be the county involved. Any candidate and one
representative of each political party on the ballot may be
present during such examination. If the devices and ballot
cards are found to be in proper order, the members of the
county commission and the ballot commissioners shall
endorse their approval in the book in which the clerk
entered the numbers of the devices opposite the numbers of
precincts. The devices and the ballot cards shall then be
secured in double lock rooms. The county clerk and the
president or president pro tempore of the county
commission shall each have a key. The rooms shall be
unlocked only in their presence and only for the removal of
the devices and the ballot cards for transportation to the

* Clerks Note: This section was also amended in H. B. 1381, which passed
prior to this bill.
polls. Upon such removal of the devices, the county clerk
and president or president pro tempore of the county
commission shall certify in writing signed by them that the
devices were found to be sealed when removed for
transportation to the polls.

Not later than one day before the election the election
commissioner of each precinct, who shall have been
previously designated by the ballot commissioners, shall
attend at the offices of the clerks of the circuit court and
county commission of such county to receive the necessary
election records, books and supplies required by law. Such
election commissioners shall receive the per diem mileage
rate prescribed by law for this service. Such election
commissioners shall give the ballot commissioners a
sequentially numbered written receipt, on a printed form,
provided by the clerk of the county commission, for such
records, books and supplies. Such receipt shall be prepared
in duplicate. One copy of the receipt shall remain with the
clerk of the county commission and one copy shall be
delivered to the president or president pro tempore of the
county commission.

§3-4A-16. Delivery of vote recording devices; time,
arrangement for voting.

The clerk of the county commission shall deliver or cause
to be delivered each vote recording device and the package
of ballot cards to the polling place where they are to be
employed. Such delivery shall be made not less than one
hour prior to the opening of the polls and shall be made in
the presence of the precinct election commissioners. At the
time of the delivery of the vote recording device and the
ballot cards, the device shall be sealed in such a way to
prevent its use prior to the opening of the polls and any
tampering with the ballot labels and the ballot cards shall
be packaged and sealed in such a way to prevent any
tampering with the ballots. Immediately prior to the
opening of the polls on election day, the sealed packages of
ballot cards shall be opened, and the seal of the vote
recording device shall be broken in the presence of the
precinct election commissioners, who shall certify in
writing signed by them to the clerk of the county
commission, that the devices and the ballot cards have been
delivered in their presence, that the devices and packages of ballot cards were found to be sealed upon such delivery, and that the seals have been broken and the devices opened in their presence. The election commissioners shall then cause the vote recording device to be arranged in the voting booth in such manner that the front of the vote recording device on which the ballot labels appear will not be visible, when the vote recording device is being operated, to any person other than the voter if the voter shall elect to close the curtain, screen or hood to the voting booth.

§3-4A-22. Assistance to illiterate and disabled voters.

(a) Any duly registered voter, who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write, may be given assistance by one of the following means:

(1) By a person of the voter's choice: Provided, That such assistance may not be given by the voter's present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member; or

(2) If no person of the voter's choice be present at the polling place, the voter may request such assistance from the poll clerks or ballot commissioners present at the polling place, whereupon such assistance may be given by any two of such election officers of opposite political party affiliation to whom such voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot or ballot labels. Such election officers, in the presence of the voter and in the presence of each other, shall thereupon cause such voter's declared choices to be recorded on the vote recording device as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting such voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. Such person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.
§3-4A-23. Persons prohibited about voting booths; penalties.

1 Excepting the election officials acting under authority of sections nineteen, twenty, twenty-one and twenty-two of this article in the conduct of the election, and qualified persons assisting voters pursuant to section twenty-two of this article, no person other than the voter alone may be in, about or within five feet of the voting booth during the time such voter is in the process of voting at any election, and, during such time, no person may communicate in any manner with the voter and the voter may not communicate with any other person or persons. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, in excess of the authority vested in such official by provisions of this article, shall constitute a violation of the provisions hereof. Any person violating any provision or provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars or be sentenced to imprisonment in the county jail for a period not exceeding twelve months, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

§3-4A-30. Adjustments in voting precincts where electronic voting system used.

1 The provisions of section five, article one of this chapter, relating to the number of registered voters in each precinct, shall apply to and control in precincts in counties in which electronic voting systems have been adopted, except that the maximum number of registered voters shall be one thousand per precinct. The county commissions of such counties, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts as practicable, to achieve the maximum advantage from the use of electronic voting systems. The county commission may, in the urban centers of any county adopting an electronic voting system, designate a voting place without the limits of a precinct, provided such voting place is in a public building, and in an adjoining
ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

§3-5-5. Candidates for county board of education.

§3-5-9. Certification and posting of candidacies.

§3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

Primary elections shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May in the year one thousand nine hundred eighty-six and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

§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
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-six and each two years thereafter, such certificate shall be filed with the clerk of the circuit court not earlier than the second Monday in January next preceding the primary election day, and not later than the first Saturday of February 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.

§3-5-7. Filing announcements of candidacies; requirements; when section applicable.

Any person who is eligible to hold and seeks to hold an office (including that of member of any political party executive committee) shall file with the secretary of state, if it be an office to be filled by the voters of more than one county, or with the clerk of the circuit court, if it be for an office to be filled by the voters of a county or subdivision less than a county, a certificate declaring himself a candidate for the nomination for such office, which certificate shall be in form or effect as follows:

I, ........................................, hereby certify that I am a candidate for the nomination for the office of ............ to represent the ............ Party, and desire my name printed on the official ballot of said party 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 my residence is number .... of ............ Street in the City (or Town) of ............ in ............ County in said State; that I am eligible to hold the said office; that I am a member of and affiliated with said political party; that I am a candidate for said office in good faith.

........................................

Candidate
Any candidate for delegate to the national convention of any political party shall provide, on a form prescribed by the secretary of state, the information required in the certificate hereinbefore described and shall also provide the name of the person he prefers as the presidential nominee of his party upon the first convention ballot, or if he has no preference, a statement that he is uncommitted:Provided, That any candidate for delegate may change his statement of presidential preference by notifying the secretary of state by registered letter, at least seventy-seven days prior to the day fixed for the primary election.

Such announcement shall be signed and acknowledged by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on said certificate shall be guilty of an offense and shall be punished as set forth in section twenty-three, article nine of this chapter.

Such certificate shall be filed with the secretary of state or the clerk of the circuit court, as the case may be, not earlier than the second Monday in January next preceding the primary election day, and not later than the first Saturday of February next preceding the primary election day, and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked before that hour.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

§3-5-9. Certification and posting of candidacies.

By the eighty-fourth day 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 show (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 seventieth 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-six and every primary election held thereafter.
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 and county of 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 name 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.” Once, immediately below the circles for straight ticket voting, the following instructions shall be printed in eight point type: “STRAIGHT TICKET VOTERS: If you decide to split your straight party vote, remember — (1) For offices where you are asked to choose one candidate, if you vote for a candidate in another party, the candidate for that office in this party will NOT receive a vote. (2) For offices where you are asked to choose more than one, if you vote for any candidate in another party YOU MUST MARK EACH OF YOUR CHOICES for that office, EVEN THOSE IN YOUR STRAIGHT TICKET PARTY.” 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
51 either side trimmed off to within one-half inch of the border
52 or solid line described.
53 The names of the candidates shall be arranged on the
54 ballot in tickets or lists, in separate columns under the
55 respective party or political or other designation certified,
56 each column or ticket containing the names of candidates
57 nominated by the same political party and no others. In
58 elections for presidential electors, the names of candidates
59 for electors of any political party or group of petitioners,
60 shall not be placed on the ballot, but shall, after
61 nomination, be filed with the secretary of state. In place of
62 their names, there shall be printed first on the ballots the
63 names of the candidates for president and vice president,
64 respectively, of each such party or group of petitioners, and
65 they shall be arranged under the title of the office. Before
66 the names of such candidates for president and vice
67 president of each party, or group, a single square shall be
68 printed, in front of a brace in which the voter shall place the
69 cross mark for the candidate of his choice for such offices. A
70 vote for any of such candidates shall be a vote for the
71 electors of the party by which such candidates were named,
72 and whose names have been filed with the secretary of state.
73 The names of the candidates on each ticket shall be
74 arranged in groups, with a heading over each group printed
75 in heavy faced eight point type to indicate the political
76 divisions in which such group is to be voted for. The
77 arrangement of the ballot shall conform as nearly as
78 practicable to the plan here given:

<table>
<thead>
<tr>
<th>Device</th>
<th>Device</th>
<th>Device</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="image1" alt="Republican Ticket" /></td>
<td><img src="image2" alt="Democratic Ticket" /></td>
<td><img src="image3" alt="Prohibition Ticket" /></td>
</tr>
</tbody>
</table>

79 STRAIGHT TICKET VOTERS: If you decide to split your
80 straight party vote, remember — (1) For offices where you
are asked to choose one candidate, if you vote for a candidate in another party, the candidate for that office in this party will NOT receive a vote. (2) For offices where you are asked to choose more than one, if you vote for any candidate in another party YOU MUST MARK EACH OF YOUR CHOICES for that office, EVEN THOSE IN YOUR STRAIGHT TICKET PARTY.

<table>
<thead>
<tr>
<th>For Governor</th>
<th>For Governor</th>
<th>For Governor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
<td>Name</td>
</tr>
</tbody>
</table>

Provided, That the arrangement of the portion of the ballot for offices for which more than one seat is to be filled shall conform as nearly as practicable to the following plan:

<table>
<thead>
<tr>
<th>For House of Delegates (Choose two)</th>
<th>For House of Delegates (Choose two)</th>
<th>For House of Delegates (Choose two)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>Name</td>
<td>Name</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.

In those delegate districts set forth in subsection (d), section two, article two, chapter one of this code which embrace more than one county and in which there is a prohibition regarding the number of delegates to be elected.
or appointed who are residents of any single county within the district, there shall be printed on the ballot, including, but not limited to, voting machines and electronic voting system ballots, in bold type, immediately preceding the names of candidates for the House of Delegates, a clear explanation of such prohibition. In those delegate districts which embrace more than one county, the county of residence of each candidate for the House of Delegates shall be printed beneath the name of each such candidate on the ballot, including, but not limited to, voting machines and electronic voting system ballots.

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 occupies a given position in the order of the candidates 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 rotated in the same manner as the names of each of the candidates for said office.

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.”

§3-6-6. Ballot counting procedures.

When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall conclude the counting of the votes cast, the tabulating and summarizing of the number of the
votes cast, unite in certifying and attesting to the returns of the election, and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work shall be completed.

In all election precincts wherein the election shall be conducted by a single election board, immediately on closing the polls the commissioners and clerks shall proceed to ascertain the result of the election in the following manner: The ballot box shall then be opened, and one of the commissioners taking therefrom one ballot at a time, in the presence of all the other officers, shall read therefrom the designations of the offices to be filled, and the names of the persons voted for, for each office, and hand the ballot to another of such commissioners, differing in politics from himself, who, if satisfied that it was correctly read, shall string it on a thread. The contents of the ballots, as they are read, shall be entered by the poll clerks, under the supervision of the commissioners, on tally sheets for the purpose, by suitable marks, in ink, made opposite to or under the name of each person voted for, so as to show the number of votes received by every person, for any office to be filled. The ballots shall be counted as they are strung upon the thread and whenever the number counted shall be equal to the number of votes entered upon the pollbooks, the excess, if any, remaining in the ballot box shall, without unfolding or unrolling the same, or allowing anyone to examine or know the contents thereof, be counted and strung on a second thread along with a card marked "excess ballots." The number, if any, of excess ballots found in the ballot box and not included in the tally of votes shall be reported on the tally sheets. They shall not adjourn until all of the votes are counted and certificates of the result made and signed by them. In precincts wherein there are double boards, the counting boards, in counting the ballots, shall proceed in the manner prescribed in this section.

§3-6-9. Canvass of returns; declaration of results; recounts; record keeping.

The commissioners of the county commission shall be ex officio a board of canvassers, and, as such, shall keep in a well-bound book, marked "election record," a complete
record of all their proceedings in ascertaining and declaring
the results of every election in their respective counties.
They shall convene as the canvassing board at the
courthouse on the fifth day (Sundays excepted) after every
election held in their county, or in any district thereof, and
the officers in whose custody the ballots, pollbooks,
registration records, tally sheets and certificates have been
placed shall lay them before the board for examination.
They may, if considered necessary, require the attendance
of any of the commissioners, poll clerks or other persons
present at the election, to appear and testify respecting the
same, and make such other orders as shall seem proper, to
procure correct returns and ascertain the true results of the
election in their county; but in this case all the questions to
the witnesses and all the answers thereto, and evidence,
shall be taken down in writing and filed and preserved. All
orders made shall be entered upon the record. They may
adjourn from time to time, but no longer than absolutely
necessary, and, when a majority of the commissioners are
not present, their meeting shall stand adjourned until the
next day, and so from day to day, until a quorum is present.
All meetings of the commissioners sitting as a board of
canvassers shall be open to the public. The board shall
proceed to open each sealed package of ballots so laid
before them, and, without unfolding them, count the
number in, each package and enter the number upon their
record. The ballots shall then be again sealed up carefully in
a new envelope, and each member of the board shall write
his name across the place where the envelope is sealed.
After canvassing the returns of the election, the board shall
publicly declare the results of the election; however, they
shall not enter an order certifying the election results for a
period of forty-eight hours after the declaration.
(a) Within the forty-eight-hour period, a candidate
voted for at the election may demand the board to open and
examine any of the sealed packages of ballots, and recount
them; but in such case they shall seal the ballots again,
along with the envelope above named, and the clerk of the
county commission and each member of the board shall
write his name across the places where it is sealed, and
endorse in ink, on the outside: "Ballots of the election held
at precinct No. ......, in the district of ...............,
(b) If a recount has been demanded, the board shall have an additional twenty-four hours after the end of the forty-eight-hour period in which to send notice to all candidates who filed for the office in which a recount has been demanded, of the date, time and place where the board will convene to commence the recount. The notice shall be served under the provisions of subdivision (c) of this section. The recount shall be set for no sooner than three days after the serving of the notice: Provided, That after the notice is served, candidates so served shall have an additional twenty-four hours in which to notify the board, in writing, of their intention to preserve their right to demand a recount of precincts not requested to be recounted by the candidate originally requesting a recount of ballots cast: Provided, however, That there shall be only one recount of each precinct, regardless of the number of requests for a recount of any precinct. A demand for the recount of ballots cast at any precinct may be made during the recount proceedings only by the candidate originally requesting the recount and those candidates who notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a recount of additional precincts.

(c) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate, and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his family and above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there, and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his county and make
(d) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of such recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

When they have made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerks of the county commissions and circuit courts from whom they were received, who shall carefully preserve them for twenty-two months, and if there is no contest pending as to any election, and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots; and if there is a contest pending, then they shall be so destroyed as soon as the contest is ended.

If the result of the election is not changed by the recount, the costs and expenses thereof shall be paid by the party at whose instance the recount was made.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

§3-8-5a. Information required in financial statement.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

§3-8-7. Failure to file statement; penalty.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

§3-8-5. Detailed accounts and verified financial statements required.

1 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, including all loans of money or things of value, 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.

Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, according to the following provisions and times:

(a) On the last Saturday in March or within fifteen days thereafter next preceding the primary election day whenever the total of all financial transactions relating to an election exceed five hundred dollars a statement which shall include all financial transactions which have taken place by the date of that statement, subsequent to any previous statement filed within the previous five years under this section, or if no previous statement was filed, all financial transactions made within the preceding five years; and

(b) Not less than seven nor more than ten days preceding each primary or other election, a statement which shall include all financial transactions which have taken place by the date of such statement, subsequent to the previous statement, if any; and

(c) Not less than twenty-five nor more than thirty days after each primary or other election, a statement which shall include all financial transactions which have taken place by the date of such statement, subsequent to the previous statement; and

(d) On the first day of July, one thousand nine hundred eighty-five, and thereafter on the last Saturday in March or
within fifteen days thereafter annually, whenever contributions or expenditures relating to an election exceed five hundred dollars or whenever any loans are outstanding, a statement which shall include all financial transactions which have taken place by the date of such report, subsequent to any previous report. Financial transactions shall include all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate or to promote the passage or defeat of any issue, thing or item to be voted on.

Every person who shall announce as a write-in candidate for any elective office and his financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of such person’s candidacy has been made.

§3-8-5a. Information required in financial statement.

Each financial statement as required by this article shall show the following information:

(a) The first name, middle initial, if any, and last name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person, and the full name, address and telephone number of each association, organization or committee filing a financial statement.

(b) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(c) The first name, middle initial, if any, and the last name in the case of an individual, and the full name of each firm, association or committee, and the amount of such contribution of such individual, firm, association or committee, and, if the aggregate of the sum or sums contributed by any one such individual, firm, association or committee exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation. A contribution totaling more than fifty dollars by any one contributor is prohibited unless it is by money
order or by check, and a violation of this provision is subject to section five-d of this article. As used herein, the term "check" shall have the meaning ascribed to that term in section one hundred four, article three, chapter forty-six of this code.

(d) The total amount of contributions received during the period covered by the financial statement.

(e) The first name, middle initial, if any, and the last name, residence and mailing address in the case of an individual or the full name and mailing address of each firm, association or committee making or cosigning a loan and the amount of any loan received, the date and terms of the loan, including interest and repayment schedule, along with a copy of the loan agreement.

(f) The first name, middle initial, if any, and the last name, residence and mailing address in the case of an individual or the full name and mailing address of each firm, association or committee having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(g) The total outstanding balance of all loans at the end of the period.

(h) The first name, middle initial, if any, and the last name, residence and mailing address in the case of an individual, or the full name and mailing address of each firm, association or committee to whom each expenditure was made or liability incurred, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required herein, such lump sum expenditures shall be accounted for in the same manner as provided herein.

(i) The total expenditure for the nomination, election or defeat of a 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, in whose behalf an expenditure
was made or a contribution was given for the primary or
other election.

(j) The total amount of expenditures made during the
period covered by the financial statement.

(k) Any unexpended balance at the time of making the
financial statements herein provided for shall be properly
accounted for in that financial statement and shall appear
as a balance in the next following financial statement.

(l) Each financial statement required by this section
shall contain a separate section setting forth the following
information for each fund-raising event held during the
period covered by the financial statement:

(1) The type of event, date held, and address and name,
if any, of the place where the event was held.

(2) All of the information required by subdivision (c) of
this section.

(3) The total of all moneys received at the fund-raising
event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

For the purpose of this section the term “fund-raising
event” means an event such as a dinner, reception,
testimonial, cocktail party, auction or similar affair
through which contributions are solicited or received by
such means as purchase of a ticket, payment of an
attendance fee or through purchase of goods or services.

(m) Any contribution or expenditure made by or on
behalf of a candidate for public office, to any other
candidate, or committee for a candidate for any public
office in the same election shall comply with the provisions
of this article.

(n) No person, firm, association or committee shall
make any contribution except from his own funds, unless
such person, firm, association or committee discloses in
writing to the person required to report under this section
the first name, middle initial, if any, and the last name in the
case of an individual, or the full name in case of a firm,
association or committee, residence and mailing address;
the major business affiliation and occupation of the person,
firm, association or committee which furnished the funds to
such contributor. All such disclosures shall be included in
the statement required by this section.
(o) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(p) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(q) No person, association or committee may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any issue or thing to be voted upon unless the identity of the donor and the amount of the contribution is known and reported.

(r) When any candidate, organization, committee or person receives any anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the general revenue fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

§3-8-5f. Loans to candidates, organizations or persons for election purposes.

Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon who receives money or any other thing of value as a loan toward election expenses shall execute, in writing, an agreement with the individual, lending institution or organization making the loan. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the
§3-8-7. Failure to file statement; penalty.

Any candidate, financial agent or treasurer of a political party committee, who fails to file a sworn, itemized statement as in this article provided, within the time required, or who willfully files a grossly incomplete or inaccurate statement, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred dollars, or imprisoned in the county jail for not more than one year, or both, in the discretion of the court. Forty days after any such primary or other election, the secretary of state, or county clerk, as the case may be, shall give notice of any failure to file such statement by any candidate, financial agent or treasurer of such committee, to the prosecuting attorney of the county where such delinquent resides. No candidate nominated at a primary election, who has failed to make a sworn statement as required by this article, shall have his name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his financial agent, if any, the financial statement relating to nominations required by this article. It shall be unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by this article, and no such person shall enter upon the duties of his office until he has filed such statement, nor shall he receive any salary or emolument for any period prior to the filing of such statement.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

(a) No person shall publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, or other publication tending to influence voting at any election;
(b) No owner, publisher, editor or employee of a newspaper or other periodical shall insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election whatever, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published;

(c) No person shall, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision thereof, solicit orally or by written communication delivered therein, or in any other manner, any contribution of money or other thing of value for any party or political purpose whatever, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or political subdivision thereof. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision thereof, who may have charge or control of any building, office or room, occupied for any official purpose, shall knowingly permit any person to enter the same for the purpose of therein soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision thereof;

(d) Except as provided in section eight of this article no person entering into any contract with the state or its subdivisions, or any department or agency thereof, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land or building is to be made in whole or in part from public funds shall, during the period of negotiation for or performance under such contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor shall any person or firm solicit
(e) No person shall, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election;

(f) No person shall, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide or national elective office, or in excess of the value of one thousand dollars, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office;

(g) No person shall solicit any contribution from any nonelective salaried employee of the state government or of any of its subdivisions or coerce or intimidate any such employee into making such contribution. No person shall coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions hereof shall not be construed to prevent any such employee from making such a contribution or from engaging in political activity voluntarily, without coercion, intimidation or solicitation;

and

(h) No person shall solicit a contribution from any other person without informing such other person at the time of such solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of such contribution being successfully collected. Nothing in this subsection shall be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not more than one thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, be subject to both such fine and imprisonment.

CHAPTER 73

(Com. Sub. for H. B. 1994—By Delegate Shepherd and Delegate Hamilton)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to political party executive committees generally; clarifying the statute which provides for the election of a senatorial or delegate district committee in only those senatorial or delegate districts which are multi-county districts; and providing for the election of two men and two women from each magisterial district to a party's executive committee in counties having three or less magisterial districts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

At the June primary election in the year one thousand nine hundred eighty-six, 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 and of the delegate district in which such county is situated, if such county be situated in a multi-county senatorial or 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, except that in counties having three or less magisterial districts or executive committee districts there shall be elected two male and two female members of the party's executive committee from each magisterial district or executive committee district.

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 districts shall not be fewer than the number of magisterial districts in such counties nor shall they exceed in number the following:

- Forty for counties having a population of one hundred thousand persons or more;
- Thirty for counties having a population of fifty thousand to one hundred thousand;
- Twenty for counties having a population of twenty thousand to fifty thousand;
- Such districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

The executive committee districts shall be as nearly equal in population as practicable, and shall each be composed of compact, contiguous territory. The county commissions shall constitute the executive committee district to be effective for the term of office of executive committee members elected at the one thousand nine hundred eighty-six primary election and thereafter. Executive committees as presently composed shall continue until after their successors are elected and qualified following the primary election of one thousand nine hundred eighty-six. The county commissions shall change the territorial boundaries of such districts as necessary, only if there is an increase or decrease in the population of such districts as determined by a decennial census and such changes must be made within two years following such census.

All members of executive committees, selected for each political division as herein provided, shall reside within the
county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year one thousand nine hundred eighty-six, shall begin on the first day of July, following said primary, and shall continue for four years thereafter and until their successors are elected and qualified. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which such vacancy exists, and shall be for the unexpired term.

As soon as possible after the first day of July, following the election of the new executive committees, as herein provided, 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.

CHAPTER 74

(Com. Sub. for H. B. 1381—By Delegate Burke)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-four, twenty-five and twenty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twelve, article four of said chapter three; to further amend said article four by adding thereto a new section, designated section twelve-a; to amend and reenact section thirteen, article four-a of said chapter three; and to further amend said article four-a by adding thereto a new section, designated section thirteen-a, relating generally to the delivery and receipt of election supplies; time
limit for delivery of election supplies to election commissioners in counties using paper ballots, voting machines and electronic voting and to the appropriate officers in municipal elections; providing for the delivery of election supplies by special messenger in counties using paper ballots, voting machines and electronic voting; and providing for inspection, maintenance, removal and certification of ballot cards used in electronic voting.

Be it enacted by the Legislature of West Virginia:

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

Article.
4. Voting Machines.
4A. Electronic Voting Systems.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-24. Obtaining and delivering election supplies.
§3-1-25. Supplies by special messenger.
§3-1-27. Municipal precinct registration records.

*§3-1-24. Obtaining and delivering election supplies.

1. It shall be the duty of the board of ballot commissioners to appoint one or more of the commissioners of election at each precinct of the county to attend at the offices of the clerks of the circuit court and county commission, as the case may be, at least one day before each election to receive the ballots, ballot boxes, pollbooks, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerks shall take a receipt for the respective materials delivered to the above commissioner or commissioners of election, and shall file such receipt in their

*Clerks Note: This section was also amended in S. B. 630, which passed subsequent to this bill.
respective offices. It shall be the duty of such commissioners to receive such supplies and materials from the respective clerks and to deliver the same with the seal of all sealed packages unbroken, at the election precinct in time to open the election.

Such commissioner or commissioners, if they perform such services, shall receive the per diem and mileage rate prescribed by law for this service.

Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the ballots so delivered shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of such party in the election precinct.

For primary elections one copy of the pollbooks, including the forms for oaths of commissioners of election and poll clerks written or printed thereon, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

*§3-1-25. Supplies by special messenger.

In case any commissioner of election so appointed shall fail to appear at the offices of the clerks of such county commissions and circuit courts, by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman thereof or the circuit clerk shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, pollbooks and other supplies for such precinct. Such messenger, if not a county employee, shall be allowed five dollars for this service and, even if he be a county employee, twenty cents a mile for the distance necessary to be traveled by him, and shall promptly report to

*Clerks Note: This section was also amended in S. B. 630, which passed subsequent to this bill.
the clerks of the circuit court and county commission, respectively, and file with such clerks the receipts of the person to whom he delivered such ballots and other supplies, and his affidavit, stating when and to whom he delivered them.

*§3-1-27. Municipal precinct registration records.

At least one day prior to every municipal election, it shall be the duty of the appropriate officer designated by the municipality to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the appropriate officer or officers designated by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the officer or tribunal empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The clerk of the county commission shall acknowledge the release and return of the registration records under this section by the issuance of appropriate receipts.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the municipality to pay for such replacement.

ARTICLE 4. VOTING MACHINES.

§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.

§3-4-12a. Supplies by special messenger.

*§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.

When the clerk of the county commission has completed the preparation of the voting machines, as provided in the next

* Clerks Note: These sections were also amended in S. B. 630, which passed subsequent to this bill.
preceding section, and not later than seven days before the day
of the election, he shall notify the members of the county
commission and the ballot commissioners that the machines
are ready for use. Thereupon the members of the county
commission and the ballot commissioners shall convene at the
office of the clerk, or at such other place wherein the voting
machines are stored, not later than five days before the day
of the election, and shall examine the machines to determine
whether the requirements of this article have been met. Any
candidate, and one representative of each political party
having candidates to be voted on at the election, may be
present during such examination. If the machines are found
to be in proper order, the members of the county commission
and the ballot commissioners shall endorse their approval in
the book in which the clerk entered the numbers of the
machines opposite the numbers of the precincts. The clerk
shall then deliver the keys to the voting machines to the ballot
commissioners who shall give a receipt for the keys, which
receipt shall contain identification of such keys. Not later than
one day before the election the election commissioner of each
precinct who shall have been previously designated by the
ballot commissioners, shall attend at the office of the clerks
of the circuit court and county commission of such county to
receive the key or keys to the device covering the registering
counters and such other keys as may be necessary for the
operation of the machine in registering votes, and to receive
the other necessary election records, books and supplies
required by law. Such election commissioners shall receive the
per diem mileage rate prescribed by law for this service. Such
election commissioners shall give the ballot commissioners a
receipt for such keys, records, books and supplies, and such
receipt shall contain identification of such keys. The master
key and all other keys shall remain in the possession of the
clerk of the county commission.

§3-4-12a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at
the offices of the clerks of the county commission and circuit
court by the close of the clerks' offices on the day prior to
any election, the board of ballot commissioners, the chairman
thereof or the circuit clerk shall cause all necessary election records, books and supplies to be delivered by special messenger in the same manner and under the same terms and conditions as is provided for the dispatch of the special messenger under the provisions of section twenty-five, article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-13. Inspection of vote recording devices and ballot cards; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices and ballot cards; receipt of election materials by ballot commissioners.

§3-4A-13a. Supplies by special messenger.

*§3-4A-13. Inspection of vote recording devices and ballot cards; duties of county commission, ballot commissioners and election commissioners; records relating to vote recording devices and ballot cards; receipt of election materials by ballot commissioners.

When the clerk of the county commission has completed the preparation of the vote recording devices as provided in section twelve of this article and the ballot cards as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he shall notify the members of the county commission and the ballot commissioners that the devices are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices and ballot cards are stored, not later than five days before the day of the election, and shall inspect the devices and the ballot cards to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. Any candidate and one representative of each political party on the ballot may be present during such examination. If the devices and ballot cards are found to be in proper order, the members of the county commission and

* Clerks Note: This section was also amended in S. B. 630, which passed subsequent to this bill.
the ballot commissioners shall endorse their approval in the
book in which the clerk entered the numbers of the devices
opposite the numbers of the precincts. The devices and the
ballot cards shall then be secured in double lock rooms. The
county clerk and the president or president pro tempore of the
county commission shall each have a key. The rooms shall be
unlocked only in their presence and only for the removal of
the devices and the ballot cards for transportation to the polls.
Upon such removal of the devices and ballot cards, the county
clerk and president or president pro tempore of the county
commission shall certify in writing signed by them that the
devices and packages of ballot cards were found to be sealed
when removed for transportation to the polls.

Not later than one day before the election the election
commissioner of each precinct who shall have been previously
designated by the ballot commissioners, shall attend at the
office of the clerks of the circuit court and county commission
of such county to receive the necessary election records, books
and supplies required by law. Such election commissioners
shall receive the per diem mileage rate prescribed by law for
this service. Such election commissioners shall give the ballot
commissioners a sequentially numbered written receipt, on a
printed form, provided by the clerk of the county commission,
for such records, books and supplies. Such receipt shall be
prepared in duplicate. One copy of the receipt shall remain
with the clerk of the county commission and one copy shall
be delivered to the president or president pro tempore of the
county commission.

§3-4A-13a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at
the offices of the clerks of the county commission and circuit
court by the close of the clerks' offices on the day prior to
any election, the board of ballot commissioners, the chairman
thereof or the circuit clerk shall cause all necessary election
records, books and supplies to be delivered by special
messenger in the same manner and under the same terms and
conditions as is provided for the dispatch of the special
messenger under the provisions of section twenty-five, article
one of this chapter.
AN ACT to amend and reenact section forty-six, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to training films for election officials; requiring the clerk of the county commission to conduct instructional programs including training films at least fifteen days prior to every primary and general election and to notify all election officials of such programs; prohibiting any election official from serving in an election without attending such instructional program; providing for removal and replacement of officials who fail to attend with certain exceptions; and requiring instructional programs for persons appointed as replacements for such officials.

Be it enacted by the Legislature of West Virginia:

That section forty-six, 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.

§3-1-46. Training film for election officials.

1 The secretary of state in conjunction with West Virginia board of regents shall produce a motion picture film which shall explain and illustrate the procedures for conducting elections, the duties of the various election officials and the methods of voting both on paper ballots and machines.

6 One copy of such film shall be distributed to the clerk of the county commission of each county to be kept and preserved by him. Such film shall be shown to all election officials before each primary or general election as part of their instructional program. The clerk of the county commission shall conduct such instructional program not less than fifteen days before each primary and general election and shall notify all election officials of the exact date, time and place such instructional program will be conducted.
No person shall serve as an election commissioner or poll clerk in any election unless he or she has attended such instructional program. A person to replace any election official who fails to attend the instructional program shall be appointed in the same manner as persons are appointed under the provisions of section twenty-eight of this article to replace election officials refusing to serve, and the clerk of the county commission shall conduct an instructional program prior to the election for any such person or persons so appointed: Provided, That in cases of emergency which prevent a person from attending the instructional program, the county commission may appoint such person as a commissioner or poll clerk notwithstanding that such person has not received the instruction.

While such film is not being used by the clerk for instructional purposes, it shall be available to any duly organized civic, religious, educational or charitable group without charge, except that the clerk shall require a cash deposit on such use in an amount to be determined by the secretary of state.

The secretary of state shall cause such film to be amended, edited or reproduced whenever he is of the opinion such revision is necessary in light of changes in the election laws of this state.

No officeholder or person seeking election to any office shall appear in such film either in person or by visual image or by name.

CHAPTER 76
(Com. Sub. for H. B. 1536—By Delegate Fullen and Delegate Riffle)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-one, article four-a of said chapter, all relating to absentee voting procedures; qualifications to vote an absent
voter's ballot by mail; qualifications to vote an absent voter's ballot by personal appearance at the office of the circuit clerk; absentee voting procedures in counties using electronic voting systems; circuit clerks in such counties to provide vote recording devices for absentee voting; absent voter ballot packets to be provided to voters qualified to vote an absent voter's ballot card by mail in such counties; procedure for voting and returning such absent voter ballot cards; duties of circuit clerks upon receipt of such absent voter ballot cards; duty of the election commissioners to determine legality of such absent voter ballot cards; and procedures for handling and processing of such absent voter ballot cards by the election officials at the polling place.

Be it enacted by the Legislature of West Virginia:

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

Article.

3. Voting By Absentees.

4A. Electronic Voting Systems.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Absentee voting methods.

1 An absent voter's ballot may be voted by mail or by personal appearance at the office of the clerk of the circuit court as provided in this section.

4 Any person described in subdivisions (1), (2) and (4), section one of this article may vote an absent voter's ballot by mail; and any person described in subdivision (3), section one of this article may vote an absent voter's ballot by mail if (a) his application for an absent voter's ballot directs that the absent voter's ballot be mailed to an out-of-county address, (b) the envelope in which his absent voter's ballot is mailed is postmarked at an address outside the county, or the voter verifies by signature that he or she is mailing the absent voter's ballot from outside the county, and (c) he or she is required to be absent from the county in which he or she is registered to vote during regular business hours of the office of the clerk of the circuit court of said county throughout the period, or
throughout the remainder of the period, of voting an absent voter's ballot by personal appearance at said clerk's office.

Any person described in subdivisions (2), (3) and (4), section one of this article, and any person described in subdivision (1), section one of this article whose physical disability on the date of the election is anticipated by reason of commitment to a hospital, institution or other confinement for childbirth or other medical reasons, may vote an absent voter's ballot by personal appearance at the office of the clerk of the circuit court.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-21. Absent voter ballots; issuance, processing and tabulation.

Absentee voters shall cast their votes on absent voter ballot cards. If absentee voters shall be deemed eligible to vote in person at the office of the clerk of the circuit court, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall provide a vote recording device for the use of such absentee voters. For all absentee voters deemed eligible to vote an absent voter's ballot card by mail, in accordance with the provisions of article three of this chapter, the clerk of the circuit court of each county shall prepare and issue an absent voter ballot packet consisting of the following:

(a) One official absent voter ballot card;

(b) One punching tool;

(c) One disposable styrofoam block to be placed behind the ballot card for voting purposes and to be discarded after use by the voter;

(d) One absent voter instruction ballot;

(e) One absent voter's ballot envelope No. 1, unsealed, which shall have no writing thereon and which shall be identical to the secrecy envelope used for placement of ballot cards at the polls; and

(f) One absent voter's ballot envelope No. 2, which envelope shall be marked with the proper precinct number and shall provide a place on its seal for the absent voter to affix his signature. Such envelope shall also otherwise contain the forms
and instructions as provided in section five, article three of this
chapter, relating to the absentee voting of paper ballots.

Upon receipt of an absent voter's ballot card by mail, the
voter shall mark the ballot card with the punch tool and the
voter may receive assistance in voting his absent voter's ballot
card in accordance with the provisions of section six, article
three of this chapter.

After the voter has voted his absent voter's ballot card, he
shall (1) enclose the same in absent voter's ballot envelope No.
1, and seal that envelope, (2) enclose sealed absent voter's
ballot envelope No. 1 in absent voter's ballot envelope No. 2,
(3) complete and sign the forms, if any, on absent voter's ballot
envelope No. 2 according to the instructions thereon, and (4)
mail, postage prepaid, sealed absent voter's ballot envelope
No. 2 to the clerk of the circuit court of the county in which
he is registered to vote, unless the voter has appeared in
person, in which event he shall hand deliver the sealed absent
voter's ballot envelope No. 2 to the clerk.

Upon receipt of such sealed envelope, the circuit clerk shall
(1) enter onto the envelope such information as may be
required of him according to the instructions thereon; (2) enter
his challenge, if any, to the absent voter's ballot; (3) enter the
required information into a record of persons making
application for and voting an absent voter's ballot by personal
appearance or by mail (the form of which record and
information to be entered therein shall be prescribed by the
secretary of state); and (4) place such sealed envelope in a
secure location in his office, there to remain until delivered
to the polling place in accordance with the provisions of this
article or, in case of a challenged ballot, to the county
commission sitting as a board of canvassers.

When absent voters' ballots have been delivered to the
election board of any precinct, the election commissioners
shall, at the close of the polls, proceed to determine the legality
of such ballots as prescribed in article three of this chapter.
The commissioners shall then open all of the absent voter's
ballot envelopes No. 2 which contain ballots not challenged
and remove therefrom the absent voter's ballot envelopes No.
1. These ballot envelopes No. 1 shall then be shuffled and
intermingled. The election commissioners and poll clerks, in
the presence of each other, shall next open all of the absent
voter's ballot envelopes No. I and remove the ballots
therefrom. The poll clerks shall then affix their signatures
thereto as provided in section nineteen-a of this article. The
commissioners shall then insert each ballot card into a secrecy
envelope identical to the secrecy envelopes used for the
placement of ballot cards of voters who are voting in person
at the polls and shall deposit the ballot in the ballot box.

CHAPTER 77

(Com. Sub. for H. B. 1850—By Mr. Speaker, Mr. Albright and Delegate Swann)

[Passed April 12, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles six, six-b, six-c and six-d, chapter twenty
of the code of West Virginia, one thousand nine hundred
thirty-one, as amended; to repeal chapter twenty-two of said
code and to enact in lieu thereof a new chapter twenty-two;
and to further amend said code by adding thereto two new
chapters, designated chapters twenty-two-a and twenty-two-b,
all relating to providing for the consolidation of the
administration and regulation of exploration for and develop­
ment, production, utilization and conservation of coal, oil and
gas, and other mineral resources of this state; providing for
the creation of a new state department of energy charged
generally with the administration of power and duties relating
to the exploration for and development, production, utilization
and conservation of all minerals; to create within the
department of energy a division of mines and minerals to
administer such laws and matters as relate to coal and other
hard minerals; creating a division of oil and gas responsible
for administration of such laws and matters as relate to oil
and gas; providing that the act may be cited as The West
Virginia Energy Act; specifying the legislative findings and
policy; defining terms; providing for the commissioner and
deputy commissioner of the department of energy, the director
of the division of mines and minerals and the director of the division of oil and gas, their appointment, qualifications, removal, salary, expenses, oath, bond, powers and duties; providing for the creation of sections within the divisions, qualifications of deputy directors thereof, and generally for the ability of the commissioner to delegate authority to such directors and deputy directors and others as he considers appropriate and to create such sections as are necessary for the effective administration of this act; providing for the transfer of funds, supplies, equipment, records and appropriations formerly held with the department of mines or department of natural resources to the department of energy; providing for the commissioner's authority to adopt rules and regulations; providing for the jurisdiction of the department of energy and cooperation with other governments and agencies; all permits, certifications, waivers, bonds, orders or authorizations heretofore issued to continue in effect; providing for hearings before the department of energy; providing for construction of the act; providing for the effective date of the act and operative dates for transfer of powers to the department of energy; providing for continuation of employment, tenure and civil service coverage of employees; relating to the continuation of the interstate mining compact, findings and purposes therefore, definitions, formulation of state programs for the conservation and use of mined land, powers conferred upon the interstate mining commission, the composition, duties and purposes thereof; providing for advisory, technical and regional committees; providing for budget recommendations to be made by the commission to the governor and manner of payment of the commission expenses; providing for the effective date of the act, effect on other laws, and construction and severability of the act; providing for the bylaws of the commission and withdrawal from the compact; providing for the continuation of the abandoned mine reclamation act, the title thereof, the legislative findings, intent and purpose of the act, the jurisdiction and authority of the commissioner to accomplish the purpose of said act to restore and reclaim land and water resources disturbed by coal surface mining operations, and defining terms; providing for the abandoned land reclamation fund and the objectives of the fund; specifying lands eligible for reclamation; providing for the powers and duties of the
commissioner, the program plans and reclamation projects under the act; providing for the acquisition and reclamation of the land adversely affected by past coal surface mining practices; providing for liens against reclaimed land, and a procedure for petition and appeal; providing for the priority of such liens; providing for filling voids and sealing tunnels existing from previous coal surface mining operations; providing for the general and miscellaneous powers and duties of the commissioner, cooperative agreements, injunctive relief, water treatment plants and facilities, the transfer of funds and interagency cooperation; continuing a reclamation board of review, and providing for the appointment, organization, authority, compensation, expenses and removal of the members thereof, appeals to the board, hearings before the board, subpoenas and subpoenas duces tecum, powers, records, findings and orders of the board, appeals from orders of the board, judicial review and temporary relief; continuing a board of appeals to hear appeals and make determinations on questions of miners' entitlements; providing for the composition and powers of said board and the compensation and terms of members; providing for the continuation of the board of coal mine health and safety, and providing for the membership thereof, method of nomination and appointment, meetings, vacancies, quorum, powers, duties, compensation and expenses of members, definitions, findings and purposes; providing for a health and safety administrator, his qualifications, duties, employees and compensation; promulgation of rules and regulations and reports of the board; continuing a shallow gas well review board and providing for policy and findings, definitions, applications of the article and exclusions therefrom; board membership, method of appointment, vacancies, compensation, expenses, staff, general powers and duties, rules and regulations and other requirements; meetings and notice requirements therefor, objections to proposed drilling, conferences, agreed locations and changes on plats, hearings, orders, distance limitations between wells, application for and establishment of a drilling unit and notice thereof and, hearings and orders pursuant thereto, pooling of interests in drilling units and limitations thereon; the effects of orders establishing drilling unit or pooling of interests, and recording procedures, judicial review, appeal to the supreme court of appeals and legal representation for the board,
operation on drilling units, unit agreements, injunctive relief, criminal penalties for violations, and construction of article; promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the oil and gas conservation commission and office of commissioner, and in conjunction therewith providing for public policy and legislative findings, definitions, applications and exclusions, commission membership, qualifications for members, terms, vacancies, meetings, compensation and expenses of members, appointment and qualifications of the commissioner and his general powers and duties, rules and regulations and notice requirements therefor, prohibition against waste, drilling units and pooling for deep oil and gas wells, procedures for secondary recovery of oil and unit operations, validity of unit agreements, hearing procedures, judicial review, appeal to supreme court of appeals, legal representation for commissioner, procedures for obtaining injunctive relief, oil and gas conservation tax, criminal penalties for violation, construction and severability; promulgated rules and regulations and orders and permits to remain in effect, though subject to review; continuing the board of miner training, education and certification and in conjunction therewith providing for legislative findings and policies, definitions; appointment of board and chairman, terms, vacancies and compensation, powers and duties of board, duties of commissioner and the department; providing for the certification of underground and surface coal miners, competency and qualification requirements therefor and certificates, definitions, apprenticeship permits for underground and surface miners, supervision of apprentices, refusal to issue certificates, appeals, limitations and application of article, and criminal penalties for violations thereof; continuing the mine inspectors examining board, its composition and general powers and duties; continuing provisions for emergency medical personnel in coal mines and requirements for first-aid training for coal mine employees; continuing the oil and gas inspector's examining board and providing for its composition, appointment, term, compensation of the members, meetings, and general powers and duties; appointment, tenure, qualifications, salary, expenses and removal of oil and gas inspectors and supervising inspectors; providing for the formation of the division of mines and minerals and a director thereof, his term, appointment,
qualifications, salary, oath and bond, purpose, administration and enforcement powers of the division, definition of terms, rules and regulations, the commissioner's and director's powers and duties; providing for mine inspectors, their districts and divisions, employment, tenure, oath and bond; providing for mine safety instructors, their qualifications, employment, compensation, tenure, oath and bond, the appointment of mine inspectors in the case of vacancies and their tenure; providing for electrical inspectors, their qualifications, salary, expenses, tenure, oath and bond; providing for eligibility and qualifications of mine inspectors, their salary, expenses, removal from office; providing for eligibility and qualifications for surface mine inspectors, their salary, expenses and removal from office; providing for authority and duties of the commissioner, director and authorized representatives to enter mines without notice and inspect mines and issue reports after fatal accidents, and findings, orders and notices with respect to dangerous conditions or violations of law; authorized representative of mines may accompany authorized representatives of commissioner on an inspection; providing for powers and duties of electrical inspectors with regard to inspections, findings and orders; review of orders and notices by the commissioner, posting of notices, orders and decisions and delivery to agent of operator, and requiring that names and addresses be filed by operators; providing for judicial review, injunctions, civil and criminal penalties, discriminations, and records and reports; providing for appointment and salary of mine foreman examiner, mine foreman-fire bosses and assistant mine foreman-fire bosses, duties of the mine foreman examiner; preparation and administration examinations notice of intent to take examination and investigation of applicants, certificates of qualification of examinees, certificate of mine foreman examiner, record of examinations, withdrawal of certification, certification of mine foreman or assistant mine foreman with regards to licensing when similar activities were suspended in another state; purchase of mine rescue stations and their equipment; employment of mine rescue crews and rescue teams; requiring mandatory safety programs; and providing criminal penalties for violating severability of provisions; providing for coal mines generally, mining maps, professional supervision thereof, seals and certifications, contents, extensions, repositories, availability, traversing,
copies, archives, surveys and maps, and criminal penalties for violations; providing for mine ventilation generally, including plans and approval thereof, fans, and ventilation of unused and abandoned mine areas; providing for the movement of mining equipment generally; providing for requiring underground mine foreman-fire bosses, their assistants, certification and duties with respect to ventilation, loose coal, slate or rocks, props, drainage of water, mandoors and instruction of apprentice miners; providing for regulation of slopes, incline planes and haulage roads; providing for signals on haulways, lights at mouth and at bottom of shaft, operation of cages and boreholes; providing for instruction of employees and supervision of apprentices, annual examinations of persons using flame safety lamps, records of such examinations and maintenance of methane detectors, etc.; providing daily inspection of working places and records; providing for safety inspections, removal of gas, sealing off dangerous places, examination of reports of fire bosses, ascertaining, recording and removal of dangers; providing for duty to notify operators when unable to comply with law and duty of operation; providing for the death or resignation of the mine foreman and a successor; providing for the duties of fire bosses to prepare danger signals and maintain open records; providing that fire bosses shall have no superior officers, prohibiting entry of mine prior to fire boss report of safety and general authority of fire bosses; providing for the control of coal dust, rock dusting, roof control programs and plans, refusal to work under unsupported roof, roof support, examination and testing, correction of dangerous conditions, roof bolt recovery, canopies or cabs and electric face equipment; providing for roof equipment to conform to seam; providing generally for the use of authorized explosives, storage and use of unauthorized explosives; providing for separate surface magazines for explosives, transportation of explosives, the underground storage thereof, and preparation for shots and blasting practices, setting forth procedures for misfires of explosives and other blasting devices; providing for hoisting machinery, telephones, safety devices, hoisting engineers and drum runners; providing for transportation generally, including haulage roads and equipment; shelter holes, prohibited practices, signals and inspections; providing for transportation of miners by cars, self propelled equipment and belts;
providing for flame resistant conveyor belts, their installation and maintenance; providing for general electrical provisions and the use of bonding track as power conductor; providing for telephone service and communication facilities; providing for conditions for electrical equipment in mines, for hand drills, rotating tools and trailing cables, and installation of lighting; providing for conditions for welding and cutting, responsibility for care and maintenance of face equipment and requirements for respiratory equipment and control of dust; providing for safeguards for mechanical equipment; providing for procurements of dust tight electrical equipment, fireproof construction, dust control, repairs, welding, handrails and toeboards, protection of personnel on conveyors, back guards on ladders, walkways or safety devices around thickeners; providing for housekeeping and storage of flammable liquids and lamphouses; providing for smoking restrictions; providing for miscellaneous safety provisions and requirements including railroad cars and dumping areas; rules, regulations and duties of operators; protective equipment and clothing, safety helmet and checking systems, prohibiting endangering security of mines, search for intoxicants, matches, etc.; providing for fire protection; first-aid equipment; accessible outlets, safe roadways for emergencies, accessibility of first-aid equipment, use of special capsule for removal of personnel; providing for coal storage bins, recovery tunnels and coal storage piles, thermal coal dryers and plants; prohibiting opening or reopening any mine without prior approval of the commissioner, establishing approval fees, and extensions of certificates of approval; providing that certificates are not transferable, and that section is to be printed on certificates; providing for the sealing and permanent closing of abandoned mines, mining close to abandoned workings, and explosions or accidents, notices, investigations by department, written reports of accidents, and preservation of evidence following accident or disaster; providing for fires in and about mines and notification of the director and mine inspector; providing for shafts and slopes generally; requiring that mine examiner be employed during the sinking of a shaft or a driving of a slope to a coal bed, and the qualifications for such examiner; providing for the rights of miners to refuse to operate on unsafe equipment, the procedures therefor and discrimination policies; providing for methods of long wall and short wall
mining; providing for the construction of shafts, slopes, surface facilities and the safety hazards therewith, duties of the board of coal mine health and safety to promulgate rules and regulations, and time limits therefor; providing for the control of respirable dust; providing for procedures prior to operating near oil and gas wells, setting forth general provisions relating to opening of old or abandoned mines, monthly reports by mine operators, examinations to determine compliance with permits, and providing for severability of provisions of article; providing for the West Virginia surface coal mining and reclamation act, title thereto, legislative findings and purpose, authority, jurisdiction, duties and functions of commissioner, apportionment of responsibility, interdepartmental cooperation, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salary and duties; providing for notice of intention to prospect and requirements therefor, bonding, commissioner’s authority to deny or limit such prospecting, postponement of reclamation, prohibited acts and exceptions; prohibiting surface mining without a permit and providing for permit requirements, successors, duration, insurance, termination, fees, application requirements and contents; providing for reclamation plan requirements, performance bonds, amount and method of bonding, bonding requirements, special reclamation tax and fund, prohibited acts, and period of bonding liability; providing for general environmental protection performance standards for surface mining and variances; providing for a pilot program for growing grapes on reclaimed areas; providing for surface effects of underground mining and application of other provisions to surface of underground mining; providing for inspections, monitoring, right of entry, inspection of records, identification signs, and progress maps; providing for cessation of operation by order of inspector, informal conference, imposition of affirmative obligations, and appeals; providing for notices of violations, procedure and actions, enforcement, permit revocation and bond forfeiture, civil criminal penalties, appeals to the board, prosecution and injunctive relief; providing for approval, denial, revision and prohibition of permit; providing for permit revision, renewal, transfer, assignment, sale and reassignment; providing for public notice, written objections, and informal conferences; providing for decision of director on permit application and hearing thereon;
providing for the designation of areas unsuitable for surface mining, petition for removal of such designation, prohibition of surface mining on certain areas, exceptions, taxation of minerals underlying land designated as unsuitable; providing for release of performance bonds or deposits, application therefor, notice, duties of director in this regard, public hearings, and final maps on grade release; providing for water rights and replacement and waiver of replacement; providing for citizens suits, orders of court and damages; providing for those surface mining operations not subject to article; providing for leasing of lands owned by state for surface mining of coal; providing for special permits for removal of coal incidental to land development; prohibited acts, application, bond and reclamation for existing abandoned coal processing waste piles; providing for existing permits and performance bond conversion and exemption from design criteria; providing for experimental practices; providing for certification and training of blasters; providing for certification of surface miners and surface mine foremen; providing for monthly reports by operators; providing for the applicability and enforcement of laws safeguarding life and property, regulations, and authority of department of energy regarding such safety laws; providing for conflicting provisions; prohibiting conflicts of interest, criminal penalties therefor, and employee protection; providing for severability of provisions of article, providing for validity of regulations promulgated under section 502(c) of the surface mining control and reclamation act of 1977, and providing for the consolidation of permitting, enforcement and rule making authority for surface mining operations, National Pollutant Discharge Elimination System, and the effective date thereof; providing for surface mining and reclamation of minerals other than coal, jurisdiction and duties in connection therewith, legislative purpose and apportionment of responsibility, definitions, reclamation supervisors and inspectors, their appointment, qualifications, salaries and duties; providing for surface mining permits, applications, issuance, renewals, fees and use of proceeds; providing for preplans for reclamation and surface mining; providing for the installation of a drainage system and alternate plans for not calling for backfilling where a water impoundment is desired, and its time limits; providing for limitations of areas for surface mining, and mandamus;
providing for blasting restrictions, formulas, filing preplans, civil penalties and notices; providing for the time limits for reclamation work, obligations of the operator, cessation of operation by inspector, completion of planning, inspection and evaluation, performance bonds, exceptions as to highway construction projects, applicability of law safeguarding life and property, rules and regulations therefor, and supervision of operations thereof, monthly reports by the operators, general rules and regulations, noncompliance procedures, adjudications, findings, etc., by written order, contents thereof and notices; providing for appeals, hearings, records, findings and orders; providing for offenses, criminal penalties, prosecutions, treble damages and injunctive relief; providing for the validity and construction of existing surface mining permits, and certification of surface miners and surface mine foreman; providing for underground clay mines; definitions, mine foreman and assistants and the employment and qualifications thereof, and providing for regulations for protection of health and safety of employees of such mines; providing for open pit mines, cement manufacturing plants and underground limestone and sandstone mines, definitions, applicability of mining law to such mines and plants, rules and regulations, monthly reports by operators, inspectors and criminal penalties; providing for a division of oil and gas and a director thereof, oil and gas wells generally, and administration and enforcement of laws in connection therewith, definitions, rules and regulations, appointments, powers and duties of director, and public records; providing for oil and gas inspectors, their eligibility, qualifications, salary, expenses and removal; providing for findings and orders of such inspectors, time for abatement, extensions of such time, special inspections, and notice of findings and orders; providing for review of such findings and orders, special inspections, annulments, revisions, etc., of order and notice; providing for requirements for such findings, orders and notices and the posting thereof; providing for judicial review; providing for permits for well work, fees, applications, and soil erosion control plans; providing water pollution conditions, powers and duties of directors, prohibitions, criminal and civil penalties and appeals to state water resources board; providing for special conditions for permits on flat well royalty leases and legislative findings and declarations in this regard; providing for notice to property
owners; providing for procedures for filing comments and notices; providing for review of application, issuance of permits in the absence of objections and comments, copy of such permits to county assessor; providing for permits to drill or fracture wells, plats, notices, bonds or other securities and forfeiture thereof, all in connection with such permits; providing for permits to fracture certain wells, and notices in connection therewith; providing for permits to introduce liquids or wastes into wells, and in connection therewith the plats, notices and bonds or security and the preparation and contents thereof; providing for objections to proposed drilling of deep wells and to fracturing, notices and hearings, agreed location or conditions, indication of changes on plats, etc., and issuance of permits; providing for objections to proposed drilling or converting for introducing liquids or wastes into wells, notices and hearings, agreed locations or conditions, indication of changes on plats, etc., issuance of permits, and docket of proceedings; providing for objections to proposed drilling of shallow gas wells, notice to chairman of review board, indication of changes on plats, and issuance of permits; providing for the applicability of certain provisions of law, to appeals from orders issuing or refusing permits and procedure therefor; providing for appeals from orders issuing or refusing permits for drilling location for introduction of liquids or waste or from conditions of converting procedure; providing for protective devices when well penetrates workable coal beds, when gas is found beneath or between workable coal beds, continuance of such devices during life of well, and plugging method when well is dry or abandoned; providing for protective devices when well is drilled through horizon of coal bed from which coal has been removed, and installation of fresh water casings; providing for filing of well logs; contents thereof, and authority to promulgate regulations in connection therewith; providing for plugging, abandonment and reclamation of wells, notice of intention therefor, performance bonds or securities, and affidavits showing time and manner thereof; providing for methods of plugging wells; providing for the introduction of liquid pressure into producing strata to recover oil contained therein; providing for performance bonds, corporate surety or other security; providing a cause of action for damages caused by explosions; providing for oil and gas conservation commissioner as acting administrator and
administrative assistants; providing for supervision by department of energy over drilling, mining and reclamation, operations, complaints, hearings and appeals; providing for reclamation fund and fees; providing for reclamation requirements; providing for rules and regulations and hearings before department of energy and appeals; providing for prevention of waste of gas, plans of operation required for wasting gas in process of producing oil, and rejection thereof; providing for rights of adjacent owners or operators to prevent waste of gas and recovery of costs; providing for restraining of waste; providing for offenses and criminal penalties; providing for injunctive relief and appeals; providing for civil actions for contamination or deprivation of fresh water sources or supplies and presumptions in connection therewith; providing for declarations of oil and gas notice by owners and lessees of coal seams; providing for causes of action for damages caused by explosions; providing for reorganizations and required reports; providing that rules, regulations, orders and permits in existence will remain valid but will be subject to review; providing for damages and compensation to surface owners resulting from oil and gas drilling and production, legislative findings and purpose, definitions, items of compensation and damage, preservation of common law rights of action and offsets, notification of claim, agreements, offers of settlement, rejection, legal action, arbitration, fees, costs and application and severability of these provisions; providing for transportation of oils, duty of pipeline companies, inspection grading and measurement, receipt, deduction for waste of oil of 35° Baume at 60° Fahrenheit; providing for the inspection, measurement and loss of oil over 35° Baume at 60° Fahrenheit; providing a lien for charges; providing for accepted orders, certificates for oil, and negotiability; providing for dealing in oil without consent of owner, monthly statements, statements of amount of oil; providing criminal penalties for wrongful issuance, sale or alteration of receipts, orders, etc., and dealing in oil without consent of owner in interest; providing for forfeitures for failure to make reports and statements; providing for underground gas storage reservoirs; definitions; filing of maps and data by persons operating or proposing to operate gas storage reservoirs; filing of maps and data by persons operating coal mines; notice by persons operating coal mines; obligations to be performed by
persons operating storage reservoirs; inspection of facilities and records; reliance on maps; burden of proof; exemptions; alternate methods; powers and duties of director; conferences; hearings; appeals; enforcement and criminal penalties for violations; and providing that orders in effect remain effective but are subject to review.

Be it enacted by the Legislature of West Virginia:

That articles six, six-b, six-c and six-d, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that chapter twenty-two of said code be repealed and that a new chapter twenty-two of said code be enacted in lieu thereof; and that said code be further amended by adding thereto two new chapters, designated chapters twenty-two-a and twenty-two-b, all to read as follows:

Chapter
22. Energy.
22A. Mines and Minerals.
22B. Oil and Gas.

CHAPTER 22. ENERGY.

Article
1. Title; Purposes; Department of Energy.
2. Interstate Mining Compact.
3. Abandoned Mine Lands and Reclamation Act.
4. Reclamation Board of Review.
5. Board of Appeals.
6. Board of Coal Mine Health and Safety.
7. Shallow Gas Well Review Board.
8. Oil and Gas Conservation.
10. Certification of Underground and Surface Coal Miners.
11. Mine Inspectors' Examining Board.
13. Oil and Gas Inspectors' Examining Board.

ARTICLE 1. TITLE; PURPOSES; DEPARTMENT OF ENERGY.

§22-1-1. Short title.
§22-1-2. Declaration of legislative findings and policy.
§22-1-3. Definitions.
§22-1-4. Department of energy created.
§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.
§22-1-6. Deputy commissioner—Appointment; eligibility; salary; duties; oath; bond.
§22-1-7. Divisions within department; sections within divisions.
§22-1-8. Director of the division of mines and minerals—Appointment; eligibility; salary.
§22-1-10. General powers and duties of the director of the division of mines and minerals.
§22-1-11. Director of the division of oil and gas—Appointment; eligibility; salary.
§22-1-12. Same—Oath and bond.
§22-1-13. General powers and duties of director of the division of oil and gas and commissioner.
§22-1-14. Transfer of funds, supplies, equipment, records, appropriations, etc.
§22-1-15. Commissioner's authority to promulgate rules and regulations.
§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.
§22-1-17. Hearings before department of energy.
§22-1-19. Effective date of act.
§22-1-20. Operative dates and transfer of functions.
§22-1-21. Continuation of employment, tenure, civil service coverage.

§22-1-1. Short title.

This act, which includes the provisions of this chapter and chapters twenty-two-a and twenty-two-b, may be cited as "The West Virginia Energy Act."

§22-1-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares that the mineral development industry is vital to the state's economy and the employment of many of its citizens, that there exists a need for comprehensive regulation of this industry and the consolidation of regulatory power and statutes in a single act and under a single department of state government with related boards and commissions, that such consolidation will result in more efficient administration, avoid unnecessary delays in permitting and other matters, provide better and more expeditious enforcement and application of environmental and safety laws as herein provided, result in better cooperation between agencies, provide for uniform policies and consistent treatment of entities engaged in mineral development, and that such efficient and uniform administration and regulation will make this state's industry more competitive with that in other energy producing states.

Accordingly, it is hereby declared the public policy of this state and the purpose of this act:
(a) To foster, encourage and promote the exploration for and the development, production, utilization and conservation of coal, oil and gas and other mineral resources of the state through the fullest practical means, and at the same time promote economic development in the state, protect the environment and enhance safety and health in these vital industries;

(b) To provide a comprehensive program for the exploration, conservation, development, protection, enjoyment, recovery and use of coal, oil and gas, and other mineral resources in this state;

(c) To aid in such a comprehensive program by creating a single department, designated the department of energy, to have the regulatory powers with respect to this industry and to have the general duties and responsibilities heretofore existing in the department of natural resources and department of mines, and that the department will perform such duties and functions in conjunction with the respective boards and commissions which are herein continued in effect;

(d) To expedite and facilitate the issuance of permits for mines, surface mining operations, oil and gas wells and other well work; to avoid conflicting permitting requirements and regulations in this state or with federal agencies; and to provide uniform policies with respect to this industry;

(e) To provide for a single agency of this state to implement requirements and programs of federal law affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state;

(f) To provide for an agency of this state which can be consulted with by other agencies of this state prior to the adoption or implementation of rules, regulations, standards, programs or requirements affecting the exploration, development, production, recovery and utilization of coal, oil and gas, and other mineral resources in this state.

§22-1-3. Definitions.

(a) Unless the context, in which used, clearly requires a different meaning, the following definitions shall apply in this chapter:
(1) "Commissioner" means the commissioner of the department of energy;
(2) "Department" means the state department of energy;
(3) "Division of mines and minerals" means the division of mines and minerals of the department of energy; and
(4) "Division of oil and gas" means the division of oil and gas of the department of energy.

(b) Unless the context clearly indicates otherwise, the use of the word “and” and the word “or” shall be interchangeable, as, for example, “oil and gas” shall mean oil or gas or both.

§22-1-4. Department of energy created.

There is hereby created in state government a department to be known as the department of energy. It shall be the purpose of the department, by and through the commissioner, the director of the division of mines and minerals and the director of the division of oil and gas to carry out the energy policy of the state as set forth in this chapter and in chapters twenty-two-a and twenty-two-b of this code.

§22-1-5. Commissioner of energy; appointment; duties; qualifications; removal; salary; expenses; oath and bond.

The commissioner shall be the chief executive officer of the department. Subject to provisions of law, he shall organize the department into such offices, divisions, agencies and other units of activity as may be found by the commissioner to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The commissioner may appoint assistants, hearing officers, clerks, stenographers, and other officers and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

The commissioner shall have the power to and may designate the deputy commissioner or other officers or employees of the department to substitute for him on any board or commission established under this chapter or to sit in his place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the commissioner. Additionally,
the commissioner shall have the power to delegate to the deputy commissioner, division directors, section deputies or other personnel, his powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or chapters twenty-two-a and twenty-two-b as he considers appropriate.

The commissioner shall be appointed by the governor with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor.

At the time of his initial appointment, the commissioner shall be at least thirty years old and shall be selected with special reference and consideration given to his administrative experience and ability, to his demonstrated interest in the energy resources industry and to his experience in the energy resource field. The commissioner shall not be a candidate for or hold any public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his office as commissioner in the event he becomes a candidate for or accepts appointment to any other public office or political party committee.

The commissioner shall receive an annual salary of $65,000 and shall be allowed and paid necessary expenses incident to the performance of his official duties. Prior to the assumption of the duties of his office, the commissioner shall take and subscribe to the oath required of public officers prescribed by section 5, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the department funds.

§22-1-6. Deputy Commissioner—Appointment; eligibility; salary; duties; oath; bond.

There shall be a deputy commissioner of the department who shall be appointed by and serve at the will and pleasure of the governor. The salary of the deputy commissioner shall be set by the governor and be paid with department funds. The commissioner or governor shall prescribe the duties and
responsibilities of the deputy commissioner.

Prior to the assumption of the duties of his office, the deputy commissioner shall take and subscribe to the oath required of public officers prescribed by section 5, article IV of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of two thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premium on the bond shall be paid from department funds.

§22-1-7. Divisions within department; sections within divisions.

(a) Divisions of mines and minerals, and oil and gas are hereby created and established within the department. Subject to provisions of law, the commissioner shall allocate the functions and services of the department to the divisions, offices and activities thereof and may from time to time establish and abolish other divisions, offices and activities within the department in order to carry out fully and in an orderly manner the powers, duties and responsibilities of his office as commissioner. The commissioner shall select and designate a competent and qualified person to be director of each division. The director of a division shall be the principal administrative officer of that division and shall be accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

(b) There shall be within the division of mines and minerals a permit section, an inspection and enforcement section and a safety, health and training section, and such other sections and units of activity as may be found by the commissioner to be necessary and desirable for the orderly, efficient and economical administration of the department for the accomplishment of its purposes. Each section shall be headed by a deputy director appointed by the commissioner. The deputy director of the safety, health and training section shall be a citizen of this state, shall be a competent person of good repute and temperate habits and shall have had at least fifteen years' experience underground in coal mines, at least ten of which shall have been underground in coal mines in this state. Such deputy director of the safety, health and training section shall possess practical knowledge of the different systems for the working, ventilating and draining of coal mines, and a
practical and scientific knowledge of all noxious and
dangerous gases found in such mines. A diploma in mining
engineering from the West Virginia University school of mines
or any similarly accredited engineering school shall be counted
as two years' working experience. Such deputy director shall
devote all of his time to the duties of the office and shall not
be directly or indirectly interested financially in any mine in
this state. The deputy director of any other section of the
division of mines and minerals shall possess such qualifications
as shall be prescribed by the commissioner.

(c) There shall be within the division of oil and gas a permit
section, an inspection and enforcement section and a safety,
health and training section, and such other sections and units
of activity as may be found by the commissioner to be
necessary and desirable for the orderly, efficient and
economical administration of the department for the accomp-
ishment of its purposes. Each such section shall be headed
by a deputy director appointed by the commissioner. The
deputy director of each section of the division of oil and gas
shall possess such qualifications as shall be prescribed by the
commissioner.

§22-1-8. Director of the division of mines and minerals—
Appointment; eligibility; salary.

(a) There shall be a director of the division of mines and
minerals who shall be appointed by the commissioner to serve
at the will and pleasure of the commissioner and whose salary
shall be set by the commissioner. The director of the division
of mines and minerals shall have full charge of the adminis-
tration of the division of mines and minerals and of such other
matters as are delegated and assigned to the director of the
division of mines and minerals by the commissioner relating
to such mines and minerals matters set out in this chapter and
in chapter twenty-two-a of this code, subject always to the
direct supervision and control of the commissioner.

(b) The director of the division of mines and minerals shall
be a citizen of West Virginia, shall be a competent person of
good repute and temperate habits with demonstrated interest
and experience in coal mining. The director of the division of
mines and minerals shall devote all of his time to his duties
and shall not be directly or indirectly interested financially in

The director of the division of mines and minerals shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the Constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

§22-1-10. General powers and duties of the director of the division of mines and minerals.

The director of the division of mines and minerals is hereby empowered and it shall be his duty to execute and carry out, administer and enforce such provisions of this chapter and chapter twenty-two-a of the code as are expressly conferred upon him by such provisions or delegated to him by the commissioner relating to mines and minerals.

§22-1-11. Director of the division of oil and gas—Appointment; eligibility; salary.

(a) There shall be a director of the division of oil and gas who shall be appointed by the commissioner to serve at the will and pleasure of the commissioner and whose salary shall be set by the commissioner. The director of the division of oil and gas shall have full charge of the oil and gas matters set out in this chapter and in chapter twenty-two-b of this code, subject always to the direct supervision and control of the commissioner.

(b) The director of the division of oil and gas shall be a citizen of West Virginia, shall be a competent person of good reputation and temperate habits and shall be a registered professional engineer and shall have had at least ten years’ practical experience in the oil and gas industry. A degree in mining, petroleum engineering or geology shall be counted as two years’ practical experience. The director of the division of oil and gas shall devote all of his time to his duties and shall not be directly or indirectly interested financially in any oil or gas production or drilling or in any coal mine in this state.
§22-1-12. **Same—Oath and bond.**

The director of the division of oil and gas shall, before entering upon the discharge of his duties, take the oath of office prescribed by section five, article four of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

§22-1-13. **General powers and duties of director of the division of oil and gas and commissioner.**

(a) Except for the authority of the shallow gas well review board under article seven of this chapter and of the oil and gas conservation commission under article eight of this chapter and of the oil and gas inspectors examining board under article thirteen of this chapter, and subject to the rule review provisions of subsection (b) of this section and the appellate review provisions of section fourteen of this article, the director of the division of oil and gas is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this chapter and chapter twenty-two-b of the code in the manner provided herein as they relate to oil and gas. Subject to the provisions of this chapter and chapter twenty-two-b of the code, the director of the division of oil and gas shall have jurisdiction and authority over all persons and property necessary therefor.

(b) The director of the division of oil and gas is authorized to propose or promulgate such rules and regulations as are necessary to carry out and implement the provisions of this chapter and chapter twenty-two-b of this code as are specifically authorized in said chapter twenty-two-b of this code. Except where specifically exempted in chapter twenty-two-b of this code, the provisions of chapter twenty-nine-a of this code shall apply to the proposal or promulgation of any such rules and regulations. No rules and regulations shall be finally proposed or promulgated by the director of the division of oil and gas for purposes of chapter twenty-nine-a of this code, unless and until the commissioner has approved such rules and regulations as provided herein. To the extent that the commissioner approves only a portion thereof, only that
portion so approved may be finally proposed or promulgated by the director of the division of oil and gas. The commissioner shall determine whether he will review the rules and regulations within thirty days from the date the same are filed with the commissioner by the director of the division of oil and gas. If the commissioner decides to make such a review, he shall file a notice of review with the director of the division of oil and gas within the thirty day time period. Failure by the commissioner to file a notice of review shall be considered to be commissioner approval of such rules and regulations, or parts thereof. If the commissioner files a notice of review, he shall act to approve, disapprove or rewrite such rules and regulations or parts thereof within sixty days from the filing of the notice of review. Failure by the commissioner to act within the sixty day time period shall be considered to be commissioner approval of such rules and regulations, or part thereof. Those rules and regulations specifically approved, approved by failure to act, or rewritten shall be proposed or promulgated under the provisions of chapter twenty-nine-a of this code.

§22-1-14. Transfer of funds, supplies, equipment, records, appropriations, etc.

(a) Any appropriation made to, and all funds, credits or other assets, including special funds and accounts which, immediately prior to the effective date of this chapter, were held in connection with the operation of the department of mines or department of natural resources in connection with any other agency for the purpose of carrying out the powers, duties and functions vested in the department of energy, shall be transferred and credited as of the effective date of this act to the department of energy created by this chapter. All reports, records, surveys, files and other materials concerning the purposes of this chapter in the possession of the department of mines or department of natural resources or any other agency with respect to powers, duties and functions vested in the department of energy shall be transferred and delivered to the commissioner as of the effective date of this chapter.

(b) Whenever any questions arise as to the transfer to the department of energy of any appropriations, funds, credits, other assets, books, documents, records, surveys, papers, files,
§22-1-15. Commissioner's authority to promulgate rules and regulations.

The commissioner shall have the power and authority to propose or promulgate rules and regulations to organize the department and to carry out and implement the provisions of this chapter and chapter twenty-two-a of this code. With respect to chapter twenty-two-b of this code, the commissioner's rulemaking powers and authority shall be as described in section thirteen of this article. All rules and regulations in effect on the effective date of this act which pertain to the provisions of this chapter, chapter twenty-two-a and twenty-two-b of this code shall remain in effect until changed or superseded by the commissioner, or as appropriate, the director of the division of oil and gas. Except when specifically exempted by the provisions of this chapter, or chapters twenty-two-a or twenty-two-b of this code, all rules and regulations or changes thereto shall be proposed or promulgated by the commissioner in accordance with the provisions of chapter twenty-nine-a of this code.

§22-1-16. Jurisdiction vested in department; cooperation with other governments and agencies; continuation of permits, etc.

Except as otherwise expressly provided in this chapter or in chapters twenty-two-a or twenty-two-b of this code, jurisdiction over the issuance of regulations, or any and all permits and other governmental authorizations required or to be required in all matters pertaining to the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources in this state including all safety, conservation, land, water, waste disposal, reclamation, and environmental regulations, permits and authorizations of such activities called for pursuant to articles five, five-a, five-d and five-f, chapter twenty of this code, and the enforcement and implementation thereof is vested exclusively in the
department of energy. The department of energy is hereby
designated as the lead regulatory agency for this state for all
purposes of federal legislation relating to such activities.

The department of energy shall exercise all power and duties
vested in the director of the department of natural resources
pursuant to subsection (g), section seven, article five-e, chapter
ten of this code, and in the administrator of the office of
oil and gas, and shallow gas-well review board pursuant to
subsection (h), section seven, article five-e, chapter twenty of
this code.

All permits, certifications, waivers, bonds, orders or
authorizations heretofore issued by the department of mines,
department of natural resources, or any of the boards or
commissions continued in effect by this chapter shall be
continued in effect but become subject to the provisions of this
chapter, chapter twenty-two-a and chapter twenty-two-b of
this code. All permits, certifications, waivers, bonds, orders or
authorizations heretofore issued by the department of mines
or department of natural resources shall become subject to the
jurisdiction of the department of energy. All permits,
certifications, waivers, bonds, orders or authorizations
heretofore issued by any of the boards or commissions
continued in effect by the provisions of this chapter shall
remain subject to the jurisdiction of those boards or
commissions.

§22-1-17. Hearings before department of energy.

Any hearing or proceeding before the department on any
matter other than rulemaking shall be conducted and heard
by the commissioner or a representative designated by him and
shall be in accordance with the provisions of article five,
chapter twenty-nine-a of this code, except where such
provisions are inconsistent with this chapter or chapters
twenty-two-a or twenty-two-b of this code.


This chapter shall be liberally construed so as to effectuate
the declaration of public policy set forth in section two, article
one of this chapter.

§22-1-19. Effective date of act.
§22-1-20. Operative dates and transfer of functions.

(a) The transfer of powers, duties, functions and responsibilities to the department of energy shall occur at the earliest practical date consistent with the purposes and intent set forth in section two, article one of this chapter.

(b) The Legislature recognizes that certain of the powers, duties, functions and responsibilities transferred under the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code involve the implementation of federal regulatory programs by the state and that the transfer of such powers, duties, functions and responsibilities to the department of energy may require approval of certain federal agencies or officials in order to avoid disruption of the federal-state relationship under which such regulatory programs are implemented. Therefore, the transfer to the department of the powers, duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code shall become effective upon a proclamation by the governor stating either that final approval of the transfer has been given by the appropriate federal agency or official or that final approval of the transfer is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

(c) The powers, duties, functions and responsibilities referred to in this chapter and chapters twenty-two-a and twenty-two-b of this code are declared to be severable, and the governor's proclamation, or lack thereof, with respect to the transfer of a portion of such powers, duties, functions and responsibilities shall not affect the transfer of other such powers, duties, functions and responsibilities.

§22-1-21. Continuation of employment, tenure, civil service coverage.

All employees of the department of natural resources and department of mines as of the date of the passage of this chapter, whose functions and duties are transferred to the department of energy, shall be employed in a comparable position within the department of energy. Those positions within the departments of mines or natural resources which,
prior to the reenactment of this chapter, were afforded tenure
or civil service protection and coverage which are transferred
to the department of energy pursuant to such reenactment,
shall continue to be tenured or subject to civil service
protection and coverage, as the case may be, to the same
extent as if this chapter had not been reenacted.

Personnel of the department of energy who are appointed
by the governor or commissioner under the provisions of this
chapter shall be excluded from civil service protection and
coverage. The commissioner and deputy commissioner are
each authorized to hire a personal secretary to serve at their
will and pleasure and such secretary also shall be excluded
from civil service protection and coverage. The commissioner
is authorized to hire a personal assistant, in addition to a
personal secretary, who shall serve at the will and pleasure of
the commissioner and who also shall be excluded from civil
service protection and coverage.

ARTICLE 2. INTERSTATE MINING COMPACT.

§22-2-1. Enactment of compact.
§22-2-3. Effective date.

§22-2-1. Enactment of compact.

The "Interstate Mining Compact" is hereby continued in law
and continued in effect with all other jurisdictions legally
joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

(a) The party states find that:
(1) Mining and the contributions thereof to the economy
and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water
and other resources for other uses present special problems
which properly can be approached only with due consideration
for the rights and interests of those engaged in mining, those
using or proposing to use these resources for other purposes
and the public.

(3) Measures for the reduction of the adverse effects of
mining on land, water and other resources may be costly and
the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions and the needs of the public make impracticable to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The continuing purposes of this compact are to:

(1) Advance the protection and restoration of land, water and other resources affected by mining.

(2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

(3) Encourage, with due recognition of relevant regional, physical and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

(4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

(5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.
Article II. Definitions.

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores and other solid matter from its original location, and the preparation, washing, cleaning or other treatment of minerals, ores or other solid matter so as to make them suitable for commercial, industrial or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or possession of the United States.

Article III. State Programs.

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:

(a) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

(b) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

(c) The institution and maintenance of suitable programs for adaption, restoration and rehabilitation of mined lands.

(d) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

Article IV. Powers.

In addition to any other powers conferred upon the
interstate mining commission, established by Article V of this
compact, such commission shall have power to:

(a) Study mining operations, processes and techniques for
the purpose of gaining knowledge concerning the effects of
such operations, processes and techniques on land, soil, water,
air, plant and animal life, recreation and patterns of
community or regional development or change.

(b) Study the conservation, adaptation, improvement and
restoration of land and related resources affected by mining.

(c) Make recommendations concerning any aspect or
aspects of law or practice and governmental administration
dealing with matters within the purview of this compact.

(d) Gather and disseminate information relating to any of
the matters within the purview of this compact.

(e) Cooperate with the federal government and any public
or private entities having interests in any subject coming within
the purview of this compact.

(f) Consult, upon the request of a party state and within
resources available therefor, with the officials of such state in
respect to any problem within the purview of this compact.

(g) Study and make recommendations with respect to any
practice, process, technique or course of action that may
improve the efficiency of mining or the economic yield from
mining operations.

(h) Study and make recommendations relating to the
safeguarding of access to resources which are or may become
the subject of mining operations to the end that the needs of
the economy for the products of mining may not be adversely
affected by unplanned or inappropriate use of land and other
resources containing minerals or otherwise connected with
actual or potential mining sites.

Article V. The Commission.

(a) There is hereby created an agency of the party states to
be known as the “Interstate Mining Commission,” hereinafter
called “the commission.” The commission shall be composed
of one commissioner from each party state who shall be the
governor thereof. Pursuant to the laws of his party state, each
governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV (c), IV (g) and IV (h) or requesting, accepting or disposing of funds, services or other property pursuant to this paragraph, Article V (g), V (h) or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided, That action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director
with the approval of the commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission’s functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain, independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor’s insurance: Provided, That the commission take such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any state, the United States or any other governmental agency, or from any person, firm, association or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, Legislature and advisory body required by Article V (a) of each party state a report covering the activities of the
209 commission for the preceding year, and embodying such
210 recommendations as may have been made by the commission.
211 The commission may make such additional reports as it may
212 deem desirable.

213 Article VI. Advisory, Technical and Regional Committees.
214 The commission shall establish such advisory, technical and
215 regional committees as it may deem necessary, membership on
216 which shall include private persons and public officials, and
217 shall cooperate with and use the services of any such
218 committees and the organizations which the members
219 represent in furthering any of its activities. Such committees
220 may be formed to consider problems of special interest to any
221 party states, problems dealing with particular commodities or
222 types of mining operations, problems relating to reclamation,
223 development or use of mined land or any other matters of
224 concern to the commission.

225 Article VII. Finance.
226 (a) The commission shall submit to the governor or
227 designated officer or officers of each party state a budget of
228 its estimated expenditures for such periods as may be required
229 by the laws of that party state for presentation to the
230 Legislature thereof.
231 (b) Each of the commission's budgets of estimated expen-
232 ditures shall contain specific recommendations of the amount
233 or amounts to be appropriated by each of the party states.
234 The total amount of appropriations requested under any such
235 budget shall be apportioned among the party states as follows:
236 One half in equal shares, and the remainder in proportion to
237 the value of minerals, ores and other solid matter mined. In
238 determining such values, the commission shall employ such
239 available public source or sources of information as, in its
240 judgment, present the most equitable and accurate compari-
241 sons among the party states. Each of the commission's budgets
242 of estimated expenditures and requests for appropriations shall
243 indicate the source or sources used in obtaining information
244 concerning value of minerals, ores and other solid matter
245 mined.

246 (c) The commission shall not pledge the credit of any party
247 state. The commission may meet any of its obligations in
whole or in part with funds available to it under Article V (h) of this compact: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Entry Into Force and Withdrawal.

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Effect on Other Laws.

Nothing in this compact shall be construed to limit, repeal
or supersede any other law of any party state.

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.


1 In accordance with Article V (i) of the interstate mining compact, the commisson shall file copies of its bylaws and any amendments thereto in the office of the secretary of state of West Virginia.

§22-2-3. Effective date.

1 This article is effective as of the first day of July, one thousand nine hundred seventy-two.

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-1. Short title.
§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.
§22-3-3. Definitions.
§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.
§22-3-5. Powers and duties of commissioner; program plans and reclamation projects.
§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.
§22-3-7. Liens against reclaimed lands; petition by landowners; appeal; priority of liens.
§22-3-8. Filling voids and sealing tunnels.
§22-3-9. General and miscellaneous powers and duties of commissioner; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.
§22-3-1. Short title.

This article shall be known and cited as the "Abandoned Mine Lands and Reclamation Act."

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

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 unreclaimed 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, as of the date the state of West Virginia obtained 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 commissioner of the department of energy to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.
§22-3-3. Definitions.
  All definitions set forth in article three of chapter twenty-two-a of this code shall apply to those defined terms which also appear in this article, if applicable.

§22-3-4. 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 deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.
  (b) Moneys in the fund may be used by the commissioner for the following:

  (1) Reclamation and restoration of land and water resources 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 adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment 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 coal 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 welfare 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 practices;
C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural 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, recreation and conservation facilities adversely affected by past coal 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 historic 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, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to the third day of August, one thousand nine 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
§22-3-5. Powers and duties of commissioner; program plans and reclamation projects.

(a) The commissioner 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 commissioner 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 protected 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 evaluated 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 engineering costs, construction inspection costs and other necessary administrative expenses.

§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

(a) If the commissioner 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 commissioner, 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 commissioner, 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 commissioner, 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 or 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 commissioner may acquire any land by purchase,
donation or condemnation, which is adversely affected by past
coal mining practices, if the commissioner 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, conserva-
tion, 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 state of West Virginia, by the West
Virginia department of energy. 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 commissioner is hereby authorized to transfer land
obtained under subsection (c) of this section to the secretary.
The commissioner may purchase such land from the secretary
after reclamation at the fair market value less the state's
original acquisition price.

(f) The commissioner may accept and local political subdivisions may transfer to the commissioner 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 commissioner 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 commissioner 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 energy. 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 commissioner 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 commissioner, 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 commissioner 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 commissioner shall require, which may
include transfers of land with or without monetary consider-
ation: 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 commissioner 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 commis-

§22-3-7. 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
commissioner 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 land owner may petition the commissioner 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.

§22-3-8. 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 commissioner 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 commissioner 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 commissioner may acquire by purchase, donation, easement or otherwise such interest in land as he determines necessary to carry out the provisions of this section.
§22-3-9. General and miscellaneous powers and duties of commissioner; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The commissioner 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 commissioner 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 commissioner 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 commissioner 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 commissioner by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of this article.

ARTICLE 4. RECLAMATION BOARD OF REVIEW.

§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

§22-4-2. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.

§22-4-3. Appeal from order of board; judicial review; temporary relief.
§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

(a) There is hereby continued 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 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 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.

§22-4-2. Appeals to the board; hearings before board; subpoena and subpoena duces tecum; records; findings and orders of the board.

(a) Any person having an interest which is or may be adversely affected by any order of the commissioner's assessment officer or a decision of the commissioner to grant, deny, modify, renew or significantly revise a permit, or a decision of the commissioner concerning a bond release pursuant to section twenty-three, article three, chapter twenty-two-a, may appeal that decision to the board 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 commissioner shall be known as the appellee. 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) The 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 decision of the commissioner, or within fifteen days after the appellant is notified of the decision of the assessment officer, the appellant or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision complained of. A notice of the appeal shall be filed with the commissioner within three days after the appeal is filed with the board.

(c) Upon the filing of the 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, and the commissioner 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 commissioner shall prepare and certify to the board a complete record of the proceedings of the commissioner out of which the appeal arises, including all documents and correspondence related to the matter.

(e) 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 witnesses, books, records or papers are found, which subpoenas and subpoenas duces tecum shall be served and returned 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 a copy of the record at the request of the appellant shall be paid by the appellant. The board may visit the site of the activity or proposed activity which is the subject of the hearing and take such additional evidence as it considers necessary provided that all parties and intervenors be given notice of the visit and are given an
opportunity to accompany the board.

(f) 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 the disobedience, neglect or refusal occurs, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the court of a refusal to testify therein. Witnesses at the hearings shall testify under oath and any member of the board may administer oaths or affirmations to persons who so testify.

(g) A stenographic record of the testimony and other evidence submitted shall be made. The 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 the proffer shall be made a part of the record of the hearing.

(h) If upon completion of the hearing the board finds that the decision appealed from was lawful and reasonable, it shall make a written order affirming the same, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make a written order reversing or modifying the decision 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. On all appeals to the board, the board shall issue a final decision thirty days after the hearing or within thirty days after the testimony presented at the hearing has been transcribed and checked for accuracy. 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 party by registered or certified mail. The order of the board shall be final unless vacated upon judicial review thereof.

§22-4-3. 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 participated 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 the county in which the surface-mining operation 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 the notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee. The 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 relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceedings; and

(3) The 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 a copy of the 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.

(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 the 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 further action as the court
may direct. Any order shall be affirmed if the court concludes
that the 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 the court to hear and entertain the appeals
upon application made therefor in the manner and within the
time provided for civil appeals generally.

(f) The availability of the review shall not be construed to
limit the operation of the rights established in section twenty-
five, article three, chapter twenty-two-a of this code 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 the proceedings, may be assessed against
either party by the board or the court.

ARTICLE 5. BOARD OF APPEALS.

§22-5-1. Board of appeals.

There is hereby continued a board of appeals, consisting of
three members. Two members of the board shall be appointed
by the governor, one person who by reason of previous
training and experience may reasonably be said to represent
the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who shall be chairman of the board, and who must not have had any connection at any time with the coal industry or an organization representing miners, shall be selected by the two members appointed by the governor. The term of office of members of the board shall be five years.

The function and duties of the board shall be to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chairman of the board shall have the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

Each member of the board shall receive one hundred dollars per diem while actually engaged in the performance of the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties. Each member shall receive mileage expense reimbursement at the rate established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

Board members, before performing any duty, shall take and subscribe to the oath required by section five, article IV of the constitution of West Virginia.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-6-1. Declaration of legislative findings and purpose.
§22-6-2. Definitions.
§22-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.
§22-6-4. Board powers and duties.
§22-6-4a. Preliminary procedures for promulgation of rules and regulations.
§22-6-4b. Health and safety administrator; qualifications; duties; employees; compensation.
§22-6-1. Declaration of legislative findings and purpose.

(a) The Legislature hereby finds and declares that:

(1) The Legislature concurs with the congressional declaration made in the "Federal Coal Mine Health and Safety Act of 1969" that "the first priority and concern of all in the coal mining industry must be the health and safety of its most precious resource—the miner";

(2) Coal mining is highly specialized, technical and complex and it requires frequent review, refinement and improvement of standards to protect the health and safety of miners;

(3) During each session of the Legislature, coal mine health and safety standards are proposed which require knowledge and comprehension of scientific and technical data related to coal mining;

(4) The formulation of appropriate regulations and practices to improve health and safety and provide increased protection of miners can be accomplished more effectively by persons who have experience and competence in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose of this article to:

(1) Continue the board of coal mine health and safety;

(2) Require such board to continue as standard rules and regulations the coal mine health and safety provisions of this code;

(3) Compel the board to review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, to revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety; and

(4) Authorize such board to conduct such other activities as it deems necessary to implement the provisions of this chapter.
§22-6-2. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words and phrases defined in section one, article one-a, chapter twenty-two-a of this code shall have, when used in this article, the meaning therein assigned to them. For the purpose of this article “board” means the board of coal mine health and safety continued by section three of this article.

§22-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The board of coal mine health and safety, heretofore established, is continued as provided by this article. The board shall consist of seven members who shall be residents of this state, and who 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 is less than one million 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. 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. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated. For purposes of this subdivision, 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 two members who can reasonably be expected to represent the viewpoint of the
working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in coal mine health and safety, and shall at the time of their appointment be employed in a position which involves the protection of health and safety of miners. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated.

(3) The governor shall appoint one public member who is professionally qualified in the field of occupational health and safety and who shall be (A) an employee of the institute of labor studies at West Virginia University or (B) a person who is engaged in or who has broad experience in occupational health and safety from the perspective of the worker. Such nominee shall have technical experience in occupational health and safety or education and experience in such field: Provided, That the nominee shall not have been, prior to his appointment to the board, employed by a mining or industrial business entity in a managerial or supervisory position, or shall not have been employed by the major employee organization representing coal miners in this state, or shall not have been a miner.

(4) The governor shall appoint one public member who is professionally qualified in the field of occupational health and
safety and who shall have a degree in engineering or industrial
safety and a minimum of five years' experience in the field of
industrial safety engaged in constructing, designing, developing
or administering safety programs: Provided, That the nominee
shall not have been, prior to his appointment to the board,
employed by a mining business entity in a managerial or
supervisory position or shall not have been employed by the
major employee organization representing coal miners in this
state, or shall not have been a miner.

(5) All appointments made by the governor under the
provisions of subdivisions (1), (2), (3) and (4) of this subsection
shall be with the advice and consent of the Senate.

(6) The seventh member of the board shall be the commis-
ioner of the department of energy who shall serve as chairman
of the board. The commissioner shall furnish to the board such
secretarial, clerical, technical, research and other services as are
deemed necessary to the conduct of the business of the board,
not otherwise furnished by the board.

(b) Any unexpired term of members of the board under
prior enactments of this section shall end upon the appoint-
ment of members in accordance with the provisions of this
section. Upon the initial appointment of members, the
governor shall specify the length of the beginning term which
each member shall serve, pursuant to the following formula:

(1) With regard to the two members appointed in accor-
dance with the provisions of subdivision (1), subsection (a) of
this section, one member shall serve a beginning term of one
year, and one member shall serve a beginning term of two
years.

(2) With regard to the two members appointed in accor-
dance with the provisions of subdivision (2), subsection (a) of
this section, one member shall serve a beginning term of one
year and one member shall serve a beginning term of two
years.

(3) The members appointed in accordance with the provi-
sions of subdivisions (3) and (4), subsection (a) of this section
shall each be appointed to serve a beginning term of three
years.

(4) Following the beginning terms provided for in this
subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members shall be eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section four-b of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section four-b of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules and regulations governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding his appointment, and is not during his term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and regulations and shall prepare such rules and regulations as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chairman, or upon the request of any three members of the board. Under the direction of the board, the health and safety administrator 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 code, and as may be required to improve coal mine health and safety. The health and safety administrator 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 chairman, in which event members shall be notified of...
the board meeting and the agenda in a manner to be determined by the chairman: 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 of additional agenda.

When proposed rules and regulations are to be finally adopted by the board, copies of such proposed rules and regulations shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules and regulations shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules and regulations. When a member shall fail to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the health and safety administrator shall notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.

(e) 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.

(f) A quorum of the board shall be five members which shall include the commissioner, at least one member representing the viewpoint of operators and at least one member representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present.

§22-6-4. Board powers and duties.

(a) At the organizational meeting of the board required by subsection (c), section three of this article, the board shall adopt as standard rules and regulations the "coal mine health
and safety provisions of chapter twenty-two-a of this code."

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 chapter twenty-two-a of this code 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, chapter twenty-two-a of this code and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code:

(I) 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 chapter twenty-two-a of this code notwithstanding specific language therein, and such rules and regulations may deal with subject areas not covered by chapter twenty-two-a of this code 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 chapter twenty-two-a of this code.

(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 chapter twenty-two-a of this code, or is otherwise contrary to law: Provided, That any rule or regulation properly promulgated by the board pursuant to the terms and conditions of chapter twenty-two-
a of this code shall create a rebuttable presumption that said
rule or regulation does not reduce the protection afforded
miners below that provided by chapter twenty-two-a of this
code.

(4) The commissioner shall cause proposed rules and
regulations and a notice thereof to be posted in section sixteen,
article one-a, chapter twenty-two-a of this code. The
commissioner 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 commissioner 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 consider-
ation 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.

(7) Promptly after any such notice is released by the board
under subdivision (6) of this section, the board shall issue
notice of, and hold a public hearing for the purpose of
receiving relevant evidence. Within sixty days after completion
of the hearings, the board shall make findings of fact which
shall be public, and may promulgate such rules and regulations
with such modifications as it deems appropriate. In the event
the board determines that a proposed rule or regulation should
not be promulgated or should be modified, it shall within a
reasonable time publish the reasons for its determination.
(8) All rules and regulations promulgated by the board shall be published in the state register and shall continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To 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.

(e) The commissioner 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 view 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 regulations 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 energy and the action, if any, taken by the board to prevent such fatality;

(2) Any rules and regulations promulgated by the board during the last 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, repeal 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 appropriate;
(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.

§22-6-4a. Preliminary procedures for promulgation of rules and regulations.
(a) Prior to the posting of proposed rules and regulations as provided for in subsection (c), section four of this article, the board shall observe the preliminary procedure for the development of rules and regulations set forth in this section:
(1) During a board meeting or at any time when the board is not meeting, any board member may suggest to the health and safety administrator, or such administrator on his own initiative may develop, subjects for investigation and possible regulation;
(2) Upon receipt of a suggestion for investigation, the health and safety administrator shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence available which relates to such suggestion, the staff time required to develop the subject matter, the legal authority of the board to act on the subject matter, including a description of findings of fact and conclusions of law which will be necessary to support any proposed rules and regulations;
(3) The board shall by majority vote of those members who are present determine whether the health and safety administrator shall prepare a draft regulation concerning the suggested subject matter;
(4) After reviewing the draft regulation, the board shall
determine whether the proposed rules and regulations should
be posted and made available for comment as provided for
in section four of this article;

(5) The board shall receive and consider those comments to
the proposed rules and regulations as provided for in section
four of this article;

(6) The board shall direct the health and safety administra-
tor to prepare for the next scheduled board meeting findings
of fact and conclusions of law for the proposed rules and
regulations, which may incorporate comments received and
technical evidence developed, and which are consistent with
section four of this article;

(7) The board shall adopt or reject or modify the proposed
findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of
the rules and regulations.

(b) By the concurrence of at least four members of the
board, the board may dispense with the procedure set out in
(a) above or any other procedural rule established, except that
the board shall in all instances when adopting rules and
regulations prepare findings of fact and conclusions of law
consistent with this section and section four of this article.

(c) Without undue delay, the board shall adopt an order of
business for the conduct of meetings which will promote the
orderly and efficient consideration of proposed rules and
regulations in accordance with the provisions of this section.

§22-6-4b. Health and safety administrator; qualifications; duties;
employees; compensation.

(a) The governor shall appoint the health and safety
administrator of the board for a term of employment of one
year. The health and safety administrator shall be entitled to
have his contract of employment renewed on an annual basis
except where such renewal is denied for cause: Provided, That
the governor shall have the power at any time to remove the
health and safety administrator for misfeasance, malfeasance
or nonfeasance: Provided, however, That the board shall have
the power to remove the health and safety administrator
10 without cause upon the concurrence of five members of the
11 board.

12 (b) The health and safety administrator shall work at the
direction of the board, independently of the commissioner of
the department of energy, and shall have such authority and
perform such duties as may be required or necessary to
16 effectuate this article.

17 (c) In addition to the health and safety administrator, there
shall be such other research employees hired by the health and
safety administrator as the board determines to be necessary.
The health and safety administrator shall provide supervision
and direction to the other research employees of the board in
the performance of their duties.

23 (d) The employees of the board shall be compensated at
rates determined by the board. The salary of the health and
safety administrator shall be fixed by the governor: Provided,
26 That the salary of the health and safety administrator shall
not be reduced during his annual term of employment or upon
the renewal of his contract for an additional term. Such salary
shall be fixed for any renewed term at least ninety days before
the commencement thereof.

31 (e) The health and safety administrator shall review all coal
mining fatalities and major causes of injuries as mandated by
section four of this article. An analysis of such fatalities and
major causes of injuries shall be prepared for consideration by
the board within ninety days of the occurrence of the accident.

36 (f) At the direction of the board, the administrator shall also
conduct an annual study of occupational health issues relating
to employment in and around coal mines of this state and
submit a report to the board with findings and proposals to
address the issues raised in such study. The administrator shall
be responsible for preparing the annual reports required by
subsection (e), section four of this article and section six of
this article.

§22-6-5. Effect of rules and regulations.

1 The standard rules and regulations and any rules and
2 regulations promulgated by the board shall have the same
3 force and effect of law as if enacted by the Legislature as a
4 part of article two, chapter twenty-two-a of this code and any
violation of any such rule and regulation shall be deemed to
be a violation of law or of a health or safety standard within
the meaning of this chapter.

§22-6-6. Reports.

Prior to each regular session of the Legislature, the board
shall submit to the Legislature an annual report upon the
subject matter of this article, the progress concerning the
achievement of its purpose and any other relevant information,
including any recommendations it deems appropriate.

§22-6-7. Compensation and expenses of board members.

Each member of the board not otherwise employed by the
state shall receive one hundred ten dollars per diem while
actually engaged in the performance of the duties of the board.
Each member shall be reimbursed for all reasonable and
necessary expenses actually incurred during the performance
of his duties, except that in the event the expenses are paid
by a third party, the member shall not be reimbursed by the
state. Each member shall receive meals, lodging and mileage
expense reimbursements at the rates established by rule and
regulation of the commissioner of the department of finance
and administration for in-state travel of public employees. The
reimbursement shall be paid out of the state treasury upon a
requisition upon the state auditor, properly certified by the
commissioner of the department of energy. No employer shall
prohibit a member of the board from exercising leave of
absence from his place of employment in order to attend a
meeting of the board or a meeting of a subcommittee of the
board, or to prepare for a meeting of the board, any contract
of employment to the contrary notwithstanding.

ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.

§22-7-1. Declaration of public policy; legislative findings.
§22-7-2. Definitions.
§22-7-3. Application of article; exclusions.
§22-7-4. West Virginia shallow gas well review board; membership; method of
appointment; vacancies; compensation and expenses; staff.
§22-7-5. Same—Meetings; notice; general powers and duties.
§22-7-6. Rules and regulations; notice requirements.
§22-7-7. Objections to proposed drilling; conferences; agreed locations and changes
on plats; hearings; orders.
§22-7-8. Distance limitations.
§22-7-1. Declaration of public policy; legislative findings.

1 (a) It is hereby declared to be the public policy of this state and in the public interest to:

3 (1) Ensure the safe recovery of coal and gas;

4 (2) Foster, encourage and promote the fullest practical exploration, development, production, recovery and utilization of this state's coal and gas, where both are produced from beneath the same surface lands, by establishing procedures, including procedures for the establishment of drilling units, for the location of shallow gas wells without substantially affecting the right of the gas operator proposing to drill a shallow gas well to explore for and produce gas; and

12 (3) Safeguard, protect and enforce the correlative rights of gas operators and royalty owners in a pool of gas to the end that each such gas operator and royalty owner may obtain his just and equitable share of production from such pool of gas.

16 (b) The Legislature hereby determines and finds that gas found in West Virginia in shallow sands or strata has been produced continuously for more than one hundred years; that the placing of shallow wells has heretofore been regulated by the state for the purpose of ensuring the safe recovery of coal and gas, but that regulation should also be directed toward encouraging the fullest practical recovery of both coal and gas because modern extraction technologies indicate the desirability of such change in existing regulation and because the energy needs of this state and the United States require encouragement of the fullest practical recovery of both coal and gas; that in order to encourage and ensure the fullest
practical recovery of coal and gas in this state and to further ensure the safe recovery of such natural resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall have the authority to regulate and determine the appropriate placing of shallow wells when gas well operators and owners of coal seams fail to agree on the placing of such wells, and establishing specific considerations, including minimum distances to be allowed between certain shallow gas wells, to be utilized by the shallow gas well review board in regulating the placing of shallow wells; that in order to encourage and ensure the fullest practical recovery of coal and gas in this state and to protect and enforce the correlative rights of gas operators and royalty owners of gas resources, it is in the public interest to enact new statutory provisions establishing a shallow gas well review board which shall also have authority to establish drilling units and order the pooling of interests therein to provide all gas operators and royalty owners with an opportunity to recover their just and equitable share of production.

§22-7-2. Definitions.

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

1. (1) "Board" means the West Virginia shallow gas well review board provided for in section four of this article;

2. (2) "Chairman" means the chairman of the West Virginia shallow gas well review board provided for in section four of this article;

3. (3) "Coal operator" means any person who proposes to or does operate a coal mine;

4. (4) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

5. (5) "Commission" means the oil and gas conservation commission provided for in section four, article eight of this chapter;
(6) "Commissioner" means the oil and gas conservation commissioner provided for in section four, article eight of this chapter;

(7) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the gas in and under a tract or tracts, or the equivalent thereof;

(8) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(9) "Department" means the state department of energy provided for in chapter twenty-two of this code;

(10) "Director" means the director for the division of oil and gas provided for in section eleven, article one, chapter twenty-two of this code;

(11) "Drilling unit" means the acreage on which the board decides one well may be drilled under section ten of this article;

(12) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (15) of this section;

(13) "Gas operator" means any person who owns or has the right to develop, operate and produce gas from a pool and to appropriate the gas produced therefrom either for himself or for himself and others. In the event that there is no gas lease in existence with respect to the tract in question, the person who owns or has the gas rights therein shall be considered a "gas operator" to the extent of seven eighths of the gas in that portion of the pool underlying the tract owned by such person, and a "royalty owner" to the extent of one eighth of such gas;

(14) "Just and equitable share of production" means, as to each person, an amount of gas in the same proportion to the total gas production from a well as that person's acreage bears to the total acreage in the drilling unit;

(15) "Oil" means natural crude oil or petroleum and other
hydrocarbons, regardless of gravity, which are produced at the
well in liquid form by ordinary production methods and which
are not the result of condensation of gas after it leaves the
underground reservoir;

(16) "Owner" when used with reference to any coal seam,
shall include any person or persons who own, lease or operate
such coal seam;

(17) "Person" means any natural person, corporation, firm,
partnership, partnership association, venture, receiver, trustee,
executor, administrator, guardian, fiduciary or other represent-
tative of any kind, and includes any government or any
political subdivision or any agency thereof;

(18) "Plat" means a map, drawing or print showing the
location of one or more wells or a drilling unit;

(19) "Pool" means an underground accumulation of gas in
a single and separate natural reservoir (ordinarily a porous
sandstone or limestone). It is characterized by a single natural-
pressure system so that production of gas from one part of
the pool tends to or does affect the reservoir pressure
throughout its extent. A pool is bounded by geologic barriers
in all directions, such as geologic structural conditions,
impermeable strata, and water in the formation, so that it is
effectively separated from any other pools which may be
present in the same district or in the same geologic structure;

(20) "Royalty owner" means any owner of gas in place, or
gas rights, to the extent that such owner is not a gas operator
as defined in subdivision (13) of this section;

(21) "Shallow well" means any gas well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group" or at a depth less than six
thousand feet, whichever is shallower;

(22) "Tracts comprising a drilling unit" means all separately
owned tracts or portions thereof which are included within the
boundary of a drilling unit;

(23) "Well" means any shaft or hole sunk, drilled, bored or
dug into the earth or into underground strata for the
extraction, injection or placement of any liquid or gas, or any
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shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use; and

(24) "Well operator" means any person who proposes to or does locate, drill, operate or abandon any well.

§22-7-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, under which a coal seam as defined in section two of this article and section one, article one, chapter twenty-two-b of this code, one thousand nine hundred thirty-one, as amended, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of this chapter or chapter twenty-two-b of this code.

(b) This article shall not apply to or affect:

(1) Deep wells;

(2) Oil wells and enhanced oil recovery wells associated with oil wells;

(3) Any shallow well permitted under article four of this chapter prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, unless such well is, after completion (whether such completion is prior or subsequent to the ninth day of June, one thousand nine hundred seventy-eight, deepened subsequent to the ninth day of June, one thousand nine hundred seventy-eight), through another coal seam to another formation above the top of the uppermost member of the "Onondaga Group" or to a depth of less than six thousand feet, whichever is shallower;

(4) Any shallow well as to which no objection is made under section seventeen, article one, chapter twenty-two-b of this code;
(5) Wells as defined in subdivision (4), section one, article four, chapter twenty-two-b of this code; or


(c) The provisions of this article affecting applications for permits to drill shallow gas wells shall only apply to such applications filed after 12:01 a.m. the first day of August, one thousand nine hundred seventy-eight, and the provisions of article four of former chapter twenty-two affecting such applications which were in effect immediately prior to the ninth day of June, one thousand nine hundred seventy-eight, shall apply to all such applications filed prior to 12:01 a.m., the first day of August, one thousand nine hundred seventy-eight, with like effect as if this article had not been enacted.

§22-7-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

(a) There is hereby continued the “West Virginia Shallow Gas Well Review Board" which shall be composed of three members, two of whom shall be the commissioner and the director. The remaining member of the board shall be a registered professional mining engineer with at least ten years practical experience in the coal mining industry and shall be appointed by the governor, by and with the advice and consent of the Senate: Provided. That any person so appointed while the Senate of this state is not in session shall be permitted to serve in an acting capacity for one year from his appointment or until the next session of the Legislature, whichever is less. As soon as practical after appointment and qualification of the member appointed by the governor, the governor shall convene a meeting of the board for the purpose of organizing and electing a chairman, who shall serve as such until his successor is elected by the board.

(b) A vacancy in the membership appointed by the governor shall be filled by appointment by the governor within sixty days after the occurrence of such vacancy. Before performing any duty hereunder, each member of the board shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia, and shall serve thereafter until his successor has been appointed and qualified.
(c) The member of the board appointed by the governor shall receive not less than seventy-five dollars per diem while actually engaged in the performance of his duties as a member of the board. Each member of the board shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the board.

(d) The division of oil and gas shall furnish office and clerical staff and supplies and services, including reporters for hearings, as required by the board.

§22-7-5. Same—Meetings; notice; general powers and duties.

(a) The board shall meet and hold conferences and hearings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the board at any time. The chairman shall call a meeting of the board (1) upon receipt of a notice from the director that an objection to the proposed drilling or deepening of a shallow well has been filed by a coal seam owner pursuant to section seventeen, article one, chapter twenty-two-b of this code or that an objection has been made by the director, (2) upon receipt of an application to establish a drilling unit filed with the board pursuant to section nine of this article, or (3) within twenty days upon the written request by another member of the board. Meetings called pursuant to subdivisions (1) and (2) of this subsection shall be scheduled not less than ten days nor more than twenty days from receipt by the chairman of the notice of objection or the application to establish a drilling unit. Notice of all meetings shall be given to each member of the board by the chairman at least ten days in advance thereof, unless otherwise agreed by the members.

(b) At least ten days prior to every meeting of the board called pursuant to the provisions of subdivisions (1) and (2), subsection (a) of this section, the chairman shall also notify (1) in the case of a notice of objection, the well operator and all objecting coal seam owners, and (2) in the case of an application to establish a drilling unit, the applicant, all persons to whom copies of the application were required to be mailed pursuant to the provisions of subsection (d), section nine of this article and all persons who filed written protests or objections with the board in accordance with the provisions
of subsection (c), section nine of this article.

(c) A majority of the members of the board shall constitute a quorum for the transaction of any business. A majority of the members of the board shall be required to determine any issue brought before it.

(d) The board is hereby empowered and it shall be its duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board shall have jurisdiction and authority over all persons and property necessary therefor: Provided, That the provisions of this article shall not be construed to grant to the board authority or power to (1) limit production or output from or prorate production of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning applications for drilling permits and drilling units in accordance with the provisions of this article;

(2) Promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, and enforce reasonable rules and regulations necessary to govern the practice and procedure before the board;

(3) Make such relevant investigations of records and facilities as it deems proper; and

(4) Issue subpoenas for the attendance of and sworn testimony by witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the board, it is necessary to do so for the effective discharge of its duties under the provisions of this article.

§22-7-6. Rules and regulations; notice requirements.

(a) The board may promulgate, pursuant to the provisions of chapter twenty-nine-a of this code, such reasonable rules and regulations as are deemed necessary or desirable to implement and make effective the provisions of this article.

(b) Notwithstanding the provisions of section two, article
seven, chapter twenty-nine-a of this code, any notice required
under the provisions of this article shall be given at the
direction of the chairman by (1) personal or substituted service
and if such cannot be had then by (2) certified United States
mail, addressed, postage and certification fee prepaid, to the
last known mailing address, if any, of the person being served,
with the direction that the same be delivered to addressee only,
return receipt requested, and if there be no known mailing
address or if the notice is not so delivered then by (3)
publishation of such notice as a Class II legal advertisement in
compliance with the provisions of article three, chapter fifty-
ine of this code, and the publication area for such publication
shall be the county or counties wherein any land which may
be affected by the order of the board is situate. The chairman
shall also mail a copy of such notice to all other persons who
have specified to the chairman an address to which all such
notices may be mailed. All notices shall issue in the name of
the state, shall be signed by the chairman, shall specify the
style and number of the proceeding, the date, time and place
of any meeting, conference or hearing, and shall briefly state
the purpose of the proceeding. Proof of service or publication
of such notice shall be made to the board promptly and in
any event within the time during which the person served must
respond to the notice. If service is made by a person other
than the sheriff or the chairman, he shall make proof thereof
by affidavit. Failure to make proof of service or publication
within the time required shall not affect the validity of the
service of the notice.

§22-7-7. Objections to proposed drilling; conferences; agreed
locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chairman for the
meeting of the board and for consideration of the objections
to proposed drilling filed by coal seam owners pursuant to
section seventeen, article one, chapter twenty-two-b of this
code, the well operator and the objecting coal seam owners
present or represented shall hold a conference with the board
to consider the objections. Such persons present or represented
at the conference may agree upon either the drilling location
as proposed by the well operator or an alternate location. Any
change in the drilling location from the drilling location
proposed by the well operator shall be indicated on the plat
enclosed with the notice of objection filed with the chairman by the director in accordance with the provisions of section seventeen, article one, chapter twenty-two-b of this code, and the distance and direction to the new drilling location from the proposed drilling location shall also be shown on such plat. If agreement is reached at the conference by the well operator and such objecting coal seam owners present or represented at the conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the director to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the division within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.

(b) If the well operator and the objecting coal seam owners present or represented at the conference with the board are unable to agree upon a drilling location, then, unless they otherwise agree, the board shall, without recess for more than one business day, hold a hearing to consider the application for a drilling permit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of a hearing, the board shall issue and file with the director a written order directing him, subject to other matters requiring approval of the director to:

(1) Refuse a drilling permit; or
(2) Issue a drilling permit for the proposed drilling location; or
(3) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or
(4) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

(c) The written order of the board shall contain findings of
fact and conclusions based thereon concerning the following safety aspects, and no drilling permit shall be issued for any drilling location where the board finds from the evidence that such drilling location will be unsafe:

(1) Whether the drilling location is above or in close proximity to any mine opening, or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether the proposed well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal and gas.

The written order of the board shall also contain findings of fact and conclusions based thereon concerning the following:

(5) The extent to which the proposed drilling location will unreasonably interfere with present or future coal mining operations on the surface including, but not limited to, operations subject to the provisions of article three, chapter twenty-two-a of this code;

(6) The feasibility of moving the proposed drilling location to a mined-out area, below the coal outcrop, or to some other location;

(7) The feasibility of a drilling moratorium for not more than one year in order to permit the completion of imminent coal mining operations;

(8) The methods proposed for the recovery of coal and gas;

(9) The distance limitations established in section eight of this article;

(10) The practicality of locating the well on a uniform
pattern with other wells;
(11) The surface topography and use; and
(12) Whether the order of the board will substantially affect the right of the gas operator to explore for and produce gas.

(d) Any member of the board may file a separate opinion.
Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22-7-8. Distance limitations.

(a) If the well operator and the objecting coal seam owners present or represented at the time and place fixed by the chairman for consideration of the objections to the proposed drilling location are unable to agree upon a drilling location, then the written order of the board shall direct the director to refuse to issue a drilling permit unless the following distance limitations are observed:

(1) For all shallow wells with a depth less than three thousand feet, there shall be a minimum distance of one thousand feet from the drilling location to the nearest existing well as defined in subsection (b) of this section; and

(2) For all shallow wells with a depth of three thousand feet or more, there shall be a minimum distance of one thousand five hundred feet from the drilling location to the nearest existing well as defined in subsection (b) of this section, except that where the distance from the drilling location to such nearest existing well is less than two thousand feet but more than one thousand five hundred feet and a coal seam owner has objected, the gas operator shall have the burden of establishing the need for the drilling location less than two thousand feet from such nearest existing well. Where the distance from the drilling location proposed by the operator or designated by the board to the nearest existing well as defined in subsection (b) of this section is greater than two thousand feet, distance criterion will not be a ground for objection by a coal seam owner.

(b) The words "existing well" as used in this section shall mean (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same
target formation or drilled for the purpose of producing from
the same target formation, and (ii) any unexpired, permitted
drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this
section shall not apply if the proposed well will be drilled
through an existing or planned pillar of coal required for
protection of a preexisting oil or gas well and the proposed
well will neither require enlargement of such pillar nor
otherwise have an adverse effect on existing or planned coal
mining operations.

(d) Nothing in this article shall be construed to empower
the board to order the director to issue a drilling permit to
any person other than the well operator filing the application
which is the subject of the proceedings.

§22-7-9. Application to establish a drilling unit; contents; notice.

(a) Whenever the board has issued an order directing the
director to refuse a drilling permit, the gas operator may apply
to the board for the establishment of a drilling unit
encompassing a contiguous tract or tracts if such gas operator
believes that such a drilling unit will afford one well location
for the production of gas from under the tract on which the
drilling permit was sought, and will be agreeable to the coal
seam owners.

(b) An application to establish a drilling unit shall be filed
with the board and shall contain:

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or registered
professional engineer showing the boundary of the proposed
drilling unit, the district and county in which such unit is
located, the acreage of the proposed drilling unit, the boundary
of the tracts which comprise the proposed drilling unit, the names of the owners of record of each such tract, the proposed
well location on the proposed drilling unit, and the proposed
well location for which the department refused to issue a
drilling permit;

(3) The names and addresses of the royalty owners of the
gas underlying the tracts which comprise the proposed drilling
unit;
(4) The names and addresses of the gas operators of the tracts which comprise the proposed drilling unit;

(5) The approximate depth and target formation to which the well for the proposed drilling unit is to be drilled;

(6) A statement indicating whether a voluntary pooling agreement has been reached among any or all of the royalty owners of the gas underlying the tracts which comprise the proposed drilling unit and the gas operators of such tracts;

(7) An affidavit of publication of the notice of intent to file an application to establish a drilling unit as required in subsection (c) of this section; and

(8) Such other pertinent and relevant information as the board may prescribe by reasonable rules and regulations promulgated in accordance with the provisions of section six of this article.

(c) Prior to the filing of an application to establish a drilling unit, the applicant shall cause to be published, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of intent to file an application to establish a drilling unit. Such notice shall contain the information required by subdivisions (1), (4) and (5), subsection (b) of this section, the name of the royalty owner of the gas underlying the proposed well location on the proposed drilling unit, plus an abbreviated description, or, at the applicant's option, a plat of the drilling unit, disclosing the county and district wherein the proposed drilling unit is to be located, the post office closest to the proposed drilling unit, a statement that the applicant will deliver a copy of the plat required by subdivision (2) of subsection (b) to any person desiring the same, the date upon which the applicant intends to file the application to establish a drilling unit, and a statement that written protests and objections to such application may be filed with the board until a specified date, which date shall be at least ten days after the date upon which the applicant intends to file the application to establish a drilling unit. The publication area of the notice required by this subsection shall be the county or counties in which the proposed drilling unit is to be located.

(d) At the time an application to establish a drilling unit
is filed, the applicant shall forward a copy thereof by registered
or certified mail to each and every person whose name and
address were included on the application in accordance with
the provisions of subdivisions (3) and (4), subsection (b) of this
section. With each such application there shall be enclosed a
notice (the form for which shall be furnished by the board on
request) addressed to each such person to whom a copy of
the application is required to be sent, informing him that such
application is being mailed to him respectively by registered
or certified mail, pursuant to the requirements of this article:
Provided, That the application and notice need not be
forwarded to those royalty owners or gas operators within the
boundary of the proposed drilling unit who have previously
agreed to voluntary pooling by separately stated document or
documents empowering the gas operator, by assignment or
otherwise, unilaterally to declare a unit.

§22-7-10. Establishment of drilling units; hearings; orders.

(a) At the time and place fixed by the chairman for the
meeting of the board and for consideration of an application
to establish a drilling unit, the applicant shall present proof
that the drilling location on the proposed drilling unit has been
agreed to by all of the owners of the coal seams underlying
such drilling location; and thereafter the applicant, the royalty
owners of the gas underlying the tracts comprising the unit,
and the gas operators of the tracts comprising the unit, or such
of them as are present or represented, shall hold a conference
with the board to consider the application. Such persons
present or represented at the conference may agree upon the
boundary of the drilling unit as proposed by the applicant or
as changed to satisfy all valid objections of those persons
present or represented. Any change in the boundary of the
drilling unit from the boundary proposed by the applicant
shall be shown on the plat filed with the board as part of the
application. If agreement is reached at the conference upon the
boundary of the drilling unit among the applicants, the royalty
owners of the gas underlying the tracts comprising the drilling
unit and the gas operators of the tracts comprising such unit,
or such of them as are present or represented, and if such
agreement is approved by the board, the board shall issue a
written order establishing and specifying the boundary of the
drilling unit.
(b) If the applicant, the royalty owners of the gas underlying the tracts comprising the drilling unit and the gas operators of the tracts comprising such unit, or such of them as are present or represented at the time and place fixed by the chairman for consideration of the application, are unable to agree upon the boundary of the drilling unit, then the board shall hold a hearing without recess of more than one business day to consider the application to establish a drilling unit. All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing. Within twenty days after the close of the hearing, the board shall issue a written order either establishing a drilling unit or dismissing the application. If the board determines to establish a drilling unit, the order shall specify the boundary of such drilling unit. In determining whether to grant or deny an application to establish a drilling unit, the board shall consider:

(1) The surface topography and property lines of the lands comprising the drilling unit;
(2) The correlative rights of all gas operators and royalty owners therein;
(3) The just and equitable share of production of each gas operator and royalty owner therein;
(4) Whether a gas operator or royalty owner objecting to the drilling unit has proved by clear and convincing evidence that the drilling unit is substantially smaller than the area that will be produced by the proposed well; and
(5) Other evidence relevant to the establishment of the boundary of a drilling unit.

(c) The board shall not grant an application to establish a drilling unit, nor shall it approve any drilling unit, unless the board finds that:

(1) The applicant has proved that the drilling location on the drilling unit has been agreed to by all of the owners of the coal seams underlying such drilling location;
(2) The director has previously refused to issue a drilling permit on one of the tracts comprising the drilling unit because of an order of the board;
(3) The drilling unit includes all acreage within the
minimum distance limitations provided by section eight of this article, unless the gas operators and royalty owners of any excluded acreage have agreed to such exclusion; and

(4) The drilling unit includes a portion of the acreage from under which the well operator intended to produce gas under the drilling permit which was refused.

(d) All orders issued by the board under this section shall contain findings of fact and conclusions based thereon as required by section three, article five, chapter twenty-nine-a of this code and shall be filed with the director within twenty days after the hearing. Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22-7-11. Pooling of interests in a drilling unit; limitations.

(a) Whenever the board establishes a drilling unit pursuant to the provisions of sections nine and ten of this article, the order establishing such drilling unit shall include an order pooling the separately owned interests in the gas to be produced from such drilling unit.

(b) If a voluntary pooling agreement has been reached between all persons owning separate operating interests in the tracts comprising the drilling unit, the order of the board shall approve such agreement.

(c) If no voluntary pooling agreement is reached prior to or during the hearing held pursuant to subsection (b), section ten of this article, then at such hearing the board shall also determine the pooling of interests in the drilling unit.

(d) Any order of the board pooling the separately owned interests in the gas to be produced from the drilling unit shall be upon terms and conditions which are just and equitable and shall authorize the production of gas from the drilling unit; shall designate the applicant as the operator to drill and operate such gas well; shall prescribe the procedure by which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging, abandoning and reclaiming such well shall be borne, and all production therefrom shared,
25 by all owners of operating interests in proportion to the net
gas acreage in the pooled tracts owned or under lease to each
owner; and shall make provisions for payment of all
reasonable costs thereof, including all reasonable charges for
supervision and for interest on past-due accounts, by all those
who elect to participate therein.

31 (e) Upon request, any such pooling order shall provide an
owner of an operating interest an election to be made within
ten days from the date of the pooling order, (i) to participate
in the risks and costs of the drilling of the well, or (ii) to
participate in the drilling of the well on a limited or carried
basis on terms and conditions which, if not agreed upon, shall
be determined by the board to be just and equitable. If the
election is not made within the ten-day period, such owner
shall be conclusively presumed to have elected the limited or
carried basis. Thereafter, if an owner of any operating interest
in any portion of the pooled tract shall drill and operate, or
pay the costs of drilling and operating, a well for the benefit
of such nonparticipating owner as provided in the order of the
board, then such operating owner shall be entitled to the share
of production from the tracts or portions thereof pooled
accruing to the interest of such nonparticipating owner,
exclusive of any royalty or overriding royalty reserved with
respect to such tracts or portions thereof, or exclusive of one
eighth of the production attributable to all unleased tracts or
portions thereof, until the market value of such nonparticipat-
ing owner’s share of the production, exclusive of such royalty,
overriding royalty or one eighth of production, equals double
the share of such costs payable by or charged to the interest
of such nonparticipating owner.

55 (f) In no event shall drilling be initiated or completed on
any tract, where the gas underlying such tract has not been
severed from the surface thereof by deed, lease or other title
document, without the written consent of the person who owns
such tract.

60 (g) All disputes which may arise as to the costs of drilling
and operating a well under a pooling order issued pursuant
to this section shall be resolved by the board within ninety
days from the date of written notification to the board of the
existence of such dispute.
§22-7-12. Effect of order establishing drilling unit or pooling of interest; recordation.

(a) An order issued by the board establishing a drilling unit and ordering the pooling of interests therein shall not entitle the gas operator designated in such order to drill a well on such drilling unit until such gas operator shall have received a drilling permit in accordance with the provisions applicable to alternative drilling locations set out in section seventeen, article one, chapter twenty-two-b of this code. All orders issued by the board establishing a drilling unit shall be filed with the director and shall also direct the director to issue a drilling permit for the drilling location agreed to by all of the owners of the coal seams underlying such drilling location.

(b) A certified copy of any order of the board establishing a drilling unit or a pooling of interests shall be mailed by the board to the clerk of the county commission of each county wherein all or any portion of the drilling unit is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recordation from the time noted thereon by such clerk shall be notice of the order to all persons.

§22-7-13. Judicial review; appeal to supreme court of appeals; legal representation for board.

(a) Any person adversely affected by an order of the board shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(c) Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The board, with the written approval of the attorney general, may
employ special counsel to represent the board at any such appeal proceedings.

§22-7-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit, when produced, shall be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.

§22-7-15. Validity of unit agreements.

No agreement between or among gas operators, lessees or other owners of gas rights in gas properties, entered into pursuant to the provisions of this article or with a view to or for the purpose of bringing about the unitized development or operation of such properties, shall be held to violate the statutory or common law of this state prohibiting monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

§22-7-16. Injunctive relief.

(a) Whenever it appears to the board that any person has been or is violating or is about to violate any provision of this article, any rule and regulation promulgated by the board hereunder or any order or final decision of the board, the board may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or to the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section seventeen of this article.

(b) Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel
compliance with the provisions of this article, the rules and
regulations promulgated by the board hereunder and all orders
of the board. The court may issue a temporary injunction in
any case pending a decision on the merits of any application
filed. Any other section of this code to the contrary
notwithstanding, the state shall not be required to furnish
bond or other undertaking as a prerequisite to obtaining
mandatory, prohibitory or temporary injunctive relief under
the provisions of this article.

(c) The judgment of the circuit court upon any application
permitted by the provisions of this section shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals. Any such appeal shall be sought in the manner
and within the time provided by law for appeals from circuit
courts in other civil actions.

(d) The board shall be represented in all such proceedings
by the attorney general or his assistants and in such
proceedings in the circuit courts by the prosecuting attorneys
of the several counties as well, all without additional
compensation. The board, with the written approval of the
attorney general, may employ special counsel to represent the
board in any such proceedings.

(e) If the board shall refuse or fail to apply for an injunction
to enjoin a violation or threatened violation of any provision
of this article, any rule and regulation promulgated by the
board hereunder or any order or final decision of the board,
within ten days after receipt of a written request to do so by
any person who is or will be adversely affected by such
violation or threatened violation, the person making such
request may apply in his own behalf for an injunction to enjoin
such violation or threatened violation in any court in which
the board might have brought suit. The board shall be made
a party defendant in such application in addition to the person
or persons violating or threatening to violate any provision of
this article, any rule and regulation promulgated by the board
hereunder or any order of the board. The application shall
proceed and injunctive relief may be granted without bond or
other undertaking in the same manner as if the application had
been made by the chairman.
§22-7-17. Penalties.

(a) Any person who violates any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board other than a violation governed by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars.

(b) Any person who, with the intention of evading any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board shall make or cause to be made any false entry or statement in any application or other document permitted or required to be filed under the provisions of this article, any of the rules and regulations promulgated by the board hereunder or any order of the board, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other person in the violation of any provision of this article, any of the rules and regulations promulgated by the board hereunder or any order or final decision of the board, shall be subject to the same penalty as that prescribed in this article for the violation by such other person.

§22-7-18. Construction.

This article shall be liberally construed so as to effectuate the declaration of public policy set forth in section one of this article.

§22-7-19. Rules, regulations, orders and permits remain in effect.

The rules and regulations promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article four-b, of former chapter twenty-two of this code, shall remain in full force and effect as if such rules, regulations, orders and permits were adopted by the board continued in this article but all such rules, regulations, orders and permits shall be subject to review by the board to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two-b of this code.
ARTICLE 8. OIL AND GAS CONSERVATION.

§22-8-1. Declaration of public policy; legislative findings.

§22-8-2. Definitions.

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§22-8-13. Special oil and gas conservation tax.

§22-8-14. Penalties.

§22-8-15. Construction and severability.

§22-8-16. Rules, regulations, orders and permits remain in effect.

§22-8-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his just and equitable share of production from such pool of oil or gas.

(b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than one hundred years; that oil and gas deposits in such shallow sands or strata have geological and other characteristics different than those found in deeper formations; and that in order to encourage the maximum recovery of oil and gas from all productive
formations in this state, it is not in the public interest, with
the exception of shallow wells utilized in a secondary recovery
program, to enact statutory provisions relating to the
exploration for or production from oil and gas from shallow
wells, as defined in section two of this article, but that it is
in the public interest to enact statutory provisions establishing
regulatory procedures and principles to be applied to the
exploration for or production of oil and gas from deep wells,
as defined in said section two.

§22-8-2. Definitions.

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

(1) “Commission” means the oil and gas conservation
commission and “commissioner” means the oil and gas
conservation commissioner as provided for in section four of
this article;

(2) “Director” means the director for the division of oil and
gas provided for in section eleven, article one, chapter twenty-
two of this code;

(3) “Person” means any natural person, corporation,
partnership, receiver, trustee, executor, administrator,
guardian, fiduciary or other representative of any kind, and
includes any government or any political subdivision or any
agency thereof;

(4) “Operator” means any owner of the right to develop,
operate and produce oil and gas from a pool and to
appropriate the oil and gas produced therefrom, either for
himself or for himself and others; in the event that there is
no oil and gas lease in existence with respect to the tract in
question, the owner of the oil and gas rights therein shall be
considered as “operator” to the extent of seven eighths of the
oil and gas in that portion of the pool underlying the tract
owned by such owner, and as “royalty owner” as to one eighth
interest in such oil and gas; and in the event the oil is owned
separately from the gas, the owner of the substance being
produced or sought to be produced from the pool shall be
considered as “operator” as to such pool;

(5) “Royalty owner” means any owner of oil and gas in
place, or oil and gas rights, to the extent that such owner is
not an operator as defined in subdivision (4) of this section;

(6) "Independent producer" means a person who is actively engaged in the production of oil and gas in West Virginia, but whose gross revenue from such production in West Virginia does not exceed five hundred thousand dollars per year.

(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;

(9) "Pool" means an underground accumulation of petroleum in a single and separate natural reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

(10) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(11) "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group" or at a depth less than six thousand feet, whichever is shallower;

(12) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(13) "Drilling unit" means the acreage on which one well may be drilled;

(14) "Waste" means and includes: (a) Physical waste, as that term is generally understood in the oil and gas industry; (b)
the locating, drilling, equipping, operating or producing of any
oil or gas well in a manner that causes, or tends to cause, a
reduction in the quantity of oil or gas ultimately recoverable
from a pool under prudent and proper operations, or that
causes or tends to cause unnecessary or excessive surface loss
of oil or gas; or (c) the drilling of more deep wells than are
reasonably required to recover efficiently and economically the
maximum amount of oil and gas from a pool;

(15) "Correlative rights" means the reasonable opportunity
of each person entitled thereto to recover and receive without
waste the oil and gas in and under his tract or tracts, or the
equivalent thereof; and

(16) "Just and equitable share of production" means, as to
each person, an amount of oil or gas or both substantially
equal to the amount of recoverable oil and gas in that part
of a pool underlying his tract or tracts.

(b) Unless the context clearly indicates otherwise, the use
of the word "and" and the word "or" shall be interchangeable,
as, for example, "oil and gas" shall mean oil or gas or both.

§22-8-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the
provisions of this article shall apply to all lands located in this
state, however owned, including any lands owned or admin-
istered by any government or any agency or subdivision
thereof, over which the state has jurisdiction under its police
power. The provisions of this article are in addition to and
not in derogation of or substitution for the provisions of article
one, chapter twenty-two-b of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than those utilized in secondary
recovery program as set forth in section eight of this arti-
cle;

(2) Any well commenced or completed prior to the ninth
day of March, one thousand nine hundred seventy-two, unless
such well is, after completion (whether such completion is
prior or subsequent to that date), (i) deepened subsequent to
that date to a formation at or below the top of the uppermost
member of the "Onondaga Group" or at a depth of or greater
than six thousand feet, whichever is shallower or (ii) involved
in secondary recovery operations for oil under an order of the
commissioner entered pursuant to section eight of this article;

(3) Gas storage operations or any well employed to inject
gas into or withdraw gas from a gas storage reservoir or any
well employed for storage observation; or

(4) Free gas rights.

(c) The provisions of this article shall not be construed to
grant to the commissioner authority or power to:

(1) Limit production or output, or prorate production of
any oil or gas well, except as provided in subdivision (6),
subsection (a), section seven of this article; or

(2) Fix prices of oil or gas.

§22-8-4. Oil and gas conservation commissioner and commission;
commission membership; qualifications of members;
terms of members; vacancies on commission; meetings;
compensation and expenses; appointment and qualifi-
cations of commissioner; general powers and duties.

(a) There is hereby continued, as provided for in subsection
(h) of this section, the "West Virginia Oil and Gas Conser-
vation Commission" which shall be composed of five members.
The commissioner of the department of energy and the
director for the division of oil and gas shall be members of
the commission ex officio. The remaining three members of
the commission shall be appointed by the governor, by and
with the advice and consent of the Senate. Of the three
members appointed by the governor, one shall be an
independent producer and at least one shall be a public
member not engaged in full-time employment in an activity
under the jurisdiction of the public service commission or the
federal energy regulatory commission. As soon as practical
after appointment of the members of the commission, the
governor shall call a meeting of the commission to be
convened at the state capitol for the purpose of organizing and
electing a chairman.

(b) The members of the commission appointed by the
governor shall be appointed for overlapping terms of six years
each, except that the original appointments shall be for terms
of two, four and six years, respectively. Each member appointed by the governor shall serve until his successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by him for the unexpired term of the member whose office shall be vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner. Notification of each meeting shall be given in writing to each member by the chairman at least five days in advance of the meeting. Any three members, one of which may be the chairman, shall constitute a quorum for the transaction of any business as herein provided for. A majority of the commission shall be required to determine any issue brought before it.

(d) Each member of the commission appointed by the governor shall receive thirty-five dollars per diem not to exceed one hundred days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conservation commissioner, fix his salary within available funds, and advise him regarding his duties and authority under this article and consult with him prior to his reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to him. The commissioner shall
possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commissioner shall have jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as he deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner's duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and regulations and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the director for the division of oil and gas, to the department of energy and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a performance 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 oil and gas conservation
commission should be continued and reestablished. Accord-
ingly, notwithstanding the provisions of section four, article
ten, chapter four of this code, the oil and gas conservation
commission shall continue to exist until the first day of July,
one thousand nine hundred ninety-one.

§22-8-5. Rules and regulations; notice requirements.

(a) The commissioner may promulgate such reasonable
rules and regulations as he may deem necessary or desirable
to implement and make effective the provisions of this article
and the powers and authority conferred and the duties
imposed upon him under the provisions of this article and for
securing uniformity or procedure in the administration of the
provisions of article three, chapter twenty-nine-a of this code.

(b) Notwithstanding the provisions of section two, article
seven, chapter twenty-nine-a of this code, any notice required
under the provisions of this article shall be given at the
direction of the commissioner by (1) personal or substituted
service and if such cannot be had then by (2) certified United
States mail, addressed, postage prepaid, to the last known
mailing address, if any, of the person being served, with the
direction that the same be delivered to addressee only, return
receipt requested, and if there be no known mailing address
or if the notice is not so delivered then by (3) publication of
such notices as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code, and the publication area for such publication shall be
the county or counties wherein any land which may be affected
by such order is situate. In addition, the commissioner shall
mail a copy of such notice to all other persons who have
specified to the commissioner an address to which all such
notices may be mailed. The notice shall issue in the name of
the state, shall be signed by the commissioner, shall specify
the style and number of the proceeding, the time and place
of any hearing, and shall briefly state the purpose of the
proceeding. Personal or substituted service and proof thereof
may be made by an officer authorized to serve process or by
an agent of the commissioner in the same manner as is now
provided by the “West Virginia Rules of Civil Procedure for
Trial Courts of Record” for service of process in civil actions
in the various courts of this state. A certified copy of any
pooling order entered under the provisions of this article shall be presented by the commissioner to the clerk of the county commission of each county wherein all or any portion of the pooled tract is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recording of such order from the time noted thereon by such clerk shall be notice of the order to all persons.

§22-8-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited.

§22-8-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commissioner by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool, and the commissioner shall promptly schedule a hearing on said application. Each application shall contain such information as the commissioner may prescribe by reasonable rules and regulations promulgated by him in accordance with the provisions of section five of this article.

(2) Upon the filing of an application to establish drilling units, notice of the hearing shall be given by the commissioner. Each notice shall specify the date, time and place of hearing, describe the area for which a spacing order is to be entered, and contain such other information as is essential to the giving of proper notice.

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in his spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:

(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

(ii) The plan of deep well spacing then being employed or
proposed in such pool for such lands;

(iii) The depth at which production from said pool has been found;

(iv) The nature and character of the producing formation or formations, and whether the substance produced or sought to be produced is gas or oil;

(v) The maximum area which may be drained efficiently and economically by one deep well; and

(vi) Any other available geological or scientific data pertaining to said pool which may be of probative value to the commissioner in determining the proper deep well drilling units therefor.

To carry out the purposes of this article, the commissioner shall, upon proper application, notice and hearing as herein provided, and if satisfied after such hearing that drilling units should be established, enter an order establishing drilling units of a specified and approximately uniform size and shape for each pool subject to the provisions of this section.

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in his order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, That if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.

(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep
wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a proper order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order. However, drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

(8) After the date of the notice of hearing called to establish drilling units, no additional deep well shall be commenced for production from the pool until the order establishing drilling units has been made, unless the commencement of the deep well is authorized by order of the commissioner.

(9) The commissioner shall, within forty-five days after the filing of an application to establish drilling units for a pool subject to the provisions of this section, either enter an order establishing such drilling units or dismiss the application.

(10) As part of the order establishing a drilling unit, the
commissioner shall prescribe just and reasonable terms and conditions upon which the royalty interests in the unit shall, in the absence of voluntary agreement, be deemed to be integrated without the necessity of a subsequent order integrating the royalty interests.

(b) Pooling of interests in drilling units.

(1) When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of a drilling unit, the interested persons may pool their tracts or interests for the development and operation of the drilling unit. In the absence of voluntary pooling and upon application of any operator having an interest in the drilling unit, and after notice and hearing, the commissioner shall enter an order pooling all tracts or interests in the drilling unit for the development and operation thereof and for sharing production therefrom. Each such pooling order shall be upon terms and conditions which are just and reasonable. In no event shall drilling be initiated on the tract of an unleased royalty owner without his written consent.

(2) All operations, including, but not limited to, the commencement, drilling or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a deep well drilled thereon.

(3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling and operation of a deep well for the production of oil or gas from the pooled acreage; shall designate the operator to drill and operate such deep well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions of tracts may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, completing, equipping, operating, plugging and abandoning such deep well shall be borne, and all production therefrom shared, by all owners of operating interests in proportion to the net oil or...
gas acreage in the pooled tracts owned or under lease to each
owner; and shall make provisions for payment of all
reasonable costs thereof, including a reasonable charge for
supervision and for interest on past-due accounts, by all those
who elect to participate therein.

(4) No drilling or operation of a deep well for the
production of oil or gas shall be permitted upon or within any
tract of land unless the operator shall have first obtained the
written consent and easement therefor, duly acknowledged and
placed of record in the office of the county clerk, for valuable
consideration of all owners of the surface of such tract of land,
which consent shall describe with reasonable certainty, the
location upon such tract, of the location of such proposed deep
well, a certified copy which consent and easement shall be
submitted by the operator to the commissioner.

(5) Upon request, any such pooling order shall provide just
and equitable alternatives whereby an owner of an operating
interest who does not elect to participate in the risk and cost
of the drilling of a deep well may elect:

(i) Option 1. To surrender his interest or a portion thereof
to the participating owners on a reasonable basis and for a
reasonable consideration, which, if not agreed upon, shall be
determined by the commissioner; or

(ii) Option 2. To participate in the drilling of the deep well
on a limited or carried basis on terms and conditions which,
if not agreed upon, shall be determined by the commissioner
to be just and reasonable.

(6) In the event a nonparticipating owner elects Option 2,
and an owner of any operating interest in any portion of the
pooled tract shall drill and operate, or pay the costs of drilling
and operating, a deep well for the benefit of such nonpartici-
pating owner as provided in the pooling order, then such
operating owner shall be entitled to the share of production
from the tracts or portions thereof pooled accruing to the
interest of such nonparticipating owner, exclusive of any
royalty or overriding royalty reserved in any leases, assign-
ments thereof or agreements relating thereto, of such tracts or
portions thereof, or exclusive of one eighth of the production
attributable to all unleased tracts or portions thereof, until the
market value of such nonparticipating owner's share of the
production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

(7) If a dispute shall arise as to the costs of drilling and operating a deep well, the commissioner shall determine and apportion the costs, within ninety days from the date of written notification to the commissioner of the existence of such dispute.

§22-8-8. Secondary recovery of oil; unit operations.

Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that: (1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary deep wells; (2) the proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent that the proposed secondary recovery operation will be economically feasible; (3) the production of oil from the unitized pool can be allocated in such a manner as to ensure the recovery by all operators of their just and equitable share of such production; and (4) the operators of at least three fourths of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common) in such pool have approved the plan and terms of unit operation to be specified by the commissioner in its order, such approval to be evidenced by a written contract setting forth the terms of the unit operation and executed by said operators and said royalty owners, and filed with the commissioner on or before the day set for hearing. The order requiring such unit operation shall designate one operator in the pool as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including reasonable charges for supervision and interest on past-due accounts, which allocation shall be in the same
proportion that the separately owned tracts share in the
production of oil from the unit. In the absence of an agreement
entered into by the operators and filed with the commissioner
providing for sharing the costs of capital investment in wells
and physical equipment, and intangible drilling costs, the
commissioner shall provide by order for the sharing of such
costs in the same proportion as the costs and expenses of the
unit operation: Provided, That any operator who has not
consented to the unitization shall not be required to contribute
to the costs or expenses of the unit operation, or to the cost
of capital investment in wells and physical equipment, and
intangible drilling costs, except out of the proceeds from the
sale of the production accruing to the interest of such operator:
Provided, however, That no credit to the well costs shall be
adjusted on the basis of less than the average well costs within
the unitized area: Provided further, That no order entered
under the provisions of this section requiring unit operation
shall vary or alter any of the terms of any contract entered
into by operators and royalty owners under the provisions of
this section.

§22-8-9. Validity of unit agreements.

No agreement between or among operators, lessees or other
owners of oil or gas rights in oil and gas properties, entered
into pursuant to the provisions of this article or with a view
to or for the purpose of bringing about the unitized
development or operation of such properties, shall be held to
violate the statutory or common law of this state prohibiting
monopolies or acts, arrangements, contracts, combinations or
conspiracies in restraint of trade or commerce.

§22-8-10. Hearing procedures.

(a) Upon receipt of an application for an order of the
commissioner for which a hearing is required by the provisions
of this article, the commissioner shall set a time and place for
such hearing not less than ten and not more than thirty days
thereafter. Any scheduled hearing may be continued by the
commissioner upon his own motion or for good cause shown
by any party to the hearing. All interested parties shall be
entitled to be heard at any hearing conducted under the
provisions of this article.

(b) All of the pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection.

(c) Any such hearing shall be conducted by the commissioner. For the purpose of conducting any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) At any such hearing any interested person may represent himself or be represented by an attorney-at-law admitted to practice before any circuit court of this state. Upon request by the commissioner, he shall be represented at such hearing by the attorney general or his assistants without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such hearing.

(e) After any such hearing and consideration of all of the testimony, evidence and record in the case, the commissioner shall render his decision in writing. The written decision of the commissioner shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon all interested persons and their attorney of record, if any.

The decision of the commissioner shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section eleven of this article.

§22-8-11. Judicial review; appeal to supreme court of appeals; legal representation for commissioner.

(a) Any person adversely affected by a decision of the commissioner rendered after a hearing held in accordance with the provisions of section ten of this article shall be entitled
to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code, shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one 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.

(c) Legal counsel and services for the commissioner in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner at any such appeal proceedings.

§22-8-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any person has been or is violating or is about to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, the commissioner may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such person and any other persons who have been, are or are about to be, involved in any practices, acts or omissions, so in violation, enjoining such person or persons from any such violation or violations. Such application may be made and prosecuted to conclusion whether or not any such violation or violations have resulted or shall result in prosecution or conviction under the provisions of section fourteen of this article.

(b) Upon application by the commissioner, the circuit courts of this state may by mandatory or prohibitory injunction
compel compliance with the provisions of this article, the reasonable rules and regulations promulgated by the commissioner hereunder and all orders and final decisions of the commissioner. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

(c) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner and within the time provided by law for appeals from circuit courts in other civil actions.

(d) The commissioner shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in any such proceedings.

(e) If the commissioner shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the commissioner might have brought suit. The commissioner shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any reasonable rule and regulation promulgated by the commissioner hereunder or any order or final decision of the commissioner. The application shall proceed and injunctive relief may be granted without bond or other undertaking in the same manner as if the application had been made by the
Owners of leases on oil and gas for the exploration, development or production of oil or natural gas shall pay to the commission a special oil and gas conservation tax of three cents for each acre under lease, excluding from the tax the first twenty-five thousand acres. The commission shall deposit with the treasurer of the state of West Virginia, to the credit of the special oil and gas conservation fund, all taxes collected hereunder. The special oil and gas conservation fund shall be a special fund and shall be administered by the commission for the sole purpose of carrying out all costs necessary to carry out the provisions of this article. This tax shall be paid as provided herein annually on or before the first day of July, one thousand nine hundred seventy-two, and on or before the first day of July in each succeeding year.

(a) Any person who violates any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, other than a violation covered by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum required under the provisions of this article, any of the reasonable rules and regulations promulgated by the commissioner hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record,
account or memorandum, full, true and correct entries, or shall
remove from this state or destroy, mutilate, alter or falsify any
such record, account or memorandum, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be fined not
more than five thousand dollars, or imprisoned in the county
jail not more than six months, or both fined and imprisoned.

(c) Any person who knowingly aids or abets any other
person in the violation of any provision of this article, any
of the reasonable rules and regulations promulgated by the
commissioner hereunder or any order of final decision of the
commissioner, shall be subject to the same penalty as that
prescribed in this article for the violation by such other person.

§22-8-15. Construction and severability.

Except as provided in subsection (c), section three of this
article, this article shall be liberally construed so as to
effectuate the declaration of public policy set forth in section
one of this article.

If any section, subsection, subdivision, subparagraph,
sentence or clause of this article is adjudged to be unconsti-
tutional or invalid, such invalidation shall not affect the
validity of the remaining portions of this article, and, to this
end, the provisions of this article are hereby declared to be
severable.

§22-8-16. Rules, regulations, orders and permits remain in effect.

The rules and regulations promulgated and all orders and
permits in effect upon the effective date of this article pursuant
to the provisions of article four-a, of former chapter twenty-
two of this code, shall remain in full force and effect as if such
rules, regulations, orders and permits were adopted by the
director established in this chapter but all such rules,
regulations, orders and permits shall be subject to review by
the commissioner to ensure they are consistent with the
purposes and policies set forth in this chapter and chapter
twenty-two-b of this code.

ARTICLE 9. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.

§22-9-1. Short title.
§22-9-2. Declaration of legislative findings and policy.
§22-9-4. Board of miner training, education and certification created; membership; method of appointment; terms.

§22-9-5. Board powers and duties.

§22-9-6. Duties of commissioner and department.

§22-9-1. Short title.

This article shall be cited as "The West Virginia Miner Training, Education and Certification Act."

§22-9-2. Declaration of legislative findings and policy.

The Legislature hereby finds and declares that:

(a) The continued prosperity of the coal industry is of primary importance to the state of West Virginia;

(b) The highest priority and concern of this Legislature and all in the coal mining industry must be the health and safety of the industry's most valuable resource—the miner;

(c) A high priority must also be given to increasing the productivity and competitiveness of the mines in this state;

(d) An inordinate number of miners, working on both the surface in surface mining and in and at underground mines, are injured during the first few months of their experience in a mine;

(e) These injuries result in the loss of life and serious injury to miners and are an impediment to the future growth of West Virginia's coal industry;

(f) Injuries can be avoided through proper miner training, education and certification;

(g) Mining is a technical occupation with various specialities requiring individualized training and education; and

(h) It is the general purpose of this article to:

(1) Require adequate training, education and meaningful certification of all persons employed in coal mines;

(2) Establish a board of miner training, education and certification and empower it to require certain training and education of all prospective miners and miners certified by the state;

(3) Authorize a stipend for prospective miners enrolled in
this state’s miner training, education and certification program;

(4) Direct the commissioner of the department of energy to apply and implement the standards set by the board of miner training, education and certification by establishing programs for miner and prospective miner education and training; and

(5) Provide for a program of continuing miner education for all categories of certified miners.


Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section one, article one-a, chapter twenty-two-a of this code shall have when used in this article the meaning therein assigned to them. These words include, but are not limited to, the following: Division, director of the division of mines and minerals, mine inspector, operator, miner, shot firer and certified electrician.

“Board” means the board of miner training, education and certification established by section four of this article.

“Mine” means any mine, including a “surface mine,” as that term is defined in section three, article three, chapter twenty-two-a of this code, and in section two, article four of said chapter; and a “mine” as that term is defined in section one, article one-a, chapter twenty-two-a of this code.

§22-9-4. Board of miner training, education and certification created; membership; method of appointment; terms.

(a) There is hereby continued a board of miner training, education and certification, which shall consist of seven members, who shall be selected in the following manner:

(1) One member shall be appointed by the governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state shall be deemed to be that association, if any, which represents surface mine operators accounting for over one half of the coal produced in surface mines in this state in the year prior to
that year in which the appointment is made.

(2) Two members shall be appointed by the governor to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state shall be deemed to be that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the governor 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) The seventh member of the board, who shall serve as chairman, shall be the commissioner of the department of energy.

(5) All appointments made by the governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session shall be permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the governor. Ap-
pointed members shall serve for a term of three years. The board shall meet at the call of the chairman, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the governor within thirty days after the vacancy occurs. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(d) Each appointed member of the board shall receive one hundred ten dollars per diem while actually engaged in the performance of the work of the board. Each member shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties. Each member shall receive meals, lodging and mileage expense reimbursements at the rates established by rule and regulation of the commissioner of the department of finance and administration for in-state travel of public employees, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

(e) A quorum of the board shall be four members. The board may act officially by a majority of those members who are present.

(f) The chairman of the board shall be a nonvoting member: Provided, That in cases of a tie, the chairman shall cast the deciding vote on the issue or issues under consideration.

(g) The director of the division of mines and minerals shall serve as the secretary to the board and shall be present or send an authorized representative to all meetings of the board.

§22-9-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required
of all prospective miners and miners prior to their certification
in any of the various miner specialities requiring certification,
under this article or any other provision of this code. Such
specialities include, but are not limited to, underground miner,
surface miner, apprentice, underground mine foreman-fire
boss, assistant underground mine foreman-fire boss, shot firer,
mine electrician and belt examiner. Notwithstanding the
provisions of this section the commissioner may by rule or
regulation further subdivide the classification for certification.

(b) The board may require certification in other miner
occupational specialities: Provided, That no new specialty may
be created by the board unless certification in a new specialty
is made desirable by action of the federal government requiring
certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a
program of preemployment education and training to be
required of miners working on the surface at underground
mines who are not certified under the provisions of this article
or any other provision of this code.

(d) The board shall set minimum standards for a program
of continuing education and training of certified persons and
other miners on an annual basis. Prior to issuing said
standards, the board shall conduct public hearings at which
the parties may be affected by its actions may be heard. Such
education and training shall be provided in a manner
determined by the commissioner to be sufficient to meet the
standards established by the board.

(e) The board may, in conjunction with any state, local or
federal agency or any other person or institution, provide for
the payment of a stipend to prospective miners enrolled in one
or more of the programs of miner education, training and
certification provided for in this article or any other provision
of this code.

(f) The board may also, from time to time, conduct such
hearings and other oversight activities as may be required to
ensure full implementation of programs established by it.

(g) Nothing in this article shall be deemed to empower the
board to revoke or suspend any certificate issued by the
commissioner or the director of the division of mines and
(h) The board may, upon its own motion or whenever requested to do so by the commissioner, deem two certificates issued by this state to be of equal value or deem training provided or required by federal agencies to be sufficient to meet training and education requirements set by it, the commissioner, or by the provisions of this code.

§22-9-6. Duties of the commissioner and department.

The commissioner shall be empowered to promulgate, pursuant to chapter twenty-nine-a of this code, such reasonable rules and regulations as are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant’s knowledge and understanding of the training and instruction which he is required to have prior to the receipt of a certificate.

The commissioner is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available to him in implementing the program of instruction and examinations.

The commissioner may, at any time, make such recommendations or supply such information to the board as he may deem appropriate.

The commissioner is authorized and directed to utilize such state and federal moneys and personnel as may be available to the department for educational and training purposes in the implementation of the provisions of this article.

ARTICLE 10. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22-10-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

§22-10-2. Definitions.

§22-10-3. Permit of apprenticeship-underground miner.

§22-10-4. Permit of apprenticeship-surface miner.

§22-10-5. Supervision of apprentices.

§22-10-6. Certificate of competency and qualifications—Underground or surface miner.
§22-10-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

Except as hereinafter provided, no person shall work or be employed for the purpose of performing normal duties as a surface or underground miner in any mine in this state unless he holds at the time he performs such duties a certificate of competency and qualification or a permit of apprenticeship issued under the provisions of this article.

§22-10-2. Definitions.

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 three, chapter twenty-two-a of this code, and in section two, article four of said chapter.

For purposes of this article, the term “underground miner” means an underground worker in a bituminous coal mine, except as hereinafter provided.

For purposes of this article, the term “board of miner training, education and certification” means that board established in article nine of this chapter.

§22-10-3. Permit of apprenticeship-underground miner.

A permit of apprenticeship-underground miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in underground mines, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least eighty hours, which shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the division of mines and minerals: Provided
further, That if a sufficient number of qualified applicants having successfully completed the state training program provided by the state division of mines and minerals are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-10-4. Permit of apprenticeship-surface miner.

A permit of apprenticeship-surface miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tipple safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least forty hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the director of the division of mines and minerals: Provided further, That if a sufficient number of qualified applicants having successfully completed the state training provided by the state division of mines and minerals are not available, the operator may request approval from the director to conduct his own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22-10-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner holding a certificate of competency and qualification may have one person working with him, and under his supervision and direction, as an apprentice, for the purpose of learning and being instructed in the duties and
6 calling of mining. Any mine foreman or fire boss or assistant
7 mine foreman or fire boss may have three persons working
8 with him under his supervision and direction, as apprentices,
9 for the purpose of learning and being instructed in the duties
10 and calling of mining: Provided, That a mine foreman,
11 assistant mine foreman or fire boss supervising apprentices in
12 an area where no coal is being produced or which is outby
13 the working section may have as many as five apprentices
14 under his supervision and direction, as apprentices, for the
15 purpose of learning and being instructed in the duties and
16 calling of mining or where the operator is using a production
17 section under program for training of apprentice miners,
18 approved by the board of miner training, education and
19 certification.

20 Every apprentice working at a surface mine shall be at all
21 times under the supervision and control of at least one person
22 who holds a certificate of competency and qualification.

23 In all cases, it shall be the duty of every mine operator who
24 employs apprentices to ensure that such persons are effectively
25 supervised and to instruct such persons in safe mining
26 practices. Each apprentice shall wear a red hat which identifies
27 him as such while employed at or near a mine. No person shall
28 be employed as an apprentice for a period in excess of eight
29 months, except that in the event of illness or injury, time
30 extensions shall be permitted as established by the director of
31 the division of mines and minerals.

§22-10-6. Certificate of competency and qualification—Under-
ground or surface miner.

1 A certificate of competency and qualification as an
2 underground miner or as surface miner shall be issued by the
3 director to any person who has at least six months' total
4 experience as an apprentice and demonstrated his competence
5 as a miner by successful completion of an examination given
6 by the director or his representative in a manner and place
7 to be determined by the board of miner training, education
8 and certification: Provided, That all examinations shall be
9 conducted in the English language and shall be of a practical
10 nature, so as to determine the competency and qualifications
11 of the applicant to engage in the mining of coal with
12 reasonable safety to himself and his fellow employees:
Provided further, That notice of the time and place of such examination shall be given to management at the mine, to the local union thereat if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§22-10-7. Refusal to issue certificate; appeal.

If the director or his representative finds that an applicant is not qualified and competent, he shall so notify the applicant not more than ten days after the date of examination.

Any applicant aggrieved by an action of the director in failing or refusing to issue a certificate of qualification and competency may, within ten days notice of the action complained of, appeal to the director who shall promptly give the applicant a hearing and either affirm the action or take such action as should have been taken.

§22-10-8. Limitations of article.

All persons possessing certificates of qualification heretofore issued by the department of mines of this state, or hereafter by the division of mines and minerals, entitling them to act as mine foreman-fire bosses, or assistant mine foreman-fire bosses, shall be eligible to engage at any time as miners in the mines of this state. Supervisory and technically trained employees of the operator, whose work contributes only indirectly to mine operations, shall not be required to possess a miners’ certificate.

Notwithstanding the provisions of this article, every person working as a surface miner in this state on or before the first day of July, one thousand nine hundred seventy-four, shall, upon application to the director, be issued a certificate of competency and qualification.

§22-10-9. Violations; penalties.

Any person who knowingly works in or at a mine without a certificate issued under the provision of this article, any person who knowingly employs an uncertified miner to work
in or at a coal mine in this state, or, any operator who fails
to ensure the supervision of miners holding a certificate of
apprenticeship as provided for in section five of this article,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor more than
five hundred dollars.

ARTICLE 11. MINE INSPECTORS' EXAMINING BOARD.

§22-11-1. Mine inspectors' examining board.

There shall be a mine inspectors' examining board consisting
of five members who, except for the public representative on
such board, shall be appointed by the governor, by and with
the advice and consent of the Senate. Members so appointed
may be removed only for the same causes and in like manner
as elective state officers. One of the members of the board shall
be a representative of the public, who shall be the director of
the school of mines at West Virginia University. Two members
of the board shall be persons who by reason of previous
training and experience may reasonably be said to represent
the viewpoint of coal mine operators and two members shall
be persons who by reason of previous training and experience
may reasonably be said to represent the viewpoint of coal mine
workers.

The director of the division of mines and minerals shall be
an ex officio member of the board and shall serve as secretary
of the board, without additional compensation; but he shall
have no right to vote with respect to any matter before the
board.

The members of the board, except the public representative,
shall be appointed for overlapping terms of eight years, except
that the original appointments shall be for terms of two, four,
six and eight years, respectively. Any member whose term
expires may be reappointed by the governor.

Each member of the board shall receive fifty dollars per
diem while actually engaged in the performance of the work
of the board; and shall receive mileage at the rate of ten cents
for each mile actually traveled going from the home of the
member to the place of the meeting of the board and returning
therefrom, which shall be paid out of the state treasury upon
a requisition upon the state auditor, properly certified by such
32 members of the board.

33 The public member shall serve as chairman of the board.
34 Members of the board, before performing any duty, shall take
35 and subscribe to the oath required by section five, article IV
36 of the constitution of West Virginia.
37
38 The mine inspectors' examining board shall meet at such
times and places as shall be designated by the chairman. It
shall be the duty of the chairman to call a meeting of the board
on the written request of three members or the director of the
division of mines and minerals. Notice of each meeting shall
be given in writing to each member by the secretary at least
five days in advance of the meeting. Three members shall
constitute a quorum for the transaction of business.

39 In addition to other duties expressly set forth elsewhere in
this article, the board shall:

40 (1) Establish, and from time to time revise, forms of
application for employment as mine inspectors and forms for
written examinations to test the qualifications of candidates
for that position;

41 (2) Adopt and promulgate reasonable rules and regulations
relating to the examination, qualification and certification of
candidates for appointment as mine inspectors, and hearing for
removal of inspectors, required to be held by section eleven,
article one-a, chapter twenty-two-a of this code. All of such
rules and regulations shall be printed and a copy thereof
furnished by the secretary of the board to any person upon
request;

42 (3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment as mine
inspector. By unanimous agreement of all members of the
board, one or more members of the board or an employee of
the division of mines and minerals may be designated to give
a candidate the written portion of the examination;

43 (4) Prepare and certify to the director of the division of
mines and minerals a register of qualified eligible candidates
for appointment as mine inspectors. The register shall list all
qualified eligible candidates in the order of their grades, the
candidate with the highest grade appearing at the top of the
list. After each meeting of the board held to examine such
candidates, and at least annually, the board shall prepare and
submit to the director of the division of mines and minerals
a revised and corrected register of qualified eligible candidates
for appointment as mine inspector, deleting from such revised
register all persons (a) who are no longer residents of West
Virginia, (b) who have allowed a calendar year to expire
without, in writing, indicating their continued availability for
such appointment, (c) who have been passed over for
appointment for three years, (d) who have become ineligible
for appointment since the board originally certified that such
person was qualified and eligible for appointment as mine
inspector, or (e) who, in the judgment of at least four members
of the board, should be removed from the register for good
cause;

(5) Cause the secretary of the board to keep and preserve
the written examination papers, manuscripts, grading sheets,
and other papers of all applicants for appointment as mine
inspector for such period of time as may be established by the
board. Specimens of the examinations given, together with the
correct solution of each question, shall be preserved perman-
etly by the secretary of the board;

(6) Issue a letter or written notice of qualification to each
successful eligible candidate;

(7) Hear and determine proceedings for the removal of mine
inspectors in accordance with the provisions of this article;

(8) Hear and determine appeals of mine inspectors from
suspension orders made by the director pursuant to the
provisions of section four, article one-a, chapter twenty-two-
a of this code: Provided, That an aggrieved inspector, in order
to appeal from any order of suspension, shall file such appeal
in writing with the mine inspectors' examining board not later
than ten days after receipt of notice of suspension. On such
appeal the board shall affirm the act of the director unless it
be satisfied from a clear preponderance of the evidence that
the director has acted arbitrarily;

(9) Make an annual report to the governor and the director
of the division of mines and minerals concerning the
administration of mine inspection personnel in the state
service, making such recommendations as the board considers
to be in the public interest.
ARTICLE 12. EMERGENCY MEDICAL PERSONNEL.

§22-12-1. Emergency personnel in coal mines.
§22-12-2. First-aid training of coal mine employees.

§22-12-1. Emergency personnel in coal mines.

(a) Emergency medical services personnel shall be employed on each shift at every mine that: (1) Employs more than ten employees and (2) more than eight persons are present on the shift. Said emergency medical services personnel shall be employed at their regular duties at a central location, or when more than one such person is required pursuant to subsection (b) or (c) at locations, convenient from quick response to emergencies; and further shall have available to them at all times such equipment as shall be prescribed by the director of the division of mines and minerals, in consultation with the director of the department of health.

(b) Until the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a medical service attendant as defined in article four-c, chapter sixteen of this code, paramedic as defined in article three-b, chapter thirty of this code, or physician assistant as defined in article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every seventy employees or any part thereof who are engaged at one time, in the extraction, production or preparation of coal.

(c) After the first day of July, one thousand nine hundred eighty-five, emergency medical services personnel shall be defined as a person who is certified as an emergency medical technician-mining, emergency medical technician, emergency medical technician-ambulance, emergency medical technician-intermediate, mobile intensive care paramedic, emergency medical technician-paramedic as defined in section three, article four-c, chapter sixteen of this code, or physician assistant as defined in section sixteen, article three-a, chapter thirty of this code. At least one emergency medical services personnel shall be employed at a mine for every fifty employees or any part thereof who are engaged at any time, in the extraction, production or preparation of coal.

(d) A training course designed specifically for certification of emergency medical technician-mining, shall be developed at
the earliest practicable time by the director of health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, mast trouser application, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the director of the department of health.

(e) The maintenance of a valid emergency medical technician-mining certificate may be accomplished without taking a three year recertification examination provided that such emergency medical technician-mining personnel completes an eight hour annual retraining and testing program prescribed by the director of health in consultation with the board of miner training, education and certification.

(f) All emergency medical services personnel currently certified as emergency medical service attendants or emergency medical technicians shall receive certification as emergency medical technicians without further training and examination for the remainder of their three year certification period; such emergency medical service attendant or emergency medical technician may upon expiration of such certification become certified as an emergency medical technician-mining upon completion of the eight hour retraining program referred to in subsection (e) above.

§22-12-2. First-aid training of coal mine employees.

Each coal mine operator shall provide every new employee within six months of the date of his employment with the opportunity for first-aid training as prescribed by the director of the division of mines and minerals unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first-aid training of not less than five hours within each twenty-four months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first-aid training.

ARTICLE 13. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22-13-1. Oil and gas inspectors; supervising inspectors; tenure; oath and bond.

§22-13-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.
§22-13-3. Oil and gas inspectors’ examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

§22-13-1. Oil and gas inspectors; supervising inspectors; tenure; oath and bond.

Notwithstanding any other provisions of law, oil and gas inspectors shall be selected, serve and be removed as in this article provided.

The director for the division of oil and gas shall divide the state so as to equalize, as far as practical, the work of each oil and gas inspector. He may designate a supervising inspector and other inspectors as may be necessary, and may designate their places of abode, at points convenient to the accomplishment of their work.

The director for the division of oil and gas shall make each appointment from among the three qualified eligible candidates on the register having the highest grades. The commissioner of the department of energy or the director for the division of oil and gas, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the commissioner or director, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors’ examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors’ examining board, after hearing, if it finds that the action of striking such name was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the director for the division of oil and gas and the commissioner, an oil and gas inspector or supervising inspector shall have permanent tenure until he becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section two of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner,
lessor, operator, stockholder, superintendent or engineer of any oil or gas drilling or producing venture or of any coal mine in this state. Before entering upon the discharge of his duties as an oil and gas inspector or supervising inspector, he shall take the oath of office prescribed by section 5, article IV of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the division of oil and gas, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The supervising inspector and oil and gas inspectors shall perform such duties as are imposed upon them by this chapter or chapter twenty-two-b of this code, and related duties assigned by the director for the division of oil and gas upon approval of the commissioner.

§22-13-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his probationary appointment, he (1) is a citizen of West Virginia, in good health, and of good character, reputation and temperate habits; (2) has had at least ten years' practical experience in the oil and gas industry, at least five years of which, immediately preceding his original appointment shall have been in the oil and gas industry in this state: Provided, That a diploma in geology or in mining or petroleum engineering shall be considered the equivalent of five years' practical experience; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the oil and gas inspectors' examining board and shall furnish such evidence of good health, character and other facts establishing eligibility as such board may require. If such board finds after investigation and examination that an applicant (1) is eligible for appointment and (2) has passed all written and oral
examinations, the board shall add such applicant's name and
grade to the register of qualified eligible candidates and certify
its action to the director of the division of oil and gas. No
candidate's name may remain on the register for more than
three years without requalifying.

(c) The salary of the supervising inspector shall be not less
than twenty-seven thousand five hundred dollars per annum.
Salaries of inspectors shall be not less than twenty-two
thousand dollars per annum. The supervising inspector and
inspectors shall receive mileage expense reimbursement at the
rate established by rule of the commissioner of the department
of finance and administration for in-state travel of public
employees. Within the limits provided by law, the salary of
each inspector and of the supervising inspector shall be fixed
by said director subject to the approval of the commissioner
and the oil and gas inspectors' examining board. In fixing
salaries of the oil and gas inspectors and of the supervising
inspector, said director shall consider ability, performance of
duty and experience. No reimbursement for traveling expenses
may be made except upon an itemized account of such
expenses submitted by the inspector or supervising inspector,
as the case may be, who shall verify, upon oath, that such
expenses were actually incurred in the discharge of his official
duties.

(d) An inspector or the supervising inspector, after having
received a permanent appointment, shall be removed from
office only for physical or mental impairment, incompetency,
neglect of duty, drunkenness, malfeasance in office, or other
good cause.

Proceedings for the removal of an oil and gas inspector or
the supervising inspector may be initiated by said director or
the commissioner whenever either has reasonable grounds to
believe and does believe that adequate cause exists warranting
removal. Such a proceeding shall be initiated by a verified
petition, filed with the oil and gas inspectors' examining board
by said director or the commissioner, setting forth with
particularity the facts alleged. Not less than twenty reputable
citizens engaged in oil and gas drilling and production
operations in the state may petition said director or the
commissioner for the removal of an inspector or the
supervising inspector. If such petition is verified by at least one
of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the removal of the inspector or supervising inspector, said director or the commissioner shall cause an investigation of the facts to be made. If, after such investigation said director or the commissioner finds that there is substantial evidence which, if true, warrants removal of the inspector or supervising inspector, he shall file a petition with the oil and gas inspectors’ examining board requesting removal of the inspector or supervising inspector.

On receipt of a petition by said director or by the commissioner seeking removal of an inspector or the supervising inspector, the oil and gas inspectors’ examining board shall promptly notify the inspector or supervising inspector, as the case may be, to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days nor more than thirty days thereafter. There shall be attached to the copy of the notice served upon the inspector or supervising inspector a copy of the petition filed with such board.

At the time and place designated in said notice, the oil and gas inspectors’ examining board shall hear all evidence offered in support of the petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance may be granted except for good cause shown.

The chairman of the board, said director and the commissioner may administer oaths and subpoena witnesses.

An inspector or supervising inspector who willfully refuses or fails to appear before such board, or having appeared, refuses to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which he may be asked to testify at such hearing before such board, forfeits his position.

If, after hearing, the oil and gas inspectors’ examining board finds that the inspector or supervising inspector should be removed, it shall enter an order to that effect. The decision
§22-13-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members who, except for the public representative on such board, shall be appointed by the governor, by and with the advice and consent of the Senate. Members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public, shall be a professor in the petroleum engineering department of the school of mines at West Virginia University appointed by the dean of said school; two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The director for the division of oil and gas shall be an ex officio member of the board and shall serve as secretary of the board without additional compensation, but he shall have no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor.

Each member of the board shall receive seventy-five dollars per diem while actually engaged in the performance of the work of the board, and shall receive mileage at the rate of not more than fifteen cents for each mile actually traveled going from the home of the member to the place of the meeting of the board and returning therefrom, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member shall serve as chairman of the board.

Members of the board, before performing any duty, shall
take and subscribe to the oath required by section five, article
four of the constitution of West Virginia.

The board shall meet at such times and places as shall be
designated by the chairman. It shall be the duty of the
chairman to call a meeting of the board on the written request
of two members, or on the written request of said director or
the commissioner. Notice of each meeting shall be given in
writing to each member by the secretary at least five days in
advance of the meeting. Three voting members shall constitute
a quorum for the transaction of business.

(b) In addition to other powers and duties expressly set
forth elsewhere in this article, the board shall:

(1) Establish, and from time to time revise, forms of
application for employment as an oil and gas inspector and
supervising inspector and forms for written examinations to
test the qualifications of candidates, with such distinctions, if
any, in the forms for oil and gas inspector and supervising
inspector as the board may from time to time deem necessary
or advisable;

(2) Adopt and promulgate reasonable rules and regulations
relating to the examination, qualification and certification of
candidates for appointment, and relating to hearings for
removal of inspectors or the supervising inspector, required to
be held by this article. All of such rules and regulations shall
be printed and a copy thereof furnished by the secretary of
the board to any person upon request;

(3) Conduct, after public notice of the time and place
thereof, examinations of candidates for appointment. By
unanimous agreement of all members of the board, one or
more members of the board or an employee of the department
of energy may be designated to give to a candidate the written
portion of the examination;

(4) Prepare and certify to said director and the commis-
ioner a register of qualified eligible candidates for appoint-
ment as oil and gas inspectors or as supervising inspectors,
with such differentiation, if any, between the certification of
candidates for oil and gas inspectors and for supervising
inspectors as the board may from time to time deem necessary
or advisable. The register shall list all qualified eligible
candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the said director and the commissioner a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment, or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

(5) Cause the secretary of the board to keep and preserve the written examination papers, manuscripts, grading sheets and other papers of all applicants for appointment for such period of time as may be established by the board. Specimens of the examinations given, together with the correct solution of each question, shall be preserved permanently by the secretary of the board;

(6) Issue a letter or written notice of qualification to each successful eligible candidate;

(7) Hear and determine proceedings for the removal of inspectors or the supervising inspector in accordance with the provisions of this article;

(8) Hear and determine appeals of inspectors or the supervising inspector from suspension orders made by said director pursuant to the provisions of section two, article one of chapter twenty-two-b of this code: Provided, That in order to appeal from any order of suspension, an aggrieved inspector or supervising inspector shall file such appeal in writing with the oil and gas inspectors' examining board not later than ten days after receipt of the notice of suspension. On such appeal the board shall affirm the action of said director unless it be satisfied from a clear preponderance of the evidence that said director has acted arbitrarily;

(9) Make an annual report to the governor concerning the administration of oil and gas inspection personnel in the state
service; making such recommendations as the board considers
to be in the public interest; and

(10) Render such advice and assistance to the director of
the division of oil and gas as he shall from time to time
determine necessary or desirable in the performance of his
duties.

(c) 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 oil and gas
inspectors’ examining board within the department of energy
should be continued and reestablished. Accordingly, notwith-
standing the provisions of section four, article ten, chapter four
of this code, the oil and gas inspectors’ examining board within
the department of energy shall continue to exist until the first
day of July, one thousand nine hundred eighty-seven.

CHAPTER 22A. MINES AND MINERALS.

Article
1. Division of Mines and Minerals.
1A. Administration; Enforcement.
3. West Virginia Surface Coal Mining and Reclamation Act.
4. Surface Mining and Reclamation of Minerals Other Than Coal.
6. Open-pit Mines, Cement Manufacturing Plants and Underground
   Limestone and Sandstone Mines.

ARTICLE 1. DIVISION OF MINES AND MINERALS.

§22A-l-1. Division of mines and minerals.
§22A-l-2. Director of division of mines and minerals.

§22A-l-1. Division of mines and minerals.

1. The division of mines and minerals, created under the
   provisions of section six, article one, chapter twenty-two of
   this code, is hereby charged with the duties and responsibilities
   set out in chapter twenty-two of this code and this chapter,
   relating to the exploration for and development, production
   and conservation of coal and all other minerals, except oil and
   gas and those minerals found in association therewith as
   provided in chapter twenty-two-b of this code. All legislative
   findings and policies stated in chapter twenty-two of this code
   in relation to these minerals apply to the operations of this
§22A-1-2. Director of division of mines and minerals.

The director of the division of mines and minerals, as provided in section seven, article one, chapter twenty-two of this code shall have the responsibility and duties in administration of the division of mines and minerals as are provided in said chapter twenty-two and this chapter.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-1. Definitions.
§22A-1A-2. Division of mines and minerals; purposes; rules and regulations.
§22A-1A-3. Director of division of mines and minerals—Appointment.
§22A-1A-4. Same—Powers and duties.
§22A-1A-5. Same—Eligibility; salary.
§22A-1A-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.
§22A-1A-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath, bond.
§22A-1A-9. Mine inspectors may be appointed to fill vacancy in division.
§22A-1A-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.
§22A-1A-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.
§22A-1A-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.
§22A-1A-12. Commissioner, director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.
§22A-1A-14. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.
§22A-1A-16. Posting of notices, orders and decisions; delivery to agent of operator; names and addresses to be filed by operators.
§22A-1A-22. Mine foreman examiner for mine foreman-fire bosses and assistant mine foreman-fire bosses; salary.
§22A-1A-23. Duties of mine foreman examiner.
§22A-1A-24. Place and time for examinations.
§22A-1A-25. Preparation of examination; notice of intention to take examination; investigation of applicant.
§22A-1A-27. Mine foreman examiner to certify successful applicants to director.
§22A-1A-29. Withdrawal of certification.
§22A-1A-30. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.
§22A-1A-31. Mine rescue stations; equipment.
§22A-1A-33. Mine rescue teams.
§22A-1A-34. Mandatory safety programs; penalties.

§22A-1A-1. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following definitions shall apply to this chapter:

2 (a) General.

3 (1) Accident: The term “accident” means any mine explosion, mine ignition, mine fire, or mine inundation, or injury to, or death of any person.

4 (2) Agent: The term “agent” means any person charged with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

5 (3) Approved: The term “approved” means in strict compliance with mining law, or, in the absence of law, accepted by a recognized standardizing body or organization whose approval is generally recognized as authoritative on the subject.

6 (4) Commissioner, or commissioner of energy: The terms “commissioner” or “commissioner of energy” means the commissioner of the department of energy as provided in chapter twenty-two of this code.

7 (5) Face equipment: The term “face equipment” shall mean mobile or portable mining machinery having electric motors or accessory equipment normally installed or operated in the last open crosscut in an entry or room.

8 (6) Imminent danger: The term “imminent danger” means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

9 (7) Mine: The term “mine” includes the shafts, slopes, drifts
or inclines connected with, or intended in the future to be
connected with, excavations penetrating coal seams or strata,
which excavations are ventilated by one general air current or
divisions thereof, and connected by one general system of mine
hauling over which coal may be delivered to one or more
points outside the mine, and the surface structures or
equipment connected or associated therewith which contribute
directly or indirectly to the mining, preparation or handling
of coal, or construction thereof.

(8) Miner: The term “miner” means any individual working
in a coal mine.

(9) Operator: The term “operator” means any firm,
corporation, partnership or individual operating any coal mine
or part thereof, or engaged in the construction of any facility
associated with a coal mine.

(10) Permissible: The term “permissible” means any
equipment, device or explosive that has been approved as
permissible by the federal mine safety and health administra-
tion and/or the United States bureau of mines and meets all
requirements, restrictions, exceptions, limitations and condi-
tions attached to such classification by that agency or the
bureau.

(11) Person: The term “person” means any individual
partnership, association, corporation, firm, subsidiary of a
corporation or other organization.

(12) Work of preparing the coal: The term “work of
preparing the coal” means the breaking, crushing, sizing,
cleaning, washing, drying, mixing, storing and loading of
bituminous coal or lignite, and such other work of preparing
such coal as is usually done by the operator of the coal mine.

(b) Division of mines and minerals.

(1) Board of appeals: The term “board of appeals” means
as provided for in article five, chapter twenty-two of this code.

(2) Division: The term “division” means the state division
of mines and minerals provided for in article one, section two
of this chapter and article one, chapter twenty-two of this
code.

(3) Director: The term “director” means the director of the
division of mines and minerals provided for in section two, article one of this chapter and article one, chapter twenty-two of this code.

(4) Mine inspector: The term “mine inspector” means a state mine inspector provided for in section seven of this article.

(5) Mine inspectors’ examining board: The term “mine inspectors’ examining board” shall mean the mine inspectors’ examining board provided for in article eleven, chapter twenty-two of this code.

c) Mine areas.

(1) Abandoned workings: The term “abandoned workings” means excavation, either caved or sealed, that is deserted and in which further mining is not intended, or open workings which are ventilated and not inspected regularly.

(2) Active workings: The term “active workings” means all places in a mine that are ventilated and inspected regularly.

(3) Drift: The term “drift” means a horizontal or approximately horizontal opening through the strata or in a coal seam and used for the same purposes as a shaft.

(4) Excavations and workings: The term “excavations and workings” means any or all parts of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms and working places, whether abandoned or in use.

(5) Inactive workings: The term “inactive workings” includes all portions of a mine in which operations have been suspended for an indefinite period, but have not been abandoned.

(6) Mechanical working section: The term “mechanical working section” means an area of a mine (A) in which coal is loaded mechanically, (B) which is comprised of a number of working places that are generally contiguous, and (C) which is of such size to permit necessary supervision during shift operation, including pre-shift and on-shift examinations and tests required by law.

(7) Panel: The term “panel” means workings that are or have been developed off of submain entries which do not
(8) Return air: The term "return air" means a volume of air that has passed through and ventilated all the working places in a mine section.

(9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be used for the purpose of ventilation, drainage, and the hoisting and transportation of men and material, in connection with the mining of coal.

(10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal seam from the surface and used for the same purposes as a shaft.

(11) Working face: The term "working face" means any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

(12) Working place: The term "working place" means the area of a coal mine inby the last open crosscut.

(13) Working section: The term "working section" means all areas of the coal mine from the loading point of the section to and including the working faces.

(14) Working unit: The term "working unit" means an area of a mine in which coal is mined with a set of production equipment; a conventional mining unit by a single loading machine; a continuous mining unit by a single continuous mining machine, which is comprised of a number of working places.

(d) Mine personnel.

(1) Assistant mine foreman: The term "assistant mine foreman" means a certified person designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of the persons employed therein.

(2) Certified electrician: The term "certified electrician" means any person who is qualified as a mine electrician and who has passed an examination given by the division, or has at least three years of experience in performing electrical work underground in a coal mine, in the surface work areas of an underground coal mine, in a surface coal mine, in a noncoal
mine, in the mine equipment manufacturing industry, or in any other industry using or manufacturing similar equipment, and has satisfactorily completed a coal mine electrical training program approved by the division.

(3) Certified person: The term "certified person," when used to designate the kind of person to whom the performance of a duty in connection with the operation of a mine shall be assigned, means a person who is qualified under the provisions of this law to perform such duty.

(4) Interested persons: The term "interested persons" includes the operator, members of any mine safety committee at the mine affected and other duly authorized representatives of the mine workers and the department.

(5) Mine foreman: The term "mine foreman" means the certified person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

(6) Qualified person: The term "qualified person" means a person who has completed an examination and is considered qualified on record by the division.

(7) Shot firer: The term "shot firer" means any person having had at least two years of practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering, and who has demonstrated his knowledge of mine gases, the use of a flame safety lamp, and other approved detecting devices by examination and certification given him by the division.

(8) Superintendent: The term "superintendent" means the person who shall have, on behalf of the operator, immediate supervision of one or more mines.

(9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical.

(l) Armored cable: The term "armored cable" means a cable provided with a wrapping of metal, usually steel wires or tapes,
primarily for the purpose of mechanical protection.

(2) Borehole cable: The term "borehole cable" means a cable designed for vertical suspension in a borehole or shaft and used for power circuits in the mine.

(3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct current, connected to and leading from the main power lines.

(4) Cable: The term "cable" means a standard conductor (single conductor cable) or a combination of conductors insulated from one another (multiple conductor cable).

(5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

(6) Delta connected: The term "delta connected" means a power system in which the windings or transformers or a.c. generators are connected to form a triangular phase relationship, and with phase conductors connected to each point of the triangle.

(7) Effectively grounded: The term "effectively grounded" is an expression which means grounded through a grounding connection of sufficiently low impedance (inherent or intentionally added or both) so that fault grounds which may occur cannot build up voltages in excess of limits established for apparatus, circuits or systems so grounded.

(8) Flame-resistant cable, portable: The term "flame-resistant cable, portable" means a portable flame-resistant cable that has passed the flame tests of the Federal Mine Safety and Health Administration.

(9) Ground or grounding conductor (mining): The term "ground or grounding conductor (mining)," also referred to as a safety ground conductor, safety ground and frame ground, means a metallic conductor used to connect the metal frame or enclosure of any equipment, device or wiring system with a mine track or other effective grounding medium.

(10) Grounded (earthed): The term "grounded (earthed)" means that the system, circuit or apparatus referred to is provided with a ground.
(11) High voltage: The term "high voltage" means voltages of more than one thousand volts.

(12) Lightning arrester: The term "lightning arrester" means a protective device for limiting surge voltage on equipment by discharging or by passing surge current; it prevents continued flow of follow current to ground and is capable of repeating these functions as specified.

(13) Low voltage: The term "low voltage" means up to and including six hundred sixty volts.

(14) Medium voltage: The term "medium voltage" means voltages from six hundred sixty-one to one thousand volts.

(15) Mine power center or distribution center: The term "mine power center or distribution center" means a combined transformer or distribution unit, complete within a metal enclosure from which one or more low-voltage power circuits are taken.

(16) Neutral (derived): The term "neutral (derived)" means a neutral point or connection established by the addition of a "zig-zag" or grounding transformer to a normally under-ground power system.

(17) Neutral point: The term "neutral point" means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.

(18) Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

(19) Wye-connected: The term "wye-connected" means a power system connection in which one end of each phase windings or transformers or a.c. generators are connected together to form a neutral point, and a neutral conductor may or may not be connected to the neutral point, and the neutral point may or may not be grounded.

(20) Zig-zag transformer (grounding transformer): The term "zig-zag transformer (grounding transformer)" means a
transformer intended primarily to provide a neutral point for 
grounding purposes.

§22A-1A-2. Division of mines and minerals; purposes; rules and 
regulations.

The division of mines and minerals shall have as its purpose 
the supervision of the execution and enforcement of the 
provisions of this chapter and, in carrying out the aforesaid 
purposes, it shall give prime consideration to the protection 
of the safety and health of persons employed within or at the 
mines of this state. In addition, the division shall, consistent 
with the aforesaid prime consideration, protect and preserve 
mining property and property used in connection therewith.

The division is hereby given authority, where authorized and 
in the manner prescribed in this chapter, to enact such rules 
and regulations as may be necessary to effectuate the above-
stated purposes, all under the supervision, review and approval 
of the commissioner.

§22A-1A-3. Director of division of mines and minerals—Appointment.

There shall be a director of the division, who shall be 
appointed by the commissioner of the department of energy 
as provided for in section eight, article one of chapter twenty-
two.

§22A-1A-4. Same—Powers and duties.

The director of the division of mines and minerals shall have 
full charge of the division. He shall have the power and duty 
to:

(1) Supervise and direct the execution and enforcement of 
the provisions of this chapter.

(2) Recommend the appointment and compensation of 
deputy directors of the division to the commissioner.

(3) Employ such assistants, clerks, stenographers and other 
employees as may be necessary to fully and effectively carry 
out the provisions of this law and fix their compensation, 
except as otherwise provided in this article.

(4) Assign mine inspectors hired by the commissioner to
divisions or districts in accordance with the provisions of section seven of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

(5) Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty days in any calendar year.

(6) Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this chapter.

(7) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(9) Make annually a full and complete written report of the administration of his division to the commissioner, the governor and the Legislature of the state for the year ending the thirtieth day of June. Such report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the division from all sources identifying each source of such funds, the expenditures of the division, the surplus or deficit of the division at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the division, the number of inspections made by each inspector,
the number and type of violations found by each inspector:

Provided, That no inspector shall be identified by name in this report. Such reports shall be filed with the commissioner, the governor and the Legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

(12) Perform all other duties which are expressly imposed upon him by the provisions of this chapter.

(13) Make all records of the division open for inspection of interested persons and the public.

(14) In conjunction with the commissioner of the department of energy, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations within the state. For the purposes of this subdivision, a small coal operator is one who is anticipated to mine less than two hundred thousand tons per year, but the division in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation.
(15) Issue all permits, which the director is specifically authorized by the provisions of this chapter to issue, as expeditiously as possible with prime consideration given to the protection of the safety and health of all persons employed within or at the mines of this state. In so doing he shall utilize the technical and logistical support made available by the deputy directors of safety, health and training; permitting; and inspection and enforcement.

§22A-1A-5. Same—Eligibility; salary.

The director shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with demonstrated interest and experience in coal mining. The director shall devote all of his time to the duties of his office and shall not be directly or indirectly interested financially in any mine. The salary of the director shall be set by the commissioner, with reimbursement for traveling expenses incurred in the discharge of his official duties, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the commissioner.


The director shall, before entering upon the discharge of his duties, take the oath of office prescribed by section 5, article IV of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the governor, conditioned upon the faithful discharge of his duties, a certificate of which oath and which bond shall be filed in the office of the secretary of state.

§22A-1A-7. Mine inspectors; districts and divisions; employment; tenure; oath; bond.

Notwithstanding any other provisions of law, mine inspectors shall be selected, serve and be removed as in this article provided.

The director shall divide the state into not more than forty-five mining districts and not more than five mining divisions, so as to equalize, as far as practical, the work of each inspector. He may assign inspectors to districts, designate and assign not more than one inspector-at-large to each division and one assistant inspector-at-large. He shall designate the places of abode of inspectors at points convenient to the mines
of their respective districts, and, in the case of inspectors and assistant inspectors-at-large, their respective divisions.

Except as in the next preceding paragraph provided, all mine inspectors appointed after the mine inspectors' examining board has certified to the commissioner an adequate register of qualified eligible candidates in accordance with section eleven of this article, so long as such register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the commissioner for a probationary period of not more than one year.

The commissioner shall make each appointment from among the three qualified eligible candidates on the register having the highest grades. Provided, That the commissioner may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the commissioner shall immediately notify in writing each member of the mine inspectors' examining board of his action, together with a detailed statement of the reasons therefor. Thereafter, the mine inspectors' examining board, after hearing, if it finds that the action of the commissioner was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

Any candidate passed over for appointment for three years shall be automatically stricken from the register.

After having served for a probationary period of one year to the satisfaction of the commissioner, a mine inspector shall have permanent tenure, subject only to dismissal for cause in accordance with the provisions of section eleven of this article.

No mine inspector, while in office, shall be directly or indirectly interested as owner, lessor, operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of his duties as a mine inspector, he shall take the oath of office prescribed by the section 5, article IV of the constitution of West Virginia and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director, conditioned upon the faithful discharge of his duties, a certificate of which oath and bond
shall be filed in the office of the secretary of state.

The district inspectors, inspectors-at-large and assistant inspectors-at-large, together with the director and the commissioner, shall make all inspections authorized by articles one-a and two of this chapter and shall perform such other duties as are imposed upon mine inspectors by articles one-a, two and six of this chapter, and article ten of chapter twenty-two of this code.

§22A-1A-8. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

The division shall employ eleven or more mine safety instructors. To be eligible for employment as a mine safety instructor, the applicant shall be (1) a citizen of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and temperate habits, and (2) a person who has had at least five years' experience in first aid and mine rescue work and who has had practical experience with dangerous gases found in coal mines, and who has a practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to a written and oral examination, given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a safety instructor and may, subject to the approval of the mine inspectors' examining board, be prepared by the director.

If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the commissioner. The commissioner may then appoint one of the candidates from the three having the highest grades.

The salary for a mine safety instructor shall be not less than twenty-one thousand six hundred seventy-two dollars per year, and shall be fixed by the commissioner, who shall take into consideration ability, performance of duty and experience.
Such instructor shall devote all of his time to the duties of his office. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expenses submitted by the instructor, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of mine inspectors shall be applicable to mine safety instructors.

§22A-1A-9. Mine inspectors may be appointed to fill vacancy in division.

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the division, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the commissioner.

§22A-1A-10. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The division shall employ five or more electrical inspectors. To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had seven years' practical electrical experience in coal mines, or a degree in electrical engineering from an accredited electrical engineering school and one year's practical experience in underground coal mining.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the commissioner. The commissioner may then appoint one of the candidates from the three having the highest grade.
The salary of a mine electrical inspector shall be not less than thirty thousand four hundred eighty dollars per year, and shall be fixed by the commissioner, who shall take into consideration ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his official duties.

Mine electrical inspectors, before entering upon the discharge of their duties, shall take and subscribe to the oath and shall execute a bond in the same penal sum, with surety approved by the director, all as is required by this article in the case of mine inspectors.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of mine inspectors shall be applicable to mine electrical inspectors.

§22A-1A-11. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person shall be eligible for appointment as a mine inspector unless, at the time of his probationary appointment, he (1) is a citizen of West Virginia, in good health, not less than twenty-four years of age, and of good character, reputation and temperate habits; (2) has had at least six years' practical experience in coal mines, at least three years of which, immediately preceding his original appointment, shall have been in mines of this state: Provided, That graduation from any accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board
finds after investigation and examination that an applicant: (1) is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant’s name and grade to the register of qualified eligible candidates and certify its action to the commissioner. No candidate’s name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than twenty-eight thousand fifty-six dollars per year; assistant inspector-at-large, not less than thirty thousand one hundred eight dollars per year; inspectors-at-large, not less than thirty-one thousand five hundred seventy-two dollars per year, and they shall receive mileage at the rate of not less than twenty cents for each mile actually traveled in the discharge of their official duties in a privately owned vehicle. Within the limits provided by law, the salary of each inspector shall be fixed by the commissioner, subject to the approval of the mine inspectors’ examining board. In fixing salaries of mine inspectors, the commissioner shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized account of such expenses submitted by the inspector, who shall verify upon oath, that such expenses were actually incurred in the discharge of his official duties. Every inspector shall be afforded compensatory time or compensation of at least his regular rate for all time in excess of forty-two hours per week.

(d) Any mine inspector who has fulfilled the requirements of this section with respect to employment and who has served satisfactorily as a mine inspector for a minimum period of one year and who has terminated his employment as a mine inspector, upon successfully passing a physical examination, may be reinstated as a mine inspector within two years after terminating his employment with the approval of the examining board and the commissioner.

(e) A mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

Proceedings for the removal of a mine inspector may be initiated by the director or commissioner whenever there is
reasonable cause to believe that adequate cause exists, warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the board by the director or commissioner, setting forth with particularity the facts alleged. Not less than twenty reputable citizens, who are operators or employees in mines in the state, may petition the director for the removal of a mine inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant and alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the facts to be made. If, after such investigation, the director finds that there is substantial evidence, which, if true, warrants removal of the inspector, he shall file a petition with the board requesting removal of the inspector.

On receipt of a petition by the director or the commissioner seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chairman of the board and the director shall have power to administer oaths and subpoena witnesses.

Any mine inspector who shall willfully refuse or fail to appear before the board, or having appeared, shall refuse to answer under oath any relevant question on the ground that his testimony or answer might incriminate him, or shall refuse to waive immunity from prosecution on account of any relevant matter about which he may be asked to testify at any such hearing before the board, shall forfeit his position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board shall be final and shall not be subject to judicial review.
§22A-1A-11a. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.

In order to qualify for an appointment as a surface mine inspector, under the provisions of this article, an eligible applicant shall have had at least five years' practical experience in surface mines, at least one year of which, immediately preceding his original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a surface mine inspector and may, subject to the approval of the mine inspectors' examining board, be prepared by the director.

If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the commissioner. The commissioner may then appoint one of the candidates from the three having the highest grades.

All such appointees shall be citizens of West Virginia, in good health, not less than twenty-five years of age, of good character and reputation and temperate in habits. No person shall be eligible for permanent appointment as a surface mine inspector until he has served in a probationary status for a period of one year to the satisfaction of the commissioner.

Surface mine inspectors serving as such on the effective date of this section may continue to serve through their probationary period, and if eligible as prescribed by this section, may qualify for appointment during such probationary period in accordance with the provisions of this section.

However, surface mine inspectors employed on the effective date of this section and who have served to the satisfaction of the commissioner for a period of two years or more may continue to serve on a permanent tenure basis. In the performance of duties devolving upon surface mine inspectors, they shall be responsible to the director of the division of mines and minerals.
The salary of the surface mine inspector supervisor shall be not less than twenty-four thousand four hundred eighty dollars per year. Salaries of surface mine inspectors shall be not less than twenty-one thousand seven hundred eighty dollars per year. In the discharge of their official duties in privately owned vehicles, surface mine inspectors and the surface mine inspector supervisor shall receive mileage at the rate of not less than twenty cents per mile.

A surface mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or other good cause.

§22A-1A-12. Commissioner, director and inspectors authorized to enter mines; duties of inspectors to examine mines; no advance notice; reports after fatal accidents.

The commissioner, director, or his authorized representative, shall have authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the commissioner or his authorized representative proper facilities for entering such mine and making examination or obtaining information.

If miners at any time or one of their authorized representatives have reason to believe that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section thirteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated.
within the past forty-eight hours in any such mine.

In addition to the other duties imposed by articles one-a and two of this chapter, it shall be the duty of each inspector to note each violation he finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.

The mine inspector shall visit the scene of each fatal accident occurring in any mine within his district and shall make an examination into the particular facts of such accident; make a report to the director, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

At the commencement of any inspection of a coal mine by an authorized representative of the commissioner, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the commissioner on such inspection.


(a) If, upon any inspection of a coal mine, an authorized representative of the commissioner finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the commissioner determines that such imminent danger no longer exists.

All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a
mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order shall be entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

(b) If, upon any inspection of a coal mine, an authorized representative of the commissioner finds that there has been a violation of the law, but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent, fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time, as originally fixed or subsequently extended, an authorized representative of the commissioner finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from, and to be prohibited from entering such area until an authorized representative of the commissioner determines that the violation has been abated.

(c) The following persons shall not be required to be withdrawn from or prohibited from entering any area of the coal mine subject to an order issued under this section:

(1) Any person whose presence in such area is necessary, in the judgment of the operator or an authorized representative of the commissioner, to eliminate the condition described in the order;

(2) Any public official whose official duties require him to enter such area;

(3) Any representative of the miners in such mine who is, in the judgment of the operator or an authorized representative of the commissioner, qualified to make coal mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the conditions described in the order; and
(4) Any consultant to any of the foregoing.

(d) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any mandatory health or safety standard and, where appropriate, a description of the area of the coal mine from which persons must be withdrawn and prohibited from entering.

(e) Each notice or order issued under this section shall be given promptly to the operator of the coal mine or his agent by an authorized representative of the commissioner issuing such notice or order, and all such notices and orders shall be in writing and shall be signed by such representative and posted on the bulletin board at the mine.

(f) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the commissioner.

(g) Each finding, order, and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making such finding, order or notice.

§22A-1A-14. Powers and duties of electrical inspectors as to inspections, findings and orders; reports of electrical inspectors.

In order that the electrical inspector may properly perform the duties required of him, he shall devote his whole time and attention to the duties of his office, and he shall have the right to enter any coal mine for the purpose of inspecting electrical equipment, and if he finds during his inspection any defects in the electrical equipment which are covered by law and may be detrimental to the lives or health of the workmen, he shall have the authority to order the operator, in writing, to remedy such defects within a prescribed time, and to prohibit the continued operation of such electrical equipment after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in his division at least once each year or as often as the director may deem necessary.

It shall be the duty of the electrical inspector, after
completing his examination of a mine, to prepare a report describing his findings in said mine in a manner and form designated by the director. The original report shall be forwarded to the operator or his representative whose duty it shall be to post it in some conspicuous place open to examination by any interested person or persons. The report shall show the date of inspection, a list of equipment, and any other information that the director may deem necessary.


(a) (1) An operator, issued an order pursuant to the provisions of section thirteen of this article, or any representative of miners in any mine affected by such order or by any modification or termination of such order, may apply to the commissioner for review of the order within thirty days of receipt thereof or within thirty days of its modification or termination. An operator, issued a notice pursuant to subsection (b), section thirteen of this article, or any representative of miners in any mine affected by such notice, may, if he believes that the period of the time fixed in such notice for the abatement of the violation is unreasonable, apply to the commissioner for review of the notice within thirty days of the receipt thereof. The applicant shall send a copy of such application to the representative of miners in the affected mine, or the operator, as appropriate. Upon receipt of such application, the commissioner shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of the operator or the representative of miners in such mine, to enable the operator and the representative of miners in such mine to present information relating to the issuance and continuance of such order or the modification or termination thereof or to the time fixed in such notice. The filing of an application for review under this law shall not operate as a stay of any order or notice.

(2) The operator and the representative of the miners shall be given written notice of the time and place of the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation, the commissioner shall make findings of fact, and he shall issue a written decision, incorporating therein an order vacating,
affirming, modifying or terminating the order, or the
modification or termination of such order, or the notice
complained of and incorporate his findings therein.

(c) In view of the urgent need for prompt decision of
matters submitted to the commissioner under this law, all
actions which the commissioner takes under this section shall
be taken as promptly as practicable, consistent with adequate
consideration of the issues involved.

(d) Pending completion of the investigation required by this
section, the applicant may file with the commissioner a written
request that the commissioner grant temporary relief from any
modification or termination of any order, or from any order
issued under section thirteen of this article, except an order
issued under section fourteen of this article, together with a
detailed statement giving reasons for granting such relief. The
commissioner may grant such relief, under such conditions as
he may prescribe, if:

(1) A hearing has been held in which all parties were given
an opportunity to be heard;

(2) The applicant shows that there is substantial likelihood
that the findings of the commissioner will be favorable to the
applicant; and

(3) Such relief will not adversely affect the health and safety
of miners in the coal mine.

No temporary relief shall be granted in the case of a notice
issued under section thirteen of this article.

§22A-1A-16. Posting of notices, orders and decisions; delivery to
agent of operator; names and addresses to be filed
by operators.

(a) At each coal mine there shall be maintained an office
with a conspicuous sign designating it as the office of the mine,
and a bulletin board at such office or at some conspicuous
place near an entrance of the mine, in such manner that
notices, orders and decisions required by this law or regulation
to be posted on the mine bulletin board may be posted
thereon, be easily visible to all persons desiring to read them,
and be protected against damage by weather and against
unauthorized removal. A copy of any notice, order or decision
required by this law to be given to an operator shall be
delivered to the office of the affected mine, and a copy shall
be immediately posted on the bulletin board of such mine by
the operator or his agent.

(b) The commissioner shall cause a copy of any notice,
order or decision required by this law to be given to an
operator to be mailed immediately to a representative of the
miners. Such notice, order or decision shall be available for
public inspection.

(c) In order to ensure prompt compliance with any notice,
order or decision issued under this law, the authorized
representative of the commissioner may deliver such notice,
order or decision to an agent of the operator and such agent
shall immediately take appropriate measures to ensure
compliance with such notice, order or decision.

(d) Each operator of a coal mine shall file with the director
the name and address of such mine and the name and address
of the person who controls or operates the mine. Any revisions
in such names or addresses shall be promptly filed with the
director. Each operator of a coal mine shall designate a
responsible official at such mine as the principal officer in
charge of health and safety at such mine, and such official shall
receive a copy of any notice, order or decision issued under
this law affecting such mine. In any case, where the coal mine
is subject to the control of any person not directly involved
in the daily operations of the coal mine, there shall be filed
with the director the name and address of such person and
the name and address of a principal official of such person
who shall have overall responsibility for the conduct of an
effective health and safety program at any coal mine subject
to the control of such person and such official shall receive
a copy of any notice, order or decision issued affecting any
such mine. The mere designation of a health and safety official
under this subsection shall not be construed as making such
official subject to any penalty under this law.


(a) Any order or decision issued by the commissioner under
this law, except an order or decision under section thirteen of
this article shall be subject to judicial review by the circuit
court of the county in which the mine affected is located or
the circuit court of Kanawha County upon the filing in such
court or with the judge thereof in vacation of a petition by
any person aggrieved by the order or decision praying that the
order or decision be modified or set aside in whole or in part,
except that the court shall not consider such petition unless
such person has exhausted the administrative remedies
available under this law and files within thirty days from date
of such order or decision.

(b) The party making such appeal shall forthwith send a
copy of such petition for appeal, by registered mail, to the
other party. Upon receipt of such petition for appeal, the
commissioner shall promptly certify and file in such court a
complete transcript of the record upon which the order or
decision complained of was issued. The court shall hear such
petition on the record made before the commissioner. The
findings of the commissioner, if supported by substantial
evidence on the record considered as a whole, shall be
conclusive. The court may affirm, vacate or modify any order
or decision or may remand the proceedings to the commis-
sioner for such further action as it may direct.

(c) In the case of a proceeding to review any order or
decision issued by the commissioner under this law, except an
order or decision pertaining to an order issued under
subsection (a), section thirteen of this article or an order or
decision pertaining to a notice issued under subsection (b),
section thirteen of this article, the court may, under such
conditions as it may prescribe, grant such temporary relief as
it deems appropriate pending final determination of the
proceedings if

(A) All parties to the proceeding have been notified and
given an opportunity to be heard on a request for temporary
relief;

(B) The person requesting such relief shows that there is a
substantial likelihood that he will prevail on the merits of the
final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety
of miners in the coal mine.

(d) The judgment of the court shall be subject to review only
by the supreme court of appeals of West Virginia upon a writ
of certiorari filed in such court within sixty days from the entry
of the order and decision of the circuit court upon such appeal
from the commissioner.

(e) The commencement of a proceeding under this section
shall not, unless specifically ordered by the court, operate as
a stay of the order or decision of the commissioner.

(f) Subject to the direction and control of the attorney
general, attorneys appointed for the commissioner may appear
for and represent him in any proceeding instituted under this
section.


The commissioner may institute a civil action for relief,
including a permanent or temporary injunction, restraining
order, or any other appropriate order in the circuit court of
the county in which the mine is located or the circuit court
of Kanawha county, whenever the operator or his agent (a)
violates or fails or refuses to comply with any order or decision
issued under this law, or (b) interferes with, hinders or delays
the director or his authorized representative in carrying out
the provisions of this law, or (c) refuses to admit such
representatives to the mine, or (d) refuses to permit the
inspection of the mine, or the investigation of an accident or
occupational disease occurring in, or connected with, such
mine, or (e) refuses to furnish any information or report
requested by the director in furtherance of the provisions of
this law, or (f) refuses to permit access to, and copying of,
such records as the director determines necessary in carrying
out the provisions of this law. Each court shall have
jurisdiction to provide such relief as may be appropriate.

Except as otherwise provided herein, any relief granted by the
court to enforce an order under clause (a) of this section shall
continue in effect until the completion or final termination of
all proceedings for review of such order under this law, unless,
prior thereto, the circuit court granting such relief sets it aside
or modifies it. In any action instituted under this section to
enforce an order or decision issued by the commissioner after
a public hearing, the findings of the commissioner, if
supported by substantial evidence on the record considered as
a whole, shall be conclusive.

(a) (1) Any operator of a coal mine in which a violation occurs of any health or safety rule or regulation or who violates any other provisions of this law, shall be assessed a civil penalty by the commissioner under subdivision (3) of this subsection, which penalty shall be not more than three thousand dollars, for each such violation. Each such violation shall constitute a separate offense. In determining the amount of the penalty, the commissioner shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter shall be subject to a civil penalty assessed by the commissioner under subdivision (3) of this subsection which penalty shall not be more than two hundred fifty dollars for each occurrence of such violation.

(3) A civil penalty shall be assessed by the commissioner only after the person charged with a violation under this chapter or rule or regulation promulgated pursuant to this chapter has been given an opportunity for a public hearing and the commissioner has determined, by a decision incorporating his findings of fact therein, that a violation did occur, and the amount of the penalty which is warranted, and incorporating, when appropriate, an order therein requiring that the penalty be paid. Any hearing under this section shall be of record.

(4) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in such order, the commissioner shall file a petition for enforcement of such order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall forthwith be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be, and thereupon the commissioner shall certify and file in such court the record upon which such order sought to be enforced was issued. The court shall have jurisdiction to enter a judgment
enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order and decision of the commissioner or it may remand the proceedings to the commissioner for such further action as it may direct. The court shall consider and determine de novo all relevant issues, except issues of fact which were or could have been litigated in review proceedings before a circuit court under section eighteen of this article, and upon the request of the respondent, such issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury's findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the attorney general, attorneys appointed for the commissioner may appear for and represent him in any action to enforce an order assessing civil penalties under this subdivision.

(b) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule or regulation promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section thirteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty of this article, shall be assessed a civil penalty by the commissioner under subdivision (3), subsection (a) of this section, of not more than five thousand dollars, and for a second or subsequent violation assessed a civil penalty of not more than ten thousand dollars.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules or regulations promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty of this article, any director, officer or agent of such corporation who knowingly authorized, ordered or carried out such violation, failure or refusal, shall be subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan
or other document filed or required to be maintained pursuant
to this law or any order or decision issued under this law, shall
be guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not more than five thousand dollars or
imprisoned in the county jail not more than six months, or
both fined and imprisoned. The conviction of any person
under this subsection shall result in the revocation of any
certifications held by him under this chapter which certified
him or authorized him to direct other persons in coal mining
by operation of law and shall bar him from being issued any
such license under this chapter, except a miner’s certification,
for a period of not less than one year or for such longer period
as may be determined by the commissioner.

(e) Whoever wilfully distributes, sells, offers for sale,
introduces or delivers in commerce any equipment for use in
a coal mine, including, but not limited to, components and
accessories of such equipment, who wilfully misrepresents such
equipment as complying with the provisions of this law, or
with any specification or regulation of the commissioner
applicable to such equipment, and which does not so comply,
shall be guilty of a misdemeanor, and, upon conviction
thereof, shall be subject to the same fine and imprisonment
that may be imposed upon a person under subsection (d) of
this section.


(a) No person shall discharge or in any other way
discriminate against or cause to be discharged or discriminated
against any miner or any authorized representative of miners
by reason of the fact that he believes or knows that such miner
or representative (1) has notified the commissioner, his
authorized representative, or an operator, directly or
indirectly, of any alleged violation or danger, (2) has filed,
instituted or caused to be filed or instituted any proceeding
under this law, (3) has testified or is about to testify in any
proceeding resulting from the administration or enforcement
of the provisions of this law. No miner or representative shall
be discharged or in any other way discriminated against or
caused to be discriminated against because a miner or
representative has done (1), (2) or (3) above.

(b) Any miner or a representative of miners who believes
that he has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination, or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at his last address of record as reflected in the records of the department of energy shall be deemed adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested.

Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the miner the board shall not reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at the
request of the applicant, a sum equal to the aggregate amount of all costs and expenses including the attorney's fees as determined by the board to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.


In addition to such records as are specifically required by this law, every operator of a coal mine shall establish and maintain such records, make such reports, and provide such information, as the commissioner may reasonably require from time to time to enable him to perform his functions under this law. The director is authorized to compile, analyze, and publish, either in summary or detailed form, such reports or information so obtained. Except to the extent otherwise specifically provided by this law, all records, information, reports, findings, notices, orders, or decisions required or issued pursuant to or under this law may be published from time to time, may be released to any interested person, and shall be made available for public inspection.


The commissioner shall appoint a mine foreman examiner to examine and certify mine foremen-fire bosses, assistant mine foremen-fire bosses and mine examiners or fire bosses. Such mine foremen examiners shall be paid a minimum salary of thirty-one thousand thirty-two dollars per year.

§22A-1A-23. Duties of mine foreman examiner.

The duties of the mine foreman examiner shall be to:

(a) Prepare and conduct examinations of mine foremen, assistant mine foremen and fire bosses;

(b) Prepare and certify to the commissioner a register of all persons who successfully completed the examination with a passing grade of eighty percent.

§22A-1A-24. Place and time for examinations.

The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding
examinations, and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

§22A-1A-25. Preparation of examination; notice of intention to take examination; investigation of applicants.

The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered applicants for certification as mine foremen and fire bosses.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.


Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.

§22A-1A-27. Mine foreman examiner to certify successful applicants to director.

The mine foreman examiner shall certify to the director, on a form furnished by him, every person whose examination shall disclose his fitness for the duties of mine foreman, assistant mine foreman, and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.


The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as
prepared by the mine foreman examiner which shall be filed in the division as public documents.

§22A-1A-29. Withdrawal of certification.

(a) Charge of breach of duty.—A mine inspector, the director, or the commissioner may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to article one or two of this chapter. The charge shall state the name of the person charged, the duty or duties he is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

(b) Evaluation of charge by board of appeals.—Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of his receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the commissioner, the director, the representative of the miner or miners affected, and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed
which shall be open for public inspection.

(e) **Hearing.**—The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records, or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.

At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) **Failure to cooperate.**—Any person charged who shall, without just cause refuse or fail to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) **Penalties.**—The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged
party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed.—No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under chapter twenty-two-a of this code, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder shall be entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22A-1A-30. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.

Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

§22A-1A-31. Mine rescue stations; equipment.

The director is hereby authorized to purchase, equip and operate for the use of said division such mine rescue stations and equipment as he may deem necessary.


The director is hereby authorized to have trained and employed at the rescue stations, operated by the division within the state, such rescue crews as he may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

After the effective date of this article, it shall be the duty and responsibility of the division to see that all rescue teams be properly trained by a qualified instructor of the division.
or such persons who have a certificate of training from the Federal Mine Safety and Health Administration.

To qualify for membership of a mine rescue crew, an applicant shall be not more than fifty years of age and shall pass on at least an annual basis a physical examination by a licensed physician. A record that such examination was taken, together with pertinent data relating thereto, shall be kept on file by the operator, and a copy shall be furnished to the director. All rescue or recovery teams performing recovery work shall be under the jurisdiction of the division guided by the mine rescue apparatus and auxiliary equipment manual.

When engaged in rescue work required by an explosion, fire or other emergency at a mine, all members of mine rescue teams assigned to rescue operations shall, during the period of their rescue work, be employees of the operator of the mine where the emergency exists, and shall be compensated by the operator at the rate established in the area for such work. In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, members of mine rescue teams shall be protected by the workers' compensation subscription of such emergency employer.

During the recovery work and prior to entering any mine at the start of each shift, all rescue or recovery teams shall be properly informed of existing conditions and work to be performed by the designated company official in charge.

For every two teams performing rescue or recovery work underground, one six-member team shall be stationed at the mine portal.

Two-way communication and lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams, and no mine rescue team member shall advance more than one thousand feet inby the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, such rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That lifeline or its equivalent shall be provided inby each fresh air base for all mine rescue or recovery teams.
Each rescue or recovery team performing work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

A rescue or recovery team shall immediately return to the fresh air base when any team member’s atmospheric pressure depletes to sixty atmospheres.

§22A-1A-33. Mine rescue teams.

It shall be the duty of any mine operator employing fifty or more employees to have available for mine rescue work a trained mine rescue team, the members of which shall work in the general area of the mine. In the event of any fire, explosion or recovery operations in or about any mine the director is hereby authorized to call and assign any rescue team for the protection of employees and the preservation of property. The director also may assign mine rescue and recovery work to inspectors, instructors, or other qualified employees of the division as he may deem desirable.

§22A-1A-34. Mandatory safety programs; penalties.

(a) The commissioner, in consultation with the state board of coal mine health and safety, shall promulgate rules and regulations in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The regulations may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the commissioner.

(b) Within six months of the date when the regulations required in subsection (a), above, become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in accordance with such regulations. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director shall have ninety days to approve, reject or modify such program. If the program is
rejected, the director shall give the operator a reasonable time
to correct and resubmit such program. Each program which
is approved shall be reviewed, at least annually, by the
director. An up-to-date copy of each program shall be placed
on file in the division of mines and minerals and further copies
shall be made available to the miners of each mine and their
representatives. Each operator shall undertake all efforts
necessary to assure total compliance with the appropriate
safety program at each mine and shall fully implement all
portions of such program.

(c) Any person violating any provision of this section is
guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than one hundred nor more than one
thousand dollars, or imprisoned in the county jail for not more
than six months, or both fined and imprisoned.


1 The various provisions of this article shall be construed as
separable and severable, and should any of the provisions,
sentences, clauses, or parts thereof be construed or held
unconstitutional or for any reason be invalid, the remaining
provisions of this article shall not be thereby affected.

ARTICLE 2. UNDERGROUND MINE MAPS.

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and
certification; contents; extensions; repository; availability; traversing;
copies; archives; final survey and map; penalties.

§22A-2-2. Plan of ventilation; approval by director of the division of mines and
minerals.


§22A-2-5. Unused and abandoned parts of mine.


§22A-2-7. When underground mine foreman-fire boss required; assistants;
certification.

§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water;
man doors; instruction of apprentice miners.


§22A-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of
cages.

§22A-2-11 Boreholes.

§22A-2-12 Instruction of employees and supervision of apprentices; annual
examination of persons using flame safety lamps; records of
examination; maintenance of methane detectors, etc.

§22A-2-17. Ascertainment, record and removal of all dangers.
§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.
§22A-2-19. Death or resignation of mine foreman; successor.
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§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

1 The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of engineers, which exists by authority of section three, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the board of examiners of land surveyors as
provided by section three, article thirteen-a of said chapter thirty. To each map supervised by the engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the board of engineers, as provided in section nine, article thirteen of said chapter thirty or board of examiners of land surveyors as provided by section eleven, article thirteen-a of said chapter thirty. Every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his seal, in the following form:

"I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this State, and covers the period ending ___________________ .

______________________________________________________________
P. E. (Either Civil or Mining Engineer or Land Surveyor)."

The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

(1) Name and address of the mine;
(2) The scale and orientation of the map;
(3) The property or boundary lines of the mine;
(4) The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;
(5) All drill holes that penetrate the coalbed being mined;
(6) Dip of the coalbed;
(7) The outcrop of the coalbed within the bounds of the property assigned to the mine;
(8) The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
(9) The elevation of the floor at intervals of not more than two hundred feet in:
(a) At least one entry of each working section, and main and cross entries;

(b) The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and

(c) Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;

(10) Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply-pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;

(11) As far as practicable the outline of existing and extracted pillars;

(12) Entries and air courses with the direction of airflow indicated by arrows;

(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;

(14) Escapeways;

(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;

(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision (10) of this section;

(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;

(18) The abandoned portion or portions of the mine;

(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with
establishing or referencing mine elevation surveys;

- Mines above or below;
- Water pools above;
- The location of the principal streams and bodies of water on the surface;
- Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;
- The location of all high pressure pipelines, high voltage power lines and principal roads;
- The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;
- Where the overburden is less than one hundred feet, occupied dwellings; and
- Such other information as may be required under the federal act or by the department of mines.

The operator of every underground coal mine shall extend, or cause to be extended, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first day of July and the first day of January of each year. Such map shall be kept up to date by temporary notations, which shall include:

- The location of each working face of each working place;
- Pillars mined or other such second mining;
- Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and
- Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area
on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be promptly filed with the division of mines and minerals. The operator shall also furnish to persons expressly entitled thereto under the federal act, upon request, one or more copies of such maps and any revision and supplement thereof. Such map or revision and supplement thereof shall be kept confidential and its contents shall not be divulged to any other person, except to the extent necessary to carry out the provisions of the federal act and this chapter and in connection with the functions and responsibilities of the secretary of housing and urban development.

Surveying calculations and mapping of underground coal mines which were or are opened or reopened after the first of July, one thousand nine hundred sixty-nine, shall be done by the rectangular coordinate traversing method and meridians carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

Underground coal mines operating on the first of July, one thousand nine hundred sixty-nine, and not using the rectangular coordinate traversing method shall, within two years of such date, convert to this procedure for surveying calculations and mapping. Meridians shall be carried through and tied between at least two parallel entries of each development panel and panels or workings adjacent to mine boundaries or abandoned workings. These surveys shall originate from at
least three permanent survey monuments on the surface of the mine property. The monuments shall be clearly referenced and described in the coal mine operator's records. Elevations shall be tied to either the United States geological survey or the United States coast and geodetic survey bench mark system, be clearly referenced and described on such map.

The operator of such underground coal mine shall, by reasonable proof, demonstrate to the director or to any federal mine inspector concerned, at any time, that a diligent search was made for all existing and available maps and survey data for the workings on the adjoining properties. The operator shall further be able to show proof to the director or to any federal mine inspector concerned, that a suitable method was used to insure accuracy in the methods used in transposing other workings to the map of such mine.

There shall be an archive of underground coal mine maps maintained at the office of the director. The archive shall:

1. Be secured in a fireproof and burglarproof vault;
2. Have an appropriate map identification system; and
3. Have adequate map microfilming facilities.

Whenever an operator permanently closes or abandons an underground coal mine, or temporarily closes an underground coal mine for a period of more than ninety days, he shall promptly notify the division of mines and minerals and the federal mine inspector of the district in which such mine is located of such closure. Within sixty days of the permanent closure or abandonment of an underground coal mine, or, when an underground coal mine is temporarily closed, upon the expiration of a period of ninety days from the date of closure, the operator shall file with the division of mines and minerals and such federal mine inspector a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by a certified or professional engineer or licensed surveyor as aforesaid and shall be available for public inspection.

Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the division to copy or reproduce such material.
Any person who fails or refuses to discharge any duty imposed upon him by this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less that five hundred dollars nor more than one thousand dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the division of mines and minerals.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director, for his information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings, with their location and relative positions to adjacent developments; no such new or additional openings shall be made until approved by the director, in consultation with the deputy directors of permitting and safety, health and training. The director shall promptly approve any such plans submitted, if the proposed system of ventilation and ventilating equipment meet the requirements of this article.


(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director. In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or his management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is
restored and the mine examined by certified persons, mine
examiners, or other persons holding a certifcate to make
preshift examination.

(b) All main fans installed after the effective date of this
article shall be located on the surface in fireproof housings
offset not less than fifteen feet from the nearest side of the
mine opening, equipped with fireproof air ducts, provided with
explosion doors or a weak wall, and operated from an
independent power circuit. In lieu of the requirements for the
location of fans and pressure-relief facilities, a fan may be
directly in front of, or over a mine opening: Provided, That
such opening is not in direct line with possible forces coming
out of the mine if an explosion occurs: Provided, however,
That there is another opening having a weak-wall stopping or
explosion doors that would be in direct line with forces coming
out of the mine. All main fans shall be provided with pressure-
recording gauges or water gauges. A daily inspection shall be
made of all main fans and machinery connected therewith by
a certified electrician and a record, kept of the same in a book
prescribed for this purpose or by adequate facilities provided
to permanently record the performance of the main fans and
to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used
in lieu of or in conjunction with line brattice to provide
adequate ventilation to the working faces: Provided, That
auxiliary fans be so located and operated to avoid recirculation
of air at any time. Auxiliary fans shall be approved and
maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical
equipment in the place shall be stopped and the power
disconnected at the power source until ventilation in the
working place is restored. During such stoppage, the
ventilation shall be by means of the primary air current
conducted into the place in a manner to prevent accumulation
of methane.

(e) In places where auxiliary fans and tubing are used, the
ventilation between shifts, weekends and idle shifts shall be
provided to face areas with line brattice or the equivalent to
prevent accumulation of methane.

(f) If the air passing through the auxiliary fan or tubing
contains gas in excess of one percent, the current shall at once be switched off and the trailing cable shall forthwith be disconnected from the power supply until the place is pronounced safe.

(g) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(h) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he is not immediately available, a representative of the division. A duly authorized representative of the employees should be consulted if practical under the circumstances.


(a) The operator or mine foreman of every coal mine, whether worked by shaft, slope, or drift, shall provide and hereafter maintain for every such mine adequate ventilation. In all mines the quantity of air passing through the last open crosscut between the intake and return in any pair or set of entries shall be not less than nine thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. All working faces in a working section between the intake and return airway entries shall be ventilated with a minimum quantity of three thousand cubic feet of air per minute and as much more as is necessary to dilute and render harmless and carry away flammable and harmful gases. The quantity of air reaching the last crosscut in pillar sections may be less than nine thousand cubic feet of air per minute if at least nine thousand cubic feet of air per minute is being delivered to the intake of the pillar line. The air current shall under any conditions have a sufficient volume and velocity to reduce and carry away smoke from blasting and any flammable or harmful gases. All active underground working places in a mine shall be ventilated by a current of air containing not less than nineteen and five-tenths percent of oxygen, not more than
five-tenths percent of carbon dioxide, and no harmful quantities of other noxious or poisonous gases.

(b) Airflow shall be maintained in all intake and return air courses of a mine, and where multiple fans are used, neutral areas created by pressure equalization between main fans shall not be permitted. Production activities in working faces shall cease while tubing, line brattice, or other ventilation devices are being installed inby the machine operator.

(c) Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

(d) Brattice cloth used underground shall be of flame-resistant material. The space between the line brattice or other approved device and the rib shall be large enough to permit the flow of a sufficient volume and velocity of air to keep the working face clear of flammable, explosive, and noxious gases, dust and explosive fumes.

(e) Each working unit newly developed in virgin coal hereafter, shall be ventilated by a separate split of air: Provided, That areas already under development and in areas where physical conditions prevent compliance with this provision, the director may grant temporary relief from compliance until such time as physical conditions make compliance possible. The quantity of air reaching the last crosscut shall not be less than nine thousand cubic feet of air per minute and shall under any condition have sufficient volume and velocity to reduce and carry away smoke and flammable or harmful gases from each working face in the section.

(f) As working places advance, crosscuts for air shall be made not more than eighty feet apart. Where necessary to render harmless and carry away noxious or flammable gases, line brattice or other approved methods of ventilation shall be used so as to properly ventilate the face. All crosscuts between the main intake and return airways not required for passage
of air and equipment shall be closed with stoppings substantially built with incombustible or fire-resistive material so as to keep working places well ventilated. In mines where it becomes necessary to provide larger pillars for adequate roof support, working places shall not be driven more than two hundred feet without providing a connection that will allow the free flow of air currents. In such cases, a minimum of twelve thousand cubic feet of air a minute shall be delivered to the last open crosscut and as much more as is necessary to dilute and render harmless and carry away flammable and noxious gases.

(g) In special instances for the construction of sidetracks, haulageways, airways, or openings in shaft bottom or slope bottom layouts where the size and strength of pillars is important, the director may issue a permit approving greater distances. The permit shall specify the conditions under which such places may be driven.

(h) In all mines a system of bleeder openings on air courses designed to provide positive movement of air through and/or around abandoned or caved areas, sufficient to prevent dangerous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure shall be made a part of pillar recovery plans projected after the first day of July, one thousand nine hundred seventy-one.

(i) If a bleeder return is closed as a result of roof falls or water during pillar recovery operations, pillar operations may continue without reopening the bleeder return if at least twenty thousand cubic feet of air per minute is delivered to the intake of the pillar line.

(j) No operator or mine foreman shall permit any person to work where he is unable to maintain the quantity and quality of the air current as heretofore required: Provided, That such provisions shall not prohibit the employment of men to make place of employment safe.

(k) The ventilation of any mine shall be so arranged by means of air locks, overcasts, or undercasts, that the use of doors on passageways where men or equipment travel may be kept to a minimum. Where doors are used in a mine they shall be erected in pairs so as to provide a ventilated air lock unless the doors are operated mechanically.
(l) A crosscut shall be provided at or near the face of each entry or room before such places are abandoned.

(m) Overcasts or undercasts shall be constructed of incombustible material and maintained in good condition.

§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated. If such workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director, and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be deemed to be abandoned until such panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection or air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in a mine, except that such air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

MOVEMENT OF EQUIPMENT


Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel under the supervision of a certified foreman. When equipment is being transported or trammed, no person shall be permitted to be inby the equipment in the ventilating split that is passing over such equipment. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.
§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

(a) In every underground mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article nine, chapter twenty-two of this code as a mine foreman-fire boss. Each applicant for certification as a mine foreman-fire boss shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least five years' experience in the underground working, ventilation and drainage of a coal mine, which shall include at least eighteen months' experience on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical engineering or civil engineering and have had at least four years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine; and (3) have demonstrated his knowledge of dangerous mine gases and their detection, mine safety, first aid, safety appliances, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under article nine, chapter twenty-two of this code.

(b) In mines in which the operations are so extensive that the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, one or more assistant mine foreman-fire bosses may be designated. Such persons shall act under the instruction of the mine foreman-fire boss, who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the
provisions of article nine, chapter twenty-two of this code.

Each applicant for certification as assistant mine foreman-fire boss shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman-fire boss: Provided, That he shall at the time he is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical or civil engineering and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine.

(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman-fire boss cannot be discharged by one man, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman-fire boss' instructions and the mine foreman-fire boss shall be responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the division, but not to exceed a maximum of ninety days.

(e) After the first day of July, one thousand nine hundred seventy-four, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an assistant underground mine foreman-
After the first day of July, one thousand nine hundred seventy-four, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman-fire boss.

§22A-2-8. Duties; ventilation; loose coal, slate or rocks; props; drainage of water; man doors; instruction of apprentice miners.

(a) The duties of the mine foreman shall be to keep a careful watch over the ventilating apparatus, the airways, traveling ways, pumps and drainage. He shall see that, as the miners advance their excavations, proper breakthroughs are made so as to ventilate properly the mine; that all loose coal, slate and rock overhead in the working places and along the haulways are removed or carefully secured so as to prevent danger to persons employed in such mines, and that sufficient suitable props, caps, timbers, roof bolts, or other approved methods of roof supports are furnished for the places where they are to be used and delivered at suitable points. The mine foreman shall have all water drained or hauled out of the working places where practicable, before the miners enter, and such working places shall be kept dry as far as practicable while the miners are at work. It shall be the duty of the mine foreman to see that proper crosscuts are made, and that the ventilation is conducted by means of such crosscuts through the rooms by means of checks or doors placed on the entries or other suitable places, and he shall not permit any room to be opened in advance of the ventilation current. The mine foreman or other certified persons designated by him, shall measure the air current with an anemometer or other approved device at least weekly at the inlet and outlet at or near the faces of the advanced headings, and shall keep a record of such measurements in a book or upon a form prescribed by the director. Signs directing the way to outlets or escapeways shall be conspicuously placed throughout the mine.

(b) After the first day of July, one thousand nine hundred seventy-one, hinged man doors, at least thirty inches square
or the height of the coal seam, shall be installed between the intake and return at intervals of three hundred feet when the height of the coal is below forty-eight inches and at intervals of five hundred feet when the height of the coal is above forty-eight inches.

(c) The duties of the mine foreman and assistant mine foreman shall include the instruction of apprentice miners in the hazards incident to any new work assignments; to assure that any individual given a work assignment in the working face without prior experience on the face is instructed in the hazards incident thereto and supervised by a miner with experience in the tasks to be performed.


The mine foreman shall require that all slopes, incline planes and haulage roads used by any person in the mine shall conform to the provisions of this article.

§22A-2-10. Signals on haulways; lights at mouth and bottom of shaft; operation of cages.

On all haulways, where hauling is done by machinery of any kind, the mine foreman shall provide for a proper system of signals, and a conspicuous light or approved trip reflector on the rear of every trip or train of cars when in motion in a mine. When hoisting or lowering of miners occurs in the morning before daylight, or in the evening after darkness, at any mine operated by shaft, the mine foreman shall provide and maintain at the shaft mouth a light of stationary character, sufficient to show the landing and all surrounding objects distinctly, and sufficient light of a stationary character shall be located at the bottom of the shaft so that persons coming to the bottom may clearly discern the cages and other objects contiguous thereto. The mine foreman shall require that no cages on which miners are riding shall be lifted or lowered at a rate of speed greater than one thousand feet per minute and that no mine cars, either empty or loaded, shall be hoisted while miners are being lowered, and no cage having an unstable self-dump platform shall be used for the carrying of miners unless the same is provided with some device by which it may be securely locked when miners are being hoisted or lowered into the mine: Provided, however, That during the initial development of a mine, and only until the shafts are
joined, miners shall be permitted to ride cages with one empty car which has been bolted or strapped to the cage.


It shall further be the duty of the mine foreman to have boreholes kept not less than twenty feet in advance of the face, one each twenty feet on sides of the working places that are being driven toward and in dangerous proximity to an abandoned mine or part of a mine which may contain inflammable gases or which is filled with water. These holes shall be drilled whenever any working place in an underground mine approaches within fifty feet of abandoned workings in such mine, as shown by surveys made and certified by a competent engineer or surveyor, or within two hundred feet of any abandoned workings of such mine which cannot be inspected.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.

The division shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to such employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person shall be first employed as a miner. It shall further be the duty and responsibility of the division to see that such course shall be given to all persons as above provided after their first being employed in any mine in this state.

It shall be the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine shall, before beginning work therein, be instructed in the particular danger incident to his work in such mine, and be furnished a copy of the mining laws and rules of such mine. It shall be the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article ten, chapter twenty-two of this code to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his assistant
mine foreman and they shall be responsible for his safety. The mine foreman or assistant mine foreman may delegate the supervision of an apprentice to an experienced miner, but the foreman and his assistant mine foreman shall remain responsible for the apprentice. During the first ninety days of employment in a mine, the apprentice shall work within sight and sound of the mine foreman, assistant mine foreman, or an experienced miner, and in such a location that the mine foreman, assistant mine foreman or experienced miner can effectively respond to cries for help of the apprentice. Such location shall be on the same side of any belt, conveyor or mining equipment.

Persons whose duties require them to use a flame safety lamp or other approved methane detectors shall be examined at least annually as to their competence by a qualified official from the division and a record of such examination shall be kept by the operator and the division. Flame safety lamps and other approved methane detectors shall be given proper maintenance and shall be tested before each working shift. Each operator shall provide for the proper maintenance and care of the permissible flame safety lamp or any other approved device for detecting methane and oxygen deficiency by a person trained in such maintenance, and, before each shift, care shall be taken to ensure that such lamp or other device is in a permissible condition.


Before the beginning of any shift upon which they shall perform supervisory duties, the mine foreman or his assistant shall review carefully and countersign all books and records reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which the operator is required to keep under this chapter. The mine foreman, assistant mine foreman or fire boss shall visit and carefully examine each working place in which miners will be working at the beginning of each shift before any face equipment is energized and shall examine each working place in the mine at least once every two hours each shift while such miners are at work in such places, and shall direct that each working place shall be secured by props, timbers, roof bolts, or other approved methods of roof support or both where necessary to the end that the working places shall be made safe. The mine foreman
or his assistants upon observing a violation or potential violation of article two of this chapter or any regulation or any plan or agreement promulgated or entered into thereunder shall arrange for the prompt correction thereof. The foreman shall not permit any miner other than a certified foreman, fire boss, assistant mine foreman, assistant mine foreman-fire boss or pumper to be on a working section by himself. Should the mine foreman or his assistants find a place to be in a dangerous condition, they shall not leave the place until it is made safe, or shall remove the persons working therein until the place is made safe by some competent person designated for that purpose.

He shall place his initials, time and the date at or near each place he examines. He shall also record any dangerous conditions and practices found during his examination in a book provided for that purpose.


It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine all working places under his supervision for hazards at least once every two hours during each coal-producing shift, or more often if necessary for safety. In all mines such examinations shall include tests with an approved detector for methane and oxygen deficiency and may also include tests with a permissible flame safety lamp. It shall also be his duty to remove as soon as possible after its discovery any accumulations of explosive or noxious gases in active workings, and where practicable, any accumulations of explosive or noxious gases in the worked out and abandoned portions of the mine. It shall be the duty of the mine foreman, assistant mine foreman or fire boss to examine each mine within three hours prior to the beginning of a shift and before any miner in such shift enters the active workings of the mine.


The mine foreman shall direct and see that all dangerous places and the entrance or entrances to worked out and abandoned places in all mines are properly dangered off across the openings.


The mine foreman shall also, each day, read carefully and
countersign with ink or indelible pencil all reports entered in the record book of the fire bosses, and he shall supervise the fire boss or fire bosses, except as hereinafter provided in section twenty-one of this article.

§22A-2-17. Ascertainment, record and removal of all dangers.

The mine foreman shall give prompt attention to the removal of all dangers reported to him by his assistants, the fire boss, or any other person working in the mine, and in case it is impracticable to remove the danger at once, he shall notify all persons whose safety is menaced thereby to remain away from the area where the dangerous condition exists. He or his assistants or certified persons designated by him, shall at least once each week travel and examine the air courses, roads and openings that give access to old workings or falls, and make a record of the condition of all places where danger has been found, with ink or indelible pencil in a book provided for that purpose.

§22A-2-18. Duty of mine foreman to notify operator when unable to comply with law; duty of operator.

The mine foreman shall notify, in writing, the operator or superintendent of the mine, and the director, of his inability to comply with any of the requirements of this law, and it shall then become the duty of such operator or superintendent promptly to attend to the matter complained of by the mine foreman so as to enable him to comply with the provisions hereof. Every operator of a mine shall furnish all supplies necessary for the mine foreman to comply with the requirements of this law after being requested to do so in writing by the mine foreman.

§22A-2-19. Death or resignation of mine foreman; successor.

In case of the death or resignation of a mine foreman, the superintendent or manager shall appoint a certified man to act as mine foreman.

FIRE BOSS

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

It shall be the duty of the fire boss, or a certified person
acting as such, to prepare a danger signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his shift or prior to his entering the mine to make his examination and, except for those persons already on assigned duty, no person except the mine owner, operator, or agent, and only then in the case of necessity, shall pass beyond this danger signal until the mine has been examined by the fire boss or other certified person and the mine or certain parts thereof reported by him to be safe. When reported by him to be safe, the danger sign or color thereof shall be changed to indicate that the mine is safe in order that employees going on shift may begin work. Each person designated to make such fire boss examinations shall be assigned a definite underground area of such mine, and, in making his examination shall examine all active working places in the assigned area and make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test the roof, face, and ribs in the working places and on active roadways and travelways, approaches to abandoned workings and accessible falls in active sections. He shall place his initials and the date at or near the face of each place he examines. Should he find a condition which he considers dangerous to persons entering such areas, he shall place a conspicuous danger sign at all entrances to such place or places. Only persons authorized by the mine management to enter such places for the purpose of eliminating the dangerous condition shall enter such place or places while the sign is posted. Upon completing his examination he shall report by suitable communication system or in person the results of this examination to a certified person designated by mine management to receive and record such report, at a designated station on the surface of the premises of the mine or underground, before other persons enter the mine to work in such coal-producing shifts. He shall also record the results of his examination with ink or indelible pencil in a book prescribed by the director kept for such purpose at a place on the surface of the mine designated by mine management. All records of daily and weekly reports, as prescribed herein, shall be open for inspection by interested persons.

§22A-2-21. Fire bosses to have no superior officers.

In the performance of the duties devolving upon fire bosses,
or certified persons acting as such, they shall have no superior
officers, but all the employees working inside of such mine or
mines shall be subordinate to them in their particular work.

§22A-2-22. Unlawful to enter mine until fire boss reports it safe;
exceptions.

No person shall enter such mine or mines for any purpose
at the beginning of work upon shift therein until such signal
or warning has been given by the fire boss or bosses as to
the safety thereof, as by statute provided, except under the
direction of the fire boss or bosses, and then for the purpose
of assisting in making the mine safe: Provided, however, That
miners regularly employed on a shift during which the mine
is being preshift examined by a fire boss or certified person
shall be permitted to leave or enter the mine in the
performance of their duties.

§22A-2-23. Authority of fire boss to perform other duties.

Notwithstanding any other provision in this article con-
tained, any person who holds a certificate issued by the
division certifying his competency to act as fire boss may
perform the duties of a fire boss and any other duties,
statutory or otherwise, for which he is qualified, in the same
mine or section and on the same day or shift.

COAL DUST AND ROCK DUST

§22A-2-24. Control of coal dust; rock dusting.

(a) In all mines, dangerous accumulations of fine, dry coal
and coal dust shall be removed from the mine, and all dry
and dusty operating sections and haulageways and conveyors
and back entries shall be rock dusted or dust allayed by such
other methods as may be approved by the director.

(b) All mines or locations in mines that are too wet or too
high in incombustible content for a coal dust explosion to
initiate or propagate are not required to be rock dusted during
the time any of these conditions prevail. Coal dust and other
dust in suspension in unusual quantities shall be allayed by
sprinkling or other dust allaying devices.

(c) In all dry and dusty mines or sections thereof, rock dust
shall be applied and maintained upon the roof, floor and sides of all operating sections, haulageways and parallel entries connected thereto by open crosscuts. Back entries shall be rock dusted. Rock dust shall be so applied to include the last open crosscut of rooms and entries, and to within forty feet of faces. Rock dust shall be maintained in such quantity that the incombustible content of the mine dust that could initiate or propagate an explosion shall not be less than sixty-five percent, but the incombustible content in back entries shall not be less than eighty percent.

(d) Rock dust shall not contain more than five percent by volume of quartz or free silica particles and shall be pulverized so that one hundred percent will pass through a twenty mesh screen and seventy percent or more will pass through a two hundred mesh screen.

ROOF—FACE—RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

(a) Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems of each coal mine and approved by the director, in consultation with the deputy directors of permitting and safety, health and training, shall be adopted and set out in printed form before new operations. The safety committee of the miners of each mine where such committee exists shall be afforded the opportunity to review and submit comments and recommendations to the director and operator concerning the development, modification or revision of such roof control plans. The plan shall show the type of support and spacing approved by the director. Such plan shall be reviewed periodically, at least every six months by the director, taking into consideration any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished to the director or his authorized representative and shall be available to the miners
(b) The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mine, as the director may prescribe, an ample supply of suitable materials of proper size with which to secure the roof thereof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. When overhangs or brows occur along rib lines they shall be promptly removed. All sections shall be maintained as near as possible on center. Except in the case of recovery work, supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set temporary supports on a working section without the direct immediate supervision of a certified miner.

(c) The operator of a mine has primary responsibility to prevent injuries and deaths resulting from working under unsupported roof. Every operator shall require that no person may proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(d) The immediate supervisor of any area in which unsupported roof is located shall not direct or knowingly permit any person to proceed beyond the last permanent support unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent support in violation of a direct or standing order of an operator, a foreman or an assistant foreman, unless adequate temporary support is provided or temporary support is not required under an approved roof control plan and absence of such support will not pose a hazard to the miner.

(f) The immediate supervisor of each miner who will be
engaged in any activity involving the securing of roof or rib
during a shift shall, at the onset of any such shift, orally review
those parts of the roof control plan relevant to the type of
mining and roof control to be pursued by such miner. The
time and parts of the plan reviewed shall be recorded in a log
book kept for such purpose. Each log book entry so recorded
shall be signed by such immediate supervisor making such
entry.

(g) Any action taken against a miner due in whole or in
part to his refusal to work under unsupported roof, where such
work would constitute a violation of this section, is prohibited
as an act of discrimination pursuant to section twenty, article
one-a of this chapter. Upon a finding of discrimination by the
appeals board pursuant to subsection (b), section twenty,
article one-a of this chapter, the miner shall be awarded by
the appeals board all reliefs available pursuant to subsections
(b) and (c), section twenty, article one-a of this chapter.

§22A-2-26. Roof support; examination and testing; correction of
dangerous conditions; roof bolt recovery.

(a) The method of mining followed in any coal mine shall
not expose the miner to unusual dangers from roof falls. The
width of roadways shall not exceed fourteen feet unless
additional support is added cross sectional. During the
development of intersections, the roof between the tangents of
the arches in the entry or room shall be supported with
artificial roof supports prior to the development of such
intersections. All areas where the arch is broken shall be
considered as having unsupported roof and such roof should
have artificial roof supports installed prior to any other work
being performed in the area.

(b) Where miners are exposed to danger from falls of roof,
face, and ribs, the operator shall examine and test the roof
face, and ribs before any work or machine is started, and as
frequently thereafter as may be necessary to insure safety.
When dangerous conditions are found, they shall be corrected
immediately.

(c) Roof bolts shall not be recovered where complete
extraction of pillars is attempted, where adjacent to clay veins
or at the locations of other irregularities, whether natural or
otherwise, that induce abnormal hazards. Where roof bolt
recovery is permitted, it shall be conducted only in accordance with methods prescribed in the approved roof control plan, and shall be conducted by experienced miners and only where adequate temporary support is provided.

§22A-2-27. Canopies or cabs; electric face equipment.

An authorized representative of the director may require in any coal mine where the height of the coal bed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies or cabs to protect the miners operating such equipment from roof falls and from rib and face rolls.


The use of underground mining equipment of a size that does not conform to the height of the seam being mined, which creates unsafe working conditions for the miner operating the equipment or others, is prohibited. The board of coal mine health and safety shall promulgate such rules and regulations as are necessary to effectuate this section.

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

Permissible explosives or permissible blasting devices only shall be used in blasting coal or other material in underground coal mines. It shall be unlawful to have, use or store any nonpermissible explosive or nonpermissible blasting devices in any coal mine or on the premises of the mine, without a permit from the director.


Separate surface magazines shall be provided for storage of explosives, detonators and blasting heater elements. Surface magazines shall be constructed of incombustible materials, be reasonably bulletproof and with no metal or sparking material exposed inside the magazine. Surface magazines shall be provided with doors constructed of at least one-fourth inch steel plate lined with a two-inch thickness of wood or the equivalent, properly screened ventilators, and with no openings except for entrances and ventilation, and shall be kept locked.
securely when unattended. The area for a distance of at least
twenty-five feet in all directions shall be kept free of materials
of a combustible nature; suitable warning signs shall be
erected, so located that a bullet passing directly through the
face of the sign will not strike the magazine. The location of
magazines shall be not less than two hundred feet from any
mine openings, occupied buildings or public roads unless
barricaded. If magazines are illuminated electrically, the lamps
shall be of vapor-proof type, properly installed and wired, and
smoking and open lights shall be prohibited in or near any
magazine.


Individual containers used to carry permissible explosives or
detonators shall be constructed of substantial, nonconductive
materials, kept closed and maintained in good condition.

When explosives or detonators are transported underground
in cars moved by means of locomotives, ropes, or other motive
power, they shall be in substantially covered cars or in special
substantially built covered containers used specifically for
transporting detonators or explosives. Any container used for
transportation or storage of explosives shall be properly
identified or marked. Explosives or detonators shall not be
hauled into or out of a mine within five minutes preceding
or following a man trip. Where explosives and detonators are
transported underground by belts, they shall be handled in the
following manner: In the original and unopened cases, in
special closed cases constructed of nonconductive material, or
in suitable, individual containers. Clearance requirements shall
be a minimum of eighteen inches; stop controls shall be
provided at loading and unloading points, and an attendant
shall supervise the loading and unloading. Neither explosives
nor detonators shall be transported on flight or shaking
conveyors, mechanical loading machines, locomotives,
scrapers, cutting machines, drill trucks, or any self-propelled
mobile equipment. If explosives and detonators are trans-
ported in the same explosives car or in the same special
container, they shall be separated by at least four inches of
hardwood partition or the equivalent; the bodies of such cars
or containers shall be constructed or lined with nonconductive
material. No hand loader shall take into any mine any larger
quantity of explosives or detonators than he may reasonably
30 expect to use in any one shift.


Explosives and detonators stored underground shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside, and be located at least fifteen feet from roadways and power wires in a well rock-dusted location, protected from falls of roof. If not kept in separate boxes or magazines not less than five feet apart, they may be kept in the same box or magazine if separated by at least a four-inch hardwood partition or the equivalent. Not more than a forty-eight hour supply of explosives or detonators shall be stored underground in section boxes or magazines. These boxes or magazines shall be kept at least one hundred feet from the faces and out of the direct line of blasting.

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified "shot firer" designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drill holes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drill holes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drill holes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to
the working the face until the smoke has been cleared away
and then he shall make a careful examination of the working
face before leaving the place or before performing any other
work in the place.

(b) Multiple shooting in coal or rock or both is authorized
only under permit issued by the director. Permission to shoot
more than ten shots simultaneously may be granted by the
director only after consultation with interested persons, and
the deputy director of safety, health and training, and such
shooting will be performed by special methods and under
precautions prescribed by the director. All multiple shooting
in bottom or roof rock shall be performed in intake air, except
by special permit from the director, after consultation with
interested persons and the deputy director of safety, health and
training, as heretofore provided. Multiple blasting of more
than ten shots performed under any permit granted by the
director under this section shall be done only on noncoal-
producing shifts or idle days, except as may be provided as
a condition of the permit granted.

c) Regular or short interval delay detonators may be used
for blasting purposes with written permission from the director
after consultation with the deputy director of safety, health
and training. Regular delay detonators shall not be used for
blasting coal, but may be used for grading above or below coal
seams and during shaft, slope, tunnel work and in faults or
wants. Where short-interval delay detonators are permitted by
said director to be used, the shot firing circuit must be tested
with a blasting galvanometer before firing, and the leg wires
connected in series. No instantaneous, regular, or zero-delay
detonators are to be fired in conjunction with short-interval
delay detonators. The delay interval between dependent rows
must not be less than twenty-five milliseconds or more than
one hundred milliseconds, and the entire series of any one
round shall nor provide a delay of more than five hundred
milliseconds between the first and last shot. The total number
of charged holes to be fired during any one round must not
exceed the limit permitted by the director. Misfires must be
tested with a blasting galvanometer before removing.

d) Electrical equipment shall not be operated in the face
areas, and only work in connection with timbering and general
safety shall be performed while boreholes are being charged.
Shots shall be fired promptly after charging. Mudcaps (adobes) or any other unconfined shots shall not be permitted in any coal mine. No solid shooting shall be permitted without written permission of the division.

(e) Blasting cables shall be well insulated and shall be as long as may be necessary to permit persons authorized to fire shots to get in a safe place out of the line of fire. The cable, when new, shall be at least one hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

§22A-2-34. Misfires of explosives.

(a) Where misfires occur with electric detonators, a waiting period of at least five minutes shall elapse before anyone returns to the shot. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

(b) Explosives shall be removed by firing a separate charge at least two feet away from and parallel to the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

(c) A careful search of the working place, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole, to recover any undetonated explosive.

(d) The handling of a misfired shot shall be under the direct supervision of the mine foreman or a certified person designated by him.

§22A-2-35. Other blasting devices.

(a) The provisions governing the handling, storage, transportation and use of permissible explosives shall apply to all other blasting devices employing a heater element when used underground.

(b) Where compressed air is used for blasting, the airlines shall be grounded at the compressor and, if practical, at other
low-resistant ground connections along the lines. They shall not be connected in any way to rails, waterlines, or other electric return conductors and shall be adequately insulated and protected where they cross electric wires, underneath track, or at places where equipment passes over or under. Steel, copper, or other airlines connected therewith shall not be handled or repaired when air pressure is in the line. Shutoff valves shall be installed every thousand feet in all compressed-air blasting lines and at all points where branch lines leave the main line and blowdown valves shall not be less than fifty feet from the face and shall be around a corner.

(c) When misfires occur with any other blasting devices, they shall be handled in a safe manner and under the supervision of the mine foreman or a certified person designated by him.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he shall be readily available at all times when men are in the mine. He shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, and after the hoist has been idle for one hour or more before hoisting or lowering men; there shall be cut out around the side of the hoisting shaft or driven through
the solid stata at the bottom thereof, a traveling way, not less
than five feet high and three feet wide to enable a person to
pass the shaft in going from one side of it to the other without
passing over or under the cage or other hoisting apparatus.
Positive stop blocks or derails shall be placed near the top and
at all intermediate landings of slopes and surface inclines and
at approaches to all shaft landings. A waiting station with
sufficient room, ample clearance from moving equipment, and
adequate seating facilities shall be provided where men are
required to wait for man trips or man cages, and the miners
shall remain in such station until the man trip or man cage
is available.

(b) No operator of any coal mine worked by shaft, slope
or incline, shall place in charge of any engine or drum used
for lowering or hoisting persons employed in such mine any
but competent and sober engineers or drum runners; and no
engineer or drum runner in charge of such machinery shall
allow any person, except such as may be designated for this
purpose by the operator, to interfere with any part of the
machinery; and no person shall interfere with any part of the
machinery; and no person shall interfere with or intimidate the
engineer or drum runner in the discharge of his duties. Where
the mine is operated or worked by shaft or slope, a minimum
space of two and one-half square feet per person shall be
available for each person on any cage or car where men are
transported. In no instance shall more than twenty miners be
transported on a cage or car without the approval of the
director, in consultation with the deputy director of safety,
health and training. No person shall ride on a loaded cage or
car in any shaft, slope, or incline: Provided, That this shall
not prevent any trip rider from riding in the performance of
his authorized duties. No engineer shall be required for
automatically operated cages, elevators, or platforms. Cages
and elevators shall have an emergency power source unless
provided with other escapeway facilities.

(c) Each automatic elevator shall be provided with a
telephone or other effective communication system by which
aid or assistance can be obtained promptly.

(d) A "stop" switch shall be provided in the automatic
elevator compartment that will permit the elevator to be
stopped at any location in the shaft.
TRANSPORTATION

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

(a) The roadbed, rails, joints, switches, frogs and other elements of all haulage roads shall be constructed, installed and maintained in a manner consistent with speed and type of haulage operations being conducted to ensure safe operation. Where transportation of personnel is exclusively by rail, track shall be maintained to within five hundred feet of the nearest working face.

(b) Track switches, except room and entry development switches, shall be provided with properly installed throws, bridle bars and guard rails; switch throws and stands, where possible, shall be placed on the clearance side.

(c) Haulage roads on entries developed after the first day of July, one thousand nine hundred seventy-one, shall have a continuous, unobstructed clearance of at least twenty-four inches from the farthest projection of any moving equipment on the clearance side.

(d) On haulage roads where trolley lines are used, the clearance shall be on the side opposite the trolley lines.

(e) On the trolley wire or "tight" side, after the effective date of this article, there shall be at least twelve inches of clearance from the farthest projection of any moving equipment.

(f) Warning lights or reflective signs or tapes shall be installed along haulage roads at locations of abrupt or sudden changes in the overhead clearance.

(g) The clearance space on all haulage roads shall be kept free of loose rock, coal, supplies or other material: Provided, That not more than twenty-four inches need be kept free of such obstructions.

(h) Ample clearance shall be provided at all points where supplies are loaded or unloaded along haulage roads or conveyors, which in no event shall be less than twenty-four inches.

(i) Shelter holes shall be provided along haulage entries driven after the first day of July, one thousand nine hundred
seventy-one, where locomotive, rope or animal haulage is used.
Such shelter holes shall be spaced not more than one hundred
feet apart; they shall be on the side of the entry opposite the
trolley wire: Provided, That where belt haulage and secondary
track haulage are located in the same entry, shelter holes may
be on the trolley wire and feeder wire side if the trolley wire
and feeder wire are guarded in a manner approved by the
director.

(j) Shelter holes made after the effective date of this article
shall be at least five feet in depth, not more than four feet
in width, and as high as the traveling space. Room necks and
crosscuts may be used as shelter holes even though their width
exceeds four feet.

(k) Shelter holes shall be kept clear of refuse and other
obstructions.

(l) After the effective date of this article, shelter holes shall
be provided at switch throws and manually operated
permanent doors.

(m) No steam locomotive shall be used in mines where
miners are actually employed in the extraction of coal, but this
shall not prevent operation of a steam locomotive through any
tunnel haulway or part of a mine that is not in actual
operation and producing coal.

(n) Underground equipment powered by internal combus-
tion engines using petroleum products, alcohol, or any other
compound shall not be used in a coal mine.

(o) Locomotives, personnel carriers, mine cars, supply cars,
shuttle cars, and all other haulage equipment shall be
maintained in a safe operating condition. Each locomotive,
personnel carrier, barrier tractor and other related equipment
shall be equipped with a suitable lifting jack and handle. An
audible warning device and headlights shall be provided on
each locomotive and each shuttle car. All other mobile
equipment, using the face areas of the mine, purchased after
the first day of July, one thousand nine hundred seventy-one,
shall be provided with a conspicuous light or other approved
device so as to reduce the possibility of collision.

(p) No persons other than those necessary to operate a trip
or car shall ride on any loaded car or on the outside of any
car. Where pusher locomotives are not used, the locomotive operator shall have an assistant to assist him in his duties.

(q) The pushing of trips, except for switching purposes, is prohibited on main haulage roads: Provided, That nothing herein shall prohibit the use of a pusher locomotive to assist the locomotive pulling a trip. Motormen and trip riders shall use care in handling locomotives and cars. It shall be their duty to see that there is a conspicuous light on the front and rear of each trip or train of cars when in motion: Provided, That trip lights need not be used on cars being shifted to and from loading machines, on cars being handled at loading heads during gathering operations at working faces, or on trips being pulled by animals. No person except the operator or his assistant shall ride on locomotives or loaded cars. An empty car or cars shall be used to provide a safe distance between the locomotive and the material car when rail, pipe or long timbers are being hauled. A safe clearance shall be maintained between the end car of trips placed on side tracks and moving traffic. On haulage roads the clearance point shall be marked with an approved device.

(r) No motorman, trip rider or brakeman shall get on or off cars, trips or locomotives while they are in motion, except that a trip rider or brakeman may get on or off the rear end of a slowly moving trip or the stirrup of a slowly moving locomotive to throw a switch, align a derail or open or close a door.

(s) Flying or running switches and riding on the front bumper of a car or locomotive are prohibited. Back poling shall be prohibited except with precaution to the nearest turning point (not over eighty feet), or when going up extremely steep grades and then only at slow speed. The operator of a shuttle car shall face in the direction of travel except during the loading operation when he shall face the loading machine.

(t) (1) A system of signals, methods or devices shall be used to provide protection for trips, locomotives and other equipment coming out onto tracks used by other equipment.

(2) In any coal mine where more than three hundred fifty tons of coal are produced on any shift in each twenty-four hour period, a dispatcher shall be on duty when there are
movements of track equipment underground, including time when there is no production of coal. Such traffic shall move only at the direction of the dispatcher.

(3) The dispatcher's only duty shall be to direct traffic. Where a dispatcher is employed, no person shall move a locomotive, personnel carrier or self-propelled equipment on or onto haulageways without instructions from the dispatcher.

(4) Any dispatcher's station provided after the effective date of this article shall be on the surface.

(5) All self-propelled track equipment shall be equipped with two-way communications.

(u) Motormen shall inspect locomotives, and report any mechanical defects found to the proper supervisor before a locomotive is put in operation.

(v) A locomotive following another trip shall maintain a distance of at least three hundred feet from the rear end of the trip ahead, unless such locomotive is coupled to the trip ahead.

(w) Positive stopblocks or derails shall be installed on all tracks near the top and at landings of shafts, slopes, and surface inclines. Positive-acting stopblocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

(x) Shuttle cars shall not be altered by the addition of sideboards so as to inhibit the view of the operator.

(y) Mining equipment shall not be parked within fifteen feet of a check curtain or fly curtain.

§22A-2-38. Transportation of miners by cars; self-propelled equipment; belts.

(a) Man trips shall be pulled, unless self-propelled, at safe speeds consistent with the condition of roads and type of equipment used, but not to exceed twelve miles an hour. Each man trip shall be under the charge of a certified person or other competent person designated by a mine foreman or assistant mine foreman. It shall be operated independently of any loaded trip of coal or other heavy material, but may transport tools, small machine parts and supplies. When mine
(a) Cars are used for man trips, a locomotive shall be used on each end of the trip.

(b) Cars on the man trip shall not be overloaded, and sufficient cars in good mechanical condition shall be provided. Sufficient space shall be afforded so that no miner shall have to be transported in a hazardous position.

(c) No person shall ride under the trolley wire unless the man cars used are suitably covered and insulated. No person shall ride on loaded timber cars, loaded supply trucks, empty timber cars or empty supply trucks which are not equipped with side guards, on top of locomotives, on chain conveyors, inside shuttle cars, on the tops of machinery or equipment, or on the sides of machinery or equipment, except for operators of such machinery or equipment.

(d) Miners shall not load or unload before the cars in which they are to ride, or are riding, come to a full stop. Miners shall proceed in an orderly manner to and from man trips.

(e) When belts are used for transporting miners, a minimum clearance of eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring and other objects. Visible reflectors shall be placed where projected equipment, cap pieces, overhead cables, wiring or other pieces cross the belt line. Where the height of the coal seam permits, the clearance shall not be less than twenty-four inches.

(f) The belt speed shall not exceed two hundred fifty feet per minute where the minimum overhead clearance is eighteen inches, or three hundred feet per minute where the minimum overhead clearance is twenty-four inches, while miners are loading, unloading, or being transported. A signaling system or method shall be provided for stopping the belt and miners shall ride not less than six feet apart.

(g) An assistant mine foreman or some other person designated by the mine foreman shall supervise the loading and unloading of belts and man trips. Where miners are required to cross over belts, adequate and safe facilities shall be provided.

(h) Positive-acting stop controls shall be installed along all belt conveyors used to transport miners, and such controls
shall be readily accessible, and maintained so that the belt can be stopped or started at any location.

(i) Belt conveyors used for man trips shall be stopped while men are loading or unloading.

(j) There shall be at least thirty-six inches of side clearance where miners board or leave such belt conveyors.

(k) Adequate illumination including colored lights or reflective signs shall be installed at all loading and unloading stations. Such colored lights and reflective signs shall be so located as to be observable to all persons riding the belt conveyor.

(l) Telephone or other suitable communications shall be provided at points where miners are regularly loaded on or unloaded from belt conveyors.

(m) After supplies have been transported on man trip cars, such cars shall be examined for unsafe conditions prior to the transportation of miners.

(n) While trackmen are working on haulageways, the dispatcher, or if there is no dispatcher, such other person responsible for communications with haulage crews shall give notice to haulage crews to maintain traffic under a slow and safe operating speed at the point of construction or repair.


(a) On or after the first day of July, one thousand nine hundred seventy-one, all conveyor belts acquired for use underground shall be flame-resistant conveyor belts.

(b) A clear travelway at least twenty-four inches wide shall be provided on both sides of all belt conveyors installed after the first day of July, one thousand nine hundred seventy-one. Where roof supports are installed within twenty-four inches of a belt conveyor, a clear travelway at least twenty-four inches wide shall be provided on the side of such support farthest from the conveyor.

(c) On belt conveyors that do not transport men, stop and start controls shall be installed at intervals not to exceed one thousand feet. Such controls shall be properly installed and positioned so as to be readily accessible.
(d) Persons shall not cross moving belt conveyors, except where suitable crossing facilities are provided.

(e) All belt conveyors shall be inspected for frozen rollers, rock falls, and fires, following the last production shift each week, also before holidays, vacation periods, and each production shift, with records kept of daily inspection.

(f) Deluge-type water sprays, water sprinklers, dry chemical sprinkler system or foam generators (designed to be automatically activated in the event of a fire or rise in the temperature at or near the belt drive) shall be installed at each main and secondary conveyor drive.

(g) All underground belt conveyors shall be equipped with slippage and sequence switches.

(h) Telephones or other suitable communications shall be provided at points where supplies are regularly loaded or unloaded from the belt conveyors.

(i) After supplies have been transported on belt conveyors, such belts shall be examined for unsafe conditions prior to the transportation of miners.

ELECTRICITY


Operators of coal mines in which electricity is used as a means of power shall comply with the following provisions:

(1) All surface transformers, unless of a construction which will eliminate shock hazards, or unless installed at least eight feet above ground, shall be enclosed in a house or surrounded by a fence at least six feet high. If the enclosure is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

(2) Underground transformers shall be air cooled or cooled with noninflammable liquid or inert gas.

(3) Underground stations containing circuit breakers filled with inflammable liquids shall be put on a separate split of air or ventilated to the return air, and shall be of fireproof construction.

(4) Transformers shall be provided with adequate overload
protection.

(5) "Danger -- High Voltage" signs with the voltage indicated shall be posted conspicuously on all transformer enclosures, high-potential switchboards and other high-potential installations.

(6) Dry insulating platforms of rubber or other suitable nonconductive material shall be kept in place at each switchboard and at stationary machinery where shock hazards exist.

(7) Capacitors used for power factor connection shall be noninflammable liquid filled. Suitable drain-off resistors or other means to protect miners against electric shock following removal of power shall be provided.

(8) All unattended underground loading points where electric driven hydraulic systems are used shall utilize a fireproof oil or emulsion.

(9) Before electrical changes are made to permissible equipment for use in a mine, they shall be approved by the director.

(10) Reverse current protection shall be provided at storage battery charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

(11) In all mines all junction or distribution boxes used for making multiple power connections inby the last open crosscut shall be permissible.

(12) All hand-held electric drills, blower and exhaust fans, electric pumps, and such other low horsepower electric face equipment which are taken into or used inby the last open crosscut of any coal mine shall be permissible.

(13) All electric face equipment which is taken into or used inby the last open crosscut of any coal mine shall be permissible.

(14) In mines operated in coal seams which are located at elevations above the water table, the phrase "coal seams above the water table" means coal seams in a mine which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.
(15) The operator of each coal mine shall maintain in permissible condition all electric face equipment, which is taken into or used in by the last open crosscut of any mine.

(16) Except where permissible power connection units are used, all power-connection points out by the last open crosscut shall be in intake air.

(17) All power circuits and electric equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for trouble shooting or testing.

(18) Energized trolley wires may be repaired only by a person trained to perform electrical work and to maintain electrical equipment and the operator of a mine shall require that such persons wear approved and tested insulated shoes and wireman's gloves.

(19) No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons who installed them, or, if such persons are unavailable, by persons authorized by the operator or his agent.

(20) All electric equipment shall be examined weekly, tested, and properly maintained by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric equipment, such equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept and made available to an authorized representative of the director and to the miners in such mine.

(21) All electric conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that a rise in temperature resulting from normal operation will not damage the insulating material.

(22) All electrical connections or splices in conductors shall
be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wire shall be reinsulated at least to the same degree of protection as the remainder of the wire.

(23) Cables shall enter metal frames of motors, splice boxes, and electric compartment only through proper fittings. When insulated wire, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

(24) All power wire (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-installed insulators and shall not contact combustible material, roof or ribs.

(25) Power wires and cables, including, but not limited to, phone communication and control wires, except trolley wires, trolley feeder wires and bare signal wires, shall be insulated adequately and fully protected. The provisions of this subdivision shall not become effective until the first day of January, one thousand nine hundred seventy-eight.

(26) Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.

(27) Incandescent lamps installed along haulageways and at other locations shall not contact combustible material, and if powered from trolley or direct current feeder circuits, need not be provided with separate short circuits or overload protection, if the lamp is not more than eight feet in distance from such circuits.

(28) In all main power circuits, disconnecting switches shall be installed underground within five hundred feet of the bottoms of shafts and boreholes through which main power circuits enter the underground area of the mine and within five hundred feet of all other places where main power circuits enter the underground area of the mine.

(29) All electric equipment shall be provided with switches
or other controls that are safely designed, constructed and installed.

(30) Each underground, exposed power conductor that leads underground shall be equipped with suitable lightning arrestors of approved type within one hundred feet of the point where the circuit enters the mine. Lightning arrestors shall be connected to a low-resistance grounding medium on the surface which shall be separated from neutral ground by a distance of not less than twenty-five feet.

(31) Except for areas of a coal mine inby the last open crosscut, incandescent lamps may be used to illuminate underground areas. When incandescent lamps are used in a track entry or belt entry or near track entries to illuminate special areas other than structures, the lamps shall be installed in weatherproof sockets located in positions such that the lamps will not come in contact with any combustible material. Lamps used in all other places must be of substantial construction and be fitted with a glass enclosure.

(32) An authorized representative of the director may require in any mine that electric face equipment be provided with devices that will permit the equipment to be deenergized quickly in the event of an emergency.

(33) An authorized representative of the director shall require manually operated emergency stop switches, designed to deenergize the traction motor circuit when the contractors or controller fail to open, to be installed on all battery powered tractors, taken into or used inby the last open crosscut of any entry or room.

(34) Trailing cables used in coal mines shall meet the requirements for flame-resistant cables.

(35) Short circuit protection for trailing cables shall be provided by an automatic circuit breaker or other no less effective device approved by the director of adequate current-interrupting capacity in each ungrounded conductor. Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.
(36) When two or more trailing cables junction to the same distribution center, means shall be provided to assure against connecting a trailing cable to the wrong size circuit breaker.

(37) One temporary splice may be made in any trailing cable. Such trailing cable may only be used for the next twenty-four hour period. No temporary splice shall be made in a trailing cable within twenty-five feet of the machine, except cable reel equipment. Temporary splices in trailing cables shall be made in a workmanlike manner and shall be mechanically strong and well insulated. Trailing cables or hand cables which have exposed wires or which have splices that heat or spark under load shall not be used. As used in this section, the term “splice” means a mechanical joining of one or more conductors that have been severed.

(38) When permanent splices in trailing cables are made, they shall be:

(A) Mechanically strong with adequate electrical conductivity and flexibility,

(B) Effectively insulated and sealed so as to exclude moisture, and

(C) Vulcanized or otherwise treated with suitable materials to provide flame-resistant qualities and good bonding to the outer jacket.

(39) Trailing cables shall be clamped to machines in a manner to protect the cables from damage and to prevent strain on the electrical connections. No cables will be hung in a manner which will damage the insulation or conductors.

(40) Trailing cables shall be adequately protected to prevent damage by mobile equipment.

(41) Trailing cable and power cable connections to junction boxes and to electrical equipment shall not be made or broken under load.

(42) All metallic sheaths, armors and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded by methods approved by an authorized representative of the director.

(43) Except where waived by the director, metallic frames,
casings and other enclosures of electric equipment that can become alive through failure of insulation or by contact with energized parts shall be grounded, and on or before the first day of January, one thousand nine hundred seventy-eight, shall have a ground monitoring system.

(44) In instance where single-phase 110-220 volt circuits are used to feed electrical equipment, the only method of grounding that will be approved is the connection of all metallic frames, casings and other enclosure of such equipment to a separate grounding conductor which establishes a continuous connection to a grounded center tap of the transformer.

(45) The attachment of grounding wires to a mine tract or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection.

(46) The frames of all offtrack direct-current machines and the enclosures of related detached components shall be effectively grounded or otherwise maintained at no less safe voltages.

(47) Installation of silicon diodes shall be restricted to electric equipment receiving power from a direct-current system with one polarity grounded. Where such diodes are used on circuits having a nominal voltage rating of two hundred fifty, they must have a forward current rating of four hundred amperes or more, and have a peak inverse voltage rating of four hundred or more. Where such diodes are used on circuits having nominal voltage rating of five hundred fifty, they must have a forward current rating of two hundred fifty amperes or more, and have a peak inverse voltage rating of eight hundred or more.

(48) In addition to the grounding diode, a polarizing diode must be installed in the machine control circuit to prevent operation of the machine when the polarity of a trailing cable is reversed.

(49) When installed on permissible equipment, all grounding diodes, over-current devices, and polarizing diodes must be placed in explosion-proof compartments.

(50) High-voltage lines, both on the surface and under-
ground, shall be deenergized and grounded before work is performed on them, except that repairs may be permitted, in the case of energized surface high-voltage lines, if such repairs are made by a qualified person in accordance with procedures and safeguards, including, but not limited to, a requirement that the operator of such mine provide, test and maintain protective devices in making such repairs.

(51) When two or more persons are working on an energized high-voltage surface line simultaneously, and any one of them is within reach of another, such persons shall not be allowed to work on different phases or on equipment with different potentials.

(52) All persons performing work on energized high-voltage surface lines shall wear protective rubber gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective devices worn by a person assigned to perform repairs on high-voltage surface lines shall be worn continuously from the time he leaves the ground until he returns to the ground, and, if such devices are employed for extended periods, such person shall visually inspect the equipment assigned him for defects before each use, and, in no case, less than twice each day.

(53) Disconnecting or cutout switches on energized high-voltage surface lines shall be operated only with insulated sticks, fuse tongs or pullers which are adequately insulated and maintained to protect the operator from the voltage to which he is exposed. When such switches are operated from the ground, the person operating such devices shall wear protective rubber gloves.

(54) Solely for purposes of grounding ungrounded high-voltage power systems, grounded messenger wires used to suspend the cables of such systems may be used as a grounding medium.

(55) When not in use, power circuits underground shall be deenergized on idle days and idle shifts, except that rectifiers and transformers may remain energized.

(56) High-voltage circuits entering the underground area of any coal mine shall be protected by suitable circuit breakers.
of adequate interrupting capacity. Such breakers shall be equipped with devices to provide protection against undervoltage, grounded phase, short circuit and overcurrent.

(57) Circuit breakers protecting high-voltage circuits entering an underground area of any coal mine shall be located on the surface and in no case installed either underground or within a drift.

(58) One circuit breaker may be used to protect two or more branch circuits, if the circuit breaker is adjusted to afford overcurrent protection for the smallest conductor.

(59) The grounding resistor, where required, shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to not more than one hundred volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(60) High-voltage circuits extending underground and supplying portable mobile or stationary high-voltage equipment shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the source transformers, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all high-voltage equipment supplied power from the circuit, except that the director or his authorized representative may permit ungrounded high-voltage circuits to be extended underground to feed stationary electrical equipment if such circuits are either steel armored or installed in grounded, rigid steel conduit throughout their entire length, and upon his finding that such exception does not pose a hazard to the miners. Within one hundred feet of the point on the surface where high-voltage circuits enter the underground portion of the mine, disconnecting devices shall be installed and so equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected, except that the director or his authorized representative may permit such devices to be installed at a greater distance from such area of the mine if he determines, based on existing physical conditions, that such installation
will be more accessible at a greater distance and will not pose any hazard to the miners.

(61) High-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity, and the fail-safe ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other no less effective device approved by the director or his authorized representative to assure such continuity.

(62) Underground high-voltage cables used in resistance grounded systems shall be equipped with metallic shields around each power conductor with one or more ground conductors having a total cross-sectional area of not less than one half the power conductor, and with an insulated internal or external conductor not smaller than No. 10 (A.W.G.) for the ground continuity check circuit.

(63) All such cables shall be adequate for the intended current and voltage. Splices made in such cables shall provide continuity of all components.

(64) Single-phase loads, such as transformer primaries, shall be connected phase-to-phase.

(65) All underground high-voltage transmission cables shall be installed only in regularly inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are six and one-half feet or more above the floor or rail, securely anchored, properly insulated, and guarded at ends, and covered, insulated, or placed to prevent contact with trolley wires and other low-voltage circuits.

(66) Disconnecting devices shall be installed at the beginning of branch lines in underground high-voltage circuits and equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when the switches are open.

(67) Circuit breakers and disconnecting switches underground shall be marked for identification.
(68) In the case of high-voltage cables used as trailing cables, temporary splices shall not be used and all permanent splices shall be made in accordance with the manufacturers’ specifications.

(69) Frames, supporting structures and enclosures of stationary, portable, or mobile underground high-voltage equipment and all high-voltage equipment supplying power to such equipment receiving power from resistance grounded systems shall be effectively grounded to the high-voltage ground.

(70) Low- and medium-voltage power circuits serving three-phase alternating current equipment serving portable or mobile equipment shall be protected by suitable circuit breakers of adequate interrupting capacity which are properly tested and maintained as prescribed by the director. Such breakers shall be equipped with devices to provide protection against under voltage, grounded phase, short circuit and overcurrent.

(71) Power centers and portable transformers shall be deenergized before they are moved from one location to another, except that, when equipment powered by sources other than such centers or transformers is not available, the director may permit such centers and transformers to be moved while energized, if he determines that another equivalent or greater hazard may otherwise be created, and if they are moved under the supervision of a qualified person, and if such centers and transformers are examined prior to such movement by such person and found to be grounded by methods approved by an authorized representative of the director and otherwise protected from hazards to the miner. A record shall be kept of such examinations. High-voltage cables, other than trailing cables, shall not be moved or handled at any time while energized, except that when such centers and transformers are moved while energized as permitted under this section, energized high-voltage cables attached to such centers and transformers may be moved only by a qualified person and the operator of such mine shall require that such person wear approved and tested insulated wireman’s gloves.

(72) Low- and medium-voltage three-phase alternating-current circuits used underground shall contain either a direct...
or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend along with the power conductors and serve as a grounding conductor for the frames of all the electrical equipment supplied power from the circuit, except that the director or his authorized representative may permit under-ground low- and medium-voltage circuits to be used under-ground to feed such stationary electrical equipment if such circuits are either steel armored or installed in grounded rigid steel conduit throughout their entire length. The grounding resistor, where required, shall be of the proper ohmic value to limit the ground fault current to twenty-five amperes. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(73) Low- and medium-voltage resistance grounded systems serving portable or mobile equipment shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken, or other not less effective device approved by the director or his authorized representative to assure such continuity, except that an extension of time, not in excess of twelve months, may be permitted by the director on a mine-to-mine basis if he determines that such equipment is not available. Cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors shall be broken last when the coupler is being uncoupled.

(74) Disconnecting devices shall be installed in conjunction with circuit breakers serving portable or mobile equipment to provide visual evidence that the power is connected.

(75) Circuit breakers shall be marked for identification.

(76) Single-phase loads shall be connected phase-to-phase.

(77) Trailing cables for medium-voltage circuits shall include grounding conductors, a ground check conductor, and grounded metallic shields around each power conductor or a ground metallic shield over the assembly, except that on equipment employing cable reels, cables without shields may
be used if the insulation is rated two thousand volts or more.

(78) Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than two thousand feet and near the beginning of all branch lines.

(79) Trolley wires and trolley feeder wires shall be provided with overcurrent protection.

(80) Trolley wires and trolley feeder wires, high-voltage cables, and transformers shall not be located within fifteen feet of the last open crosscut and shall be kept at least one hundred fifty feet from pillar workings.

(81) Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:

(A) At all points where men are required to work or pass regularly under the wires.

(B) On both sides of all doors and stoppings.

(C) At man-trip stations.

(82) Temporary guards shall be provided where trackmen and other persons work in close proximity to trolley wires and trolley feeder wires.

(83) Adequate precaution shall be taken to ensure that equipment being moved along haulageways will not come in contact with trolley wires or trolley feeder wires.

(84) Trolley and feeder wires shall be installed as follows: Where installed on permanent haulage, they shall be:

(A) At least six inches outside the track gauge line.

(B) Kept taut and not permitted to touch the roof, rib or crossbars. Particular care shall be taken where they pass through door openings to preclude bare wires from coming in contact with combustible material.

(C) Installations of trolley wire hangers shall be provided within three feet of each splice in a trolley wire.
§22A-2-41. Bonding track used as power conductor.
Where track is used as a power conductor, rails and switches on main entries shall be bonded and cross-bonded in such manner as to assure adequate return. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than two hundred feet: Provided, however, That rail joints in such secondary haulage roads need not be bonded where a copper feeder adequate in size parallels the track and is electrically connected thereto at intervals of not more than two hundred feet by cross bonds.

§22A-2-42. Telephone service or communication facilities.
Telephone service or equivalent two-way communication facilities shall be provided in all mines at least one of which shall be in service at all times as follows:
(a) A telephone or equivalent two-way communication facility shall be located on the surface within five hundred feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where a responsible person who is always on duty when miners are underground can hear the facility and respond immediately in the event of an emergency. “Two-way communication facility” shall mean a system maintained to allow voice contact to come in and out of the working section at all times.
(b) (1) Telephones or equivalent two-way communication facilities provided at each working section shall be located not more than five hundred feet outby the last open crosscut and not more than eight hundred feet from the farthest point of penetration of the working places on such section.
(2) The incoming communication signal shall activate an audible alarm, distinguishable from the surrounding noise level, or a visual alarm that can be seen by a miner regularly employed on the working section.
(3) If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off: Provided, That where trolley phones and telephones
are both used, an alternate source of power for the trolley phone system is not required.

(4) Telephones or equivalent two-way communication facilities shall be maintained in good operating condition at all times. In the event of any failure in the system that results in loss of communication, repairs shall be started immediately, and the system restored to operating condition as soon as possible.

(5) Where required by the director, trucks used for haulage of coal, miners, or supplies by an operator shall be equipped with two-way communication instruments.

(c) On or after the first day of January, one thousand nine hundred seventy-eight, unless the director for good cause grants a waiver, all such telephones or equivalent two-way communications shall be connected to regular telephonic and other means of communication available in the community so that in the event of an emergency, emergency medical attendants or other personnel can communicate from within the mine directly to health care facilities.

(d) Telephone lines and cables shall be carried on insulators installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately. Lightning arrestors shall be provided at the points where telephone circuits enter the mine.


(a) Electric equipment shall not be taken into or operated in any place where methane can be detected with a flame safety lamp or other approved methane detector at any point not less than eight inches from the roof, face, or rib.

(b) In all mines, electric haulage locomotives operated from trolley wire and other electrical equipment or devices which may ignite gas shall not be used in return air, unless permission is granted by the director for a specified area. For the purpose of this provision, air used to ventilate a section of a mine shall not be considered return air until such time as the air has ventilated all of the workings in the section.

(c) No person shall be placed in charge of a coal-cutting machine in any mine who is not a qualified person, capable
of determining the safety of the roof and sides of the working places and of detecting the presence of explosive gas, unless they are accompanied by a certified or qualified person who has passed such an examination.

(d) In any mine no machine shall be brought in by the last breakthrough next to the working face until the machine man shall have made an inspection for gas in the place where the machine is to work. If explosive gas in excess of one percent is found in the place, the machine shall not be taken in until the danger is removed.

(e) In working places a safety lamp, or other suitable approved apparatus for the detection of explosive gas, shall be provided for use with each mining machine when working, and should any indication of explosive gas in excess of one percent appear on the flame of the safety lamp, or on other apparatus used for the detection of explosive gas, the person in charge shall immediately stop the machine, cut off the current at the nearest switch and report the condition to the mine foreman or supervisor. The machine shall not again be started in such place until the condition found has been corrected and been pronounced safe by a certified person.

(f) No electric equipment shall be operated in a mine for a longer period than twenty minutes without an examination as above described being made for gas; and if gas is found in excess of one percent, the current shall at once be switched off the machine, and the trailing cable shall forthwith be disconnected from the power supply until the place is pronounced safe.

(g) Machine runners and helpers shall use care while operating mining machines. They shall not permit any person to remain near the machine while it is in operation. They shall examine the roof of the working place to see that it is safe before starting to operate the machine. They shall not move the machine while the cutter chain is in motion.

§22A-2-44. Hand-held electric drills and rotating tools; trailing cables.

Electric drills and other electrically operated rotating tools intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases
4 the switch and shall be equipped with friction or safety
5 clutches.

§22A-2-45. Installation of lighting.
1 Electric lights or other approved methods of lighting shall
2 be installed so that they do not come in contact with
3 combustible materials, and the wires shall be supported by
4 suitable insulators and fastened securely to the power
5 conductors.

§22A-2-46. Welding and cutting.
1 (a) A record shall be kept of oxygen and gas tanks or
2 cylinders taking into a mine and the date shall be recorded
3 when they are removed from the mine. No more tanks or
4 cylinders than necessary to perform efficiently the work shall
5 be permitted underground at one time.
6
7 (b) Propane torches may be used in lieu of blowtorches.

8 (c) Welding and cutting may be done in mines: Provided,
9 That all equipment and gauges are maintained in safe
10 condition and not abused, that suitable precautions are taken
11 against ignition of methane, coal dust, or combustible
12 materials, that means are provided for prompt extinguishment
13 of fires accidentally started, and that only persons who have
14 demonstrated competency in welding and cutting are entrusted
15 to do this work. Adequate eye protection shall be used by all
16 persons doing welding or cutting, and precautions shall be
17 taken to prevent other persons from exposure that might be
18 harmful to their eyes.

19 (d) Transportation of oxygen and gas tanks or cylinders
20 shall be permitted on self-propelled machinery or belt
21 conveyors specially equipped for safe holding of the containers
22 in transportation. In no instance shall such transportation be
23 permitted in conjunction with any man trip.

24 (e) Empty oxygen and gas tanks or cylinders shall be
25 marked "empty" and shall be removed from the mine promptly
26 in safe containers provided for transportation of the same.

27 (f) When tanks and cylinders are not in use and when they
28 are being transported, valve protection caps and plugs shall
29 be placed on all tanks or cylinders for which caps and plugs
30 are available. No oxygen tanks, gas tanks or cylinders shall
be transported with the hoses and gauges attached thereto.

(g) In all mines a certified person shall examine for gas with permissible flame safety lamps or other approved detectors before and during welding or cutting in, at or near working faces. The safety of the equipment and methods used in such cases shall be subject to approval of the director. If equipment is mobile, it shall be removed outby the last open break-through before cutting and welding may be performed on such equipment.

§22A-2-47. Responsibility for care and maintenance of face equipment.

Mine operators shall maintain face equipment in safe operating condition. Equipment operators shall exercise reasonable care in the operation of the equipment entrusted to them and shall promptly report defects known to them.

§22A-2-48. When respiratory equipment to be worn; control of dust.

Miners exposed for short periods to gas-, dust-, fume-, and mist-inhalation hazards shall wear permissible respiratory equipment. Dust shall be controlled by the use of permissible dust collectors or other approved methods.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

(a) The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks while such machines are parked or being trammed. Loading machines shall not be trammed with loading arms in motion, except when loading materials.

(b) Belt, chain or rope drives and the moving parts of machinery which are within seven feet of the floor, ground or platform level, unless isolated, shall be guarded adequately. Repair pits shall be kept covered or guarded at all times when not in use. Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Guards which have been removed shall be replaced before the
machinery is again put into use. Provision shall be made to prevent accumulations of spilled lubricants.

(c) Mechanically operated grinding wheels shall be equipped with safety washers, substantial retaining hoods, and, unless goggles are used, eye shields.

(d) No person shall stand along the side of the boom, or pass or stand along the loading head or cutting head, on a continuous miner or loading machine in operation.

(e) Braking devices shall be guarded to prevent accidental release. When required by the director, track-mounted mobile equipment shall be equipped with workable sanding devices.

(f) On and after the first day of January, one thousand nine hundred seventy-eight, all battery powered equipment shall be equipped with an under-voltage indicator which will indicate when the voltage is less than three fourths of its rated capacity, at which time such equipment shall be withdrawn from use except for the purpose of returning the vehicle to the recharging station.

SURFACE STRUCTURES AND PRACTICES

§22A-2-50. Procurement of dust-tight electrical equipment; fireproof construction; dust control; repairs; welding; handrails and toeboards; protection of personnel on conveyors; back guards on ladders; walkways or safety devices around thickeners.

(a) In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction or enclosed with reasonably dust-tight housings or enclosures.

(b) After the first day of July, one thousand nine hundred seventy-one, all structures erected on the surface within one hundred feet of any mine opening shall be of fireproof construction.

(c) Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations.

(d) Where coal is dumped at or near air intake openings, reasonable provisions shall be made to prevent dust from entering the mine.
(e) Where repairs are being made to the plant, proper scaffolding and proper overhead protection shall be provided for workmen wherever necessary.

(f) Welding shall not be done in dusty atmospheres and dusty locations shall be well cleaned, and fire-fighting apparatus shall be readily available during welding.

(g) Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are excepted from such requirement.

(h) Elevated platforms and stairways shall be provided with toeboards where necessary, and they shall be kept clear of refuse and ice and maintained in good repair.

(i) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickeners shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.


Good housekeeping shall be practiced in and around mine buildings and yards. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails and broken glass.

§22A-2-52. Storage of flammable liquids in lamphouse.

Naphtha or other flammable liquids in lamphouses shall be kept in approved containers or other safe dispensers.

§22A-2-53. Smoking in and around surface structures.

Smoking in or about surface structures shall be restricted to places where it will not cause fire or an explosion.
MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas.

Employees handling railroad cars shall have access to and use an approved distinct audible signaling device to give warning when cars are in motion. Where required by rule or regulation, safety belts shall be worn and properly attached by all car droppers handling railroad cars. All dumping ramps shall be of a sufficient width to ensure safe operation of vehicles used thereon.

§22A-2-54. Duties of persons subject to article; rules and regulations of operators.

(a) It shall be the duty of the operator, mine foreman, supervisors, mine examiners, and other officials to comply with and to see that others comply with the provisions of this article.

(b) It shall be the duty of all employees and checkweighmen to comply with this article and to cooperate with management and the department of energy and division of mines and minerals in carrying out the provisions hereof.

(c) Reasonable rules and regulations of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this article and other applicable laws shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles, or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment.
11 (d) Safety hats and safety-toed shoes shall be worn by all
12 persons while in or around a mine.
13
14 (e) Approved safety goggles or eyeshields shall be worn by
15 all persons while being transported in open-type man trips.
16
17 (f) A self-rescue device approved by the director shall be
18 worn by each person underground or kept within his
19 immediate reach, and such device shall be provided by the
20 operator. The self-rescue device shall be adequate to protect
21 such miner for one hour or longer. Each operator shall train
22 each miner in the use of such device, and refresher training
23 courses for all underground employees shall be held during
24 each calendar year.


1 All surface mine employees shall be required to wear safety
2 helmets when working in areas where there is a possible danger
3 of head injury from impact, or from falling or flying objects,
4 or from electrical shock and burns: Provided, That such
5 employees shall not be required to wear such safety helmet
6 while operating machinery equipped with a falling object
7 protective structure which satisfies the impact and penetration
8 requirements established by the American National Standards
9 Institute, Safety Requirements for Industrial Head Protection,
10 Standard Z89.1, unless the director finds that the dangers set
11 forth herein may be present: Provided, however, That such
12 employees shall be required to wear safety helmets while not
13 operating such equipment including period of travel to and
14 from such equipment.
15
16 The safety helmets required hereunder shall meet the
17 specifications for such helmets as prescribed by the mine health
18 and safety administration.

§22A-2-56. Checking systems.

1 Each mine shall have a check-in and check-out system that
2 will provide positive identification upon the person of every
3 individual underground. An accurate record of the people in
4 the mine, which shall consist of a written record, a check
5 board, or a time-clock record, shall be kept on the surface in
6 a place that will not be affected in the event of an explosion.
7 Said record shall bear a number or name identical to the
8 identification check fastened to the belt of all persons going
§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches, etc.

(a) No miner, worker or other person shall knowingly injure any shaft, lamp, instrument, air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the places worked by safety lights, or disturb any part of the machinery or appliances, open a door closed for directing ventilation and not close it again, or enter any part of a mine against caution, or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of the provisions of this section.

(b) Open lights, smoking, and smokers' articles, including matches, are prohibited in all mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars, cigarettes, or any device for making lights or fire not authorized or approved. The operator shall at frequent intervals search, or cause to be searched, any person, including his clothing and material belongings, entering or about to enter the mine, or inside the mine, to prevent such person from taking or carrying therein any of the above-mentioned articles.

(c) No person shall at any time carry into any mine any intoxicants or enter any mine while under the influence of intoxicants.


(a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples, and preparation plants, substations, hoist rooms and compressor stations.

(b) Fire drills and demonstration of various types of available fire-fighting equipment shall be held for employees at least every six months.

(c) The location of pipelines, location of valves, and fire taps shall be shown on a map of the mine and kept available at the mine office at all times.

(d) Each coal mine shall be provided with suitable fire-fighting equipment adapted for the size and condition of the mine. Fire-fighting equipment required under this article shall meet the following requirements:
(1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of fifty pounds per square inch.

(2) A portable water car shall be of at least one thousand gallons capacity, and shall have at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty pounds per square inch.

(3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing capacity equivalent to that of a portable water car.

(4) A portable foam-generating machine shall have facilities and equipment for supplying the machine with thirty gallons of water per minute at thirty pounds per square inch for a period of thirty-five minutes.

(5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing a nominal weight of five pounds of dry powder and enough expellant to apply the powder; or a foam-producing type containing at least two and one-half gallons of foam-producing liquid and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and purpose shall be used after the first day of July, one thousand nine hundred seventy-one, and all new portable fire extinguishers acquired for use in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.

(6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that the test flame shall be applied to the outer surface rather than to an open end. The bursting pressure shall be at least four times higher than the static water at the mine location; the maximum water pressure in the hose nozzle shall not exceed 100 p.s.i.g.

(e) Each working section of coal mines producing three hundred tons or more per shift shall be provided with two portable fire extinguishers and two hundred forty pounds of bagged rock dust; waterlines shall extend to each section.
loading point and be equipped with enough fire hose to reach each working face unless the section loading point is provided with one of the following: (1) Two portable water cars or (2) two portable chemical cars, or (3) one portable water car or one portable chemical car and either a portable foam-generating machine or a portable high-pressure rock-dusting machine, fitted with at least two hundred fifty feet of hose and supplied with at least sixty sacks of rock dust.

(f) In all coal mines, waterlines shall be installed parallel to the entire length of belt conveyors and shall be equipped with fire hose outlets with valves at three-hundred-foot intervals along each belt conveyor and at tailpieces. At least five hundred feet of fire hose with fittings suitable for connection with each belt conveyor waterline system shall be stored at strategic locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor entry belt as long as the outlets project into the belt conveyor entry. Each working section of coal mines producing less than three hundred tons of coal per shift shall be provided with two portable fire extinguishers, two hundred forty pounds of bagged rock dust and at least five hundred gallons of water and at least three pails of ten-quart capacity. In lieu of the five hundred gallon water supply, a waterline with sufficient hose to reach the working places, a portable water car of five hundred fifty gallons capacity, or a portable all-purpose dry powder chemical car of at least one hundred twenty-five pounds capacity may be provided.

(g) In mines producing three hundred tons of coal or more per shift, waterlines shall be installed parallel to all haulage tracks using mechanized equipment in the track or adjacent entry and shall extend to the loading point of each working section. Waterlines shall be equipped with outlet valves at intervals of not more than five hundred feet, and five hundred feet of fire hose with fittings suitable for connection with such waterlines shall be provided at strategic locations. Two portable water cars, readily available, may be used in lieu of waterlines prescribed under this subsection.

(h) In mines producing less than three hundred tons of coal per shift, there shall be provided at five-hundred-foot intervals in all main and secondary haulage roads: (1) A tank of water of at least fifty-five gallon capacity with at least three pails
of not less than ten-quart capacity, or (2) not less than two
hundred forty pounds of bagged rock dust.

(i) Each track or off-track locomotive, self-propelled man-
trip car, or personnel carrier shall be equipped with one
portable fire extinguisher.

(j) Two portable fire extinguishers shall be provided at each
permanent electrical installation. One portable fire extin-
guisher and two hundred forty pounds of rock dust shall be
provided at each temporary electrical installation.

(k) Two portable fire extinguishers and two hundred forty
pounds of rock dust shall be provided at each permanent
underground oil storage station. One portable fire extinguisher
shall be provided at each working section where twenty-five
gallons or more of oil are stored in addition to extinguishers
required under subsection (e) of this section.

(l) One portable fire extinguisher or two hundred forty
pounds of rock dust and water shall be provided at locations
where welding, cutting, or soldering with arc or flame is being
done.

(m) At each wooden door through which power lines pass
there shall be one portable fire extinguisher or two hundred
forty pounds of rock dust within twenty-five feet of the door
on the intake air side.

(n) At each mine producing three hundred tons of coal or
more per shift, there shall be readily available the following
materials at locations not exceeding two miles from each
working section:

(1) One thousand board feet of brattice boards
(2) Two rolls of brattice cloth
(3) Two handsaws
(4) Twenty-five pounds of 8°nails
(5) Twenty-five pounds of 10°nails
(6) Twenty-five pounds of 16°nails
(7) Three claw hammers
(8) Twenty-five bags of wood fiber plaster or ten bags of
(9) Five tons of rock dust.

(10) At each mine producing less than three hundred tons of coal per shift, the above materials shall be available at the mine: Provided, however, That the emergency materials for one or more mines may be stored at a central warehouse or building supply company and such supply must be the equivalent of that required for all mines involved and within one hour's delivery time from each mine. This exception shall not apply where the active working sections are more than two miles from the surface.

§22A-2-59. First-aid equipment.

(a) Each operator of an underground coal mine shall maintain a supply of first-aid equipment at each of the following locations:

1. At the mine dispatcher's office and on the surface in close proximity to the mine entry.

2. At the bottom of each regularly traveled slope or shaft; however, where the bottom of such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies may be maintained on the surface at the entrance of the mine.

3. At a point in each working section not more than five hundred feet outby the active working face or faces.

(b) The first-aid equipment required to be maintained shall include at least the following:

1. One stretcher

2. One broken-back board

3. Twenty-four triangular bandages

4. Eight four-inch bandage compresses

5. Sixteen two-inch bandage compresses

6. Twelve one-inch adhesive compresses

7. One foille

8. Two cloth blankets

9. One rubber blanket
(10) Two tourniquets
(11) One one-ounce bottle of aromatic spirits of ammonia
(12) Two inflatable plastic arm splints
(13) Two inflatable plastic leg splints
(14) Six small splints, metal or wooden
(15) Two cold packs

(c) All first-aid supplies required to be maintained under the section shall be stored in suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to the miners.

(d) No first-aid material shall be removed or diverted without authorization, except in case of accident in or about the mine.

(e) On all occasions when a person becomes sick or injured underground to the extent that he must go to the surface, he shall be accompanied by one or more persons.

§22A-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first-aid equipment; use of special capsule for removal of personnel.

(a) No operator or mine foreman of any coal mine shall employ any person to work in such mine, or permit any persons to be in the mine for the purpose of working therein unless they are provided with two openings or outlets to each seam, separated by natural strata, such openings to be not less than three hundred feet apart, if the mine be worked by shaft; if the mine be worked by shaft and slope, such openings shall be separated by one hundred feet of natural strata; and not less than fifty feet apart at the outlets, if worked by slope or drift; but this requirement of a distance of three hundred feet between openings or outlets to shaft mines shall not apply where such openings or outlets have been made prior to the first day of July, one thousand nine hundred seventy-one.

(b) At least two separate and distinct travelable passageways designated as escapeways shall be maintained to ensure passage at all times to any person, including disabled persons. The escapeway openings to the surface shall be separated in such manner as shall be prescribed by the director. If at least
two escapeways are not available for any reason, all miners
in the affected area other than those requisite to remedy the
situation shall be withdrawn from the affected area until such
time as the escapeway is made passable. Where the height of
the coal bed is more than five feet, the escapeways shall be
maintained at a height of at least five feet excluding necessary
roof support, and the travelway in such escapeway shall be
maintained at a width of at least six feet, excluding necessary
roof support and in those situations where the height of the
coal bed is less than five feet the escapeway should be
maintained to the height of the coal bed excluding any
necessary roof support, and the travelway in such escapeway
shall be maintained at a width of at least six feet. At least
one escapeway ventilated with intake air, maintained to the
last open crosscut, shall be provided from each working
section continuously to the nearest available opening on the
surface, and shall be maintained in safe condition and properly
marked. Mine openings shall be adequately protected to
prevent the entrance into the underground area of the mine
of floodwater. Escape facilities approved by the director,
properly maintained and frequently tested, shall be present at
or in each escape shaft or slope to allow all persons, including
disabled persons, to escape quickly to the surface in event of
an emergency. Return airways entries designated as escape-
ways shall be provided with permissible two-way communica-
tion systems to the surface, and such systems shall be located
at points not to exceed every four thousand feet. On or after
the first day of April, one thousand nine hundred seventy-
éight, each operator shall provide lifeline cords, with reflective
material at twenty-five foot intervals, from the last open
crosscut to the surface along a designated escapeway ventilated
by return air: Provided, That in case of a shaft mine such
lifeline cords shall extend from the last open crosscut to the
bottom of the designated escape shaft. Such lifeline cord shall
be of durable construction sufficient to allow miners to see and
to use effectively to guide themselves out of the mine in the
event of an emergency.

(c) Escapeways shall be inspected and traveled at least once
each week by a certified mine examiner who shall place his
initials and the date in a conspicuous place or places and who
shall file a written report thereon which shall be kept on the
surface.
(d) When new coal mines are opened, not more than twenty miners shall be allowed at any one time in any mine until a connection has been made between the two mine openings, and such connection shall be made as soon as possible.

(e) When only one opening is available because of final mining of pillars, not more than twenty miners shall be allowed in such mine at any one time, and the distance between the mine opening and working face shall not exceed five hundred feet.

(f) First-aid materials and such other equipment as the director may require shall be maintained within five hundred feet of each area in which miners are regularly working to which they may have access in case of an emergency and for protection against hazards.

(g) Each working area of the mine not serviced by track-mounted or rubber-tired vehicles which uses conveyor belts for removal of coal shall be equipped with a special capsule in which an injured person can be placed and transported on the belt to the surface or to other transportation facilities. The director shall within nine months of the eighth day of July, one thousand nine hundred seventy-seven, promulgate standards and guidelines, or allow to continue in effect any present standards and guidelines, as to what such “special capsule” as used in this subsection shall include. Each section of the mine using or serviced by track-mounted or rubber-tired equipment shall have readily available a vehicle which can be used to promptly remove a person in case of injury.

§22A-2-6l. Coal storage bins; recovery tunnels; coal storage piles.

(a) Coal storage bins hereafter constructed with vertical sides fifty feet or over in height shall be provided with ventilators or louvers or both to provide adequate ventilation. Where roofs are constructed over coal storage bins, adequate ventilation shall be provided by stacks, ventilators, louvers or mechanical means.

(b) Where cutting or welding is performed at any location where coal is stored, means of prompt extinguishment of any fire accidentally started shall be provided, and the area where cutting or welding is performed shall be adequately watered down and rock-dusted.
(c) A qualified person shall test for methane with a methane detector prior to and during cutting and welding operations inside or underneath a coal storage bin.

(d) Electric motors, switches and controls for coal storage bins hereafter acquired shall be of dust-tight construction.

(e) Repairs to electric equipment shall not be made when the surrounding atmosphere contains dangerous amounts of gas or dust.

(f) Where electric lights are used in recovery tunnels of over one hundred feet in length, the wiring shall be in rigid conduit and shall be enclosed in waterproof receptacles.

(g) An escapeway shall be provided from any recovery tunnel hereafter constructed to a safe place on the surface; such escapeway shall be at least thirty inches in diameter and where inclined, a ladder shall be provided to extend full length of the escapeway to facilitate emergency exit.

(h) Extreme caution shall be exercised by all employees required to work at or near coal storage piles during coal recovery operations to avoid injury by coal slides or by being in or drawn into a chute.


Thermal coal dryer plants shall be hereafter constructed, maintained and operated in compliance with the following provisions:

(1) Good housekeeping shall be practiced in and around thermal dryer plants.

(2) Adequate fire-fighting facilities shall be provided on all floors.

(3) When welding and cutting operations are to be performed in a dryer structure, the area shall be wetted down thoroughly and adequate fire-fighting apparatus shall be readily available during the operation.

(4) Only qualified persons shall be permitted to operate dryers; however, this provision shall not prohibit qualified persons from training other persons to become qualified operators.
(5) Dryer control panels shall be provided with audible and visible alarm devices; such devices should be adjusted to function at somewhat less than maximum dryer temperature.

(6) A bypass or relief stack equipped with an automatically operated damper shall be provided for bypassing gases from the heating units to the outside atmosphere during emergency or normal shutdown operations.

(7) Thermal coal dryers hereafter installed shall not be enclosed except that roofs may be used. Whenever it is deemed necessary to enclose thermal dryers, such equipment shall be in a fireproof structure.

(8) Dryer installations and discharge stacks shall be protected with adequate explosion release vents that open to the outside atmosphere.

(9) Thermal coal dryers shall be located at a safe distance from tipples, cleaning plants, mine openings and surface buildings, such as oil storage areas, explosive magazines, and other buildings where coal dust, sparks and flames are likely to enter and become ignited or otherwise cause danger of fires.

(10) Dryers shall be equipped with quick-response heat control devices which, in the event of superelevated temperatures, will automatically divert the hot inlet gases into a bypass stack, thereby bypassing the drying chamber and at the same time stopping the fuel from being supplied to the air heater.

(11) All dryers, conveyors and other fine coal transporting machines shall be constructed as dust-tight as practicable. Where necessary, such equipment shall be provided with removable covers for inspection and cleaning and shall be provided with vent pipes to the outside atmosphere to permit the escape of distilled gases.

(12) Dryers shall be examined thoroughly after normal and emergency shutdown for fires and coal dust accumulations.

(13) Dryer controls, valves and mechanical equipment shall be frequently inspected, and no dryer shall be operated with defective mechanical equipment.

(14) The gauges of temperature control instruments shall be of the recording type.
(15) Operating rules suitable for the characteristics of each dryer system and the materials processed shall be developed and shall be available at the control panel.

(16) Electrical equipment, electrical wiring and lighting fixtures shall be of dust-tight construction.

(17) Adequate illumination shall be provided.

(18) Dryers shall not be operated beyond their rated evaporation capacity.

(19) Fluid bed dryers shall be provided with water sprays of sufficient capacity for use in event of fire.

(20) After shutdowns, thermal dryers shall be cleared of hot coals so as to minimize ignitions on succeeding startups.

(21) Thermal coal dryers previously installed in a tipple or cleaning plant shall be separated where practicable from other working areas by substantial partitions capable of providing greater resistance to explosion pressures than an exterior wall or walls.

(22) When it is necessary to use extension cables for emergency illumination, such lighting devices shall be dust-tight and adequately guarded. When it becomes necessary to perform work in dryer system bins or any other dusty areas, permissible cap lamps shall be used for illumination.

§22A-2-63. No mine to be opened or reopened without prior approval of commissioner of the department of energy; approval fee; extension of certificate of approval; certificates not transferable; section to be printed on certificates.

(a) After the first day of July, one thousand nine hundred seventy-one, no mine shall be opened or reopened unless prior approval has been obtained from the commissioner of the department of energy, 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 commissioner 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 commissioner, 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-seven of this article and has paid or otherwise appealed all coal mine assessments imposed under article one-a, chapter twenty-two-a 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 preinspection of the area proposed for underground mining prior to the issuance of any new opening approval.

§22A-2-64. Sealing permanently closed or abandoned mines.

(a) After the first day of July, one thousand nineteen hundred seventy-one, when any coal mine is worked out or indefinitely closed, such mine openings shall be properly sealed within ninety days after the mine is abandoned.

(b) Mines temporarily inactive for less than ninety days shall be adequately fenced with conspicuous signs prohibiting the possible entrance of unauthorized persons.

(c) Shaft openings shall be effectively capped or filled. Filling shall be for the entire depth of the shaft. Caps shall consist of a six inch thick concrete cap or other equivalent means approved by the director.

(d) Caps shall be equipped with a vent pipe at least two inches in diameter extending for a distance of at least fifteen feet above the surface shaft.
§22A-2-65. Mining close to abandoned workings.

Any operator working up to an abandoned coal mine may be permitted to work to his property line, if approved by the director, but in such cases precaution must be taken as provided in this article.

§22A-2-66. Explosion or accident; notice; investigation by division of mines and minerals.

Whenever, by reason of any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury shall occur, it shall be the duty of the superintendent of the mine, and in his absence, the mine foreman in charge of the mine, to give immediate notice to the director and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go the scene of such accident and make such recommendations and render such assistance as he may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he shall preserve with the other records in his office, the cost of such records to be paid by the division, and a copy shall be furnished to the operator and other interested parties. To enable him to make such investigation, he shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. The director shall have the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.


Whenever any accident occurs in or about any coal mine to any employee or person connected with the mining operation, resulting in personal injury or death, the operator shall, within twenty-four hours, report the same in writing to the director and to the district mine inspector of the district in which the accident occurs, giving full details thereof upon forms furnished by the director.

§22A-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by
§22A-2-69. Fire in and about mine; notification of director and district mine inspector.

The operator or mine foreman, upon the discovery of fire in or about a mine, shall immediately notify the director and the district mine inspector in whose district the mine is located.

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications.—During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him by the division of mines and minerals after he has passed an examination given by the division of mines and minerals. He shall, at the time he takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground construction; moreover, he shall be able to detect methane with a flame safety lamp and have a thorough knowledge of the ventilation of shafts, slopes and mines, and the machinery connected therewith, and finally, he shall be a person of good moral character with temperate habits.

(b) Mine examiner or certified person acting as such; duties generally; records open for inspection.—In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with a permissible flame safety lamp for accumulations of methane and oxygen deficiency, and examine sides of shafts and ribs and roof of all slopes. Should he find a condition which he considers dangerous to persons, he shall place a conspicuous danger sign at all entrances to such places. He shall record the results of his examination with ink or indelible pencil in a book prescribed by the director, kept at a place on the surface designated by mine management. All
records as prescribed herein shall be open for inspection by interested persons.

(c) Approvals and permits.—An approval shall be obtained from the division before work is started. A permit shall be obtained from the division (1) to stop fan when miners are in shafts or slopes; (2) to use electrical machinery in shafts or slopes; (3) to use electric lights in shafts or slopes; (4) to use welders, torches and like equipment in shafts or slopes; (5) to hoist more than four miners at one time in buckets or cars; (6) to shoot more than fifteen shots in one series.

(d) Records.—The foreman in charge on each shift shall keep a daily report of conditions and practices. The foreman in charge on each shift shall read and countersign the reports of the previous shift. Unsatisfactory conditions and practices reported shall be repeated on daily reports until corrected. Hoists, buckets, cars, ropes and appliances thereto shall be examined by a qualified person before the start of each shift and a written record kept. Deaths from accidents or previous injuries shall be reported immediately by wire to the office of the director and to the district mine inspector or the inspector-at-large. A written report of all injuries and deaths shall be mailed to the division and district mine inspector promptly. Immediate notice shall be given the office of the director, the district mine inspector and the inspector-at-large in the event of an ignition of gas, or serious accident to miners or equipment. All permits and approvals must be available for inspection by all interested persons.

(e) General.—The foreman on shift shall have at least five years’ experience in shafts or slopes. New-employees shall be instructed in the dangers and rules incident to their work. Conspicuous bulletin boards and warning signs shall be maintained. Unauthorized persons shall not be permitted around shafts or slopes. First-aid material shall be maintained at the operation as required by section fifty-nine of this article. The scene of a fatal accident shall be left unchanged until an investigation is made by all interested persons. All employees and others around the operation shall wear hard-toe shoes and hard-top hats. Goggles or other eye protection shall be worn when cutting, welding or striking where particles may fly. Gears, belts and revolving parts of machinery shall be properly guarded. Hand tools shall be in good condition. Sides of
energy

75 shafts, ribs and roof of all slopes shall be closely observed for
76 loose and dangerous conditions. Loose brows, ribs and top in
77 slopes shall be taken down or supported; loose ribs in shafts
78 shall be scaled. Miners shall be hoisted and lowered under
79 power in shafts and slopes. All hoists must have two positive
80 breaking devices. At least three wraps of rope shall remain on
81 the hoist drum at all times. Wire ropes shall not be less than
82 three-fourths inches in diameter, and of a design to prevent
83 excessive spinning or turning when hoisting.

84 When heavy materials are hoisted, a large rope shall be used
85 if necessary. A hoisting engineer shall be in constant
86 attendance while men are in shaft. Head frames shall be
87 constructed substantially. Noise from machinery shall not
88 interfere with signals. The standard signal code, whistle or bell
89 shall be used for hoisting:

90 One signal ........................................... Hoist
91 One signal ........................................... Stop
92 Two signals ......................................... Lower
93 Three signals ....................................... Man cage
94 One signal from hoisting engineer ............... Miners
95 board cage

96 Hoist signals shall be posted in front of the hoisting
97 engineer. The shaft opening shall be enclosed by a fence five
98 feet high. Buckets shall not be loaded within six inches of the
99 top rim. Buckets shall have a positive lock on the handle or
100 bale to prevent bucket from crumpling while being hoisted.
101 Positive coupling devices shall be used on buckets or cars
102 (hooks with safety catches or threaded clevis). Emergency
103 devices for escape shall be provided while shafts are under
104 construction. Miners shall not ride on or work from rims of
105 buckets. Buckets or cars shall not be lowered without a signal
106 from working area. Only sober and competent engineers shall
107 be permitted to operate hoists. No intoxicating liquors or
108 intoxicated persons shall be permitted in or around any shaft,
109 slope or machinery. Lattice type platforms shall be used.

110 (f) Explosives.—Explosives and blasting caps being taken
111 into or removed from the operation shall be transported and
112 kept in approved nonconducting receptacles (unopened cartons
113 or cases are permissible). Explosives shall not be primed until
114 ready to be inserted into holes. Handling of explosives and
loading of holes shall be under the strict supervision of a qualified person or shotfirer. No more explosives or caps than are required to shoot one round shall be taken into shafts. Adobe, mudcapped or unconfined shots shall not be fired. Holes shall be stemmed tightly and full into the mouth. Blasting caps shall be inserted in line with the explosive. Leg wires of blasting caps and buss wires shall be kept shunted until connected. Shooting cables shall be shunted at firing devices and before connecting to leg wires. Only approved shooting devices shall be used. Shots shall be fired promptly after the round of holes are charged. Warnings shall be given before shots are fired by shouting "Fire" three times slowly after those notified have withdrawn. The blasting circuit shall be wired in series or parallel series. All shooting circuits shall be tested with a galvanometer by a qualified person before shooting. A careful examination for misfires shall be made after each shot. Persons shall not return to the face until smoke and dust have cleared away. The shooting cable shall be adequately insulated and have a substantial covering; be connected by the person firing the shot; and be kept away from power circuits. Misfires shall be removed by firing separate holes or by washing; shall not be drilled out; and shall be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than three hundred feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least fifty feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines.

(g) Electrical.—Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts;
and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) **Ventilation.**—Ventilating fans shall be offset from portal at least fifteen feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than nine thousand feet per minute at the working area or as much more as the inspector may require.

(i) **Gases.**—A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the division as to his competency in the use of flame safety lamps.

An examination shall be made before and after shooting by the foreman on shift. The foreman shall have no superior in the performance of his duties. A lighted flame safety lamp or other approved detector shall be carried at all times by the foreman when in the working area and weekly gas analysis made. In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified mine foreman or mine examiner designated by the operator of such shaft or slope to do so, shall make an examination of such area. Evidence of official examination shall be left at the face by marking date and initials.

Gases should be removed under the supervision of the foreman in charge. Smoking shall not be permitted inside of shafts or slopes.

(j) **Drilling.**—Dust allaying or dust collecting devices shall be used while drilling.

(k) **Lights to be used in shafts.**—Only approved electric cap lights shall be used in shafts. Other lights shall be of explosive-
proof type. Lights shall be suspended in shafts by cable or
chain other than the power conductor. In slopes lights must
be substantially installed. Power cables shall be of an approved
type. Power cables shall not be taut from shaft collar to light.
Power cables shall be in good condition and free of improper
splices. Lights shall be suspended not less than twenty feet
above where miners are working. Lights shall be removed from
shaft and power cut off when shooting. In slopes lights must
be removed a safe distance when shots are fired. Lights shall
not be replaced in shafts or slopes until examination has been
made for gas by the mine examiner and found clear. Front
of light shall be protected by a substantial metal type guard.
Lights shall be protected from falling objects from above by
a metal hood. The lighting circuit shall be properly fused.
Electric lights shall not be used in gaseous atmospheres. A
lighted flame safety lamp or approved detector shall be kept
for use at the face while miners are at work.

§22A-2-71. Right of miner to refuse to operate unsafe equipment;
procedure; discrimination.

No miner shall be required to operate unsafe equipment. 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.

§22A-2-72. 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 commissioner may modify the application of any provision of this section to a mine if the commissioner 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 commissioner 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 commissioner 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.

§22A-2-73. 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.

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.

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.

§22A-2-74. Control of respirable dust.

Each operator shall maintain the concentration of respirable dust in the mine atmosphere during each shift to which miners in active workings of such mine are exposed below such level as the board may establish. The board may promulgate rules and regulations governing respirable dust, including, but not limited to, dust standards, sampling procedures, sampling devices, equipment and sample analysis by using the data gathered by the federal mine safety and health administration and, or the federal bureau of mines.

Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules and regulations of the board or the commissioner may thereafter order such operator to discontinue such operation.

§22A-2-75. Coal operators—Procedure before operating near oil and gas wells.

(a) Before a coal operator conducts underground mining operations within five hundred feet of any well, including the driving of an entry or passageway, or the removal of coal or other material, the coal operator shall file with the division of mines and minerals and forward to the well operator by certified mail, return receipt requested, its mining maps and plans (which it is required to prepare, file and update to and with the regulatory authority) for the area within five hundred feet of the well, together with a notice, on a form furnished by the director, informing them that the mining maps and plans are being filed or mailed pursuant to the requirements of this section.

Once these mining maps and plans are filed with the division the coal operator may proceed with its underground mining operations in the manner and as projected on such plans or
maps, but shall not remove, without the consent of the
director, any coal or other material or cut any passageway
nearer than two hundred feet of any completed well or well
that is being drilled. The coal operator shall, at least every six
months while mining within the five hundred foot area, update
its mining maps and plans and file the same with the director
and the well operator.

(b) Application may be made at any time to the director
by a coal operator for leave to conduct underground mining
operations within two hundred feet of any well or to mine
through any well, by petition, duly verified, showing the
location of the well, the workings adjacent to the well and the
mining operations contemplated within two hundred feet of
the well or through such well, and praying the approval of
the same by the director and naming the well operator as a
respondent. The coal operator shall file such petition with the
director and mail a true copy to the well operator by certified
mail, return receipt requested.

The petition shall notify the well operator that it may answer
the petition within five days after receipt, and that in default
of an answer the director may approve the proposed
operations as requested if it be shown by the petitioner or
otherwise to the satisfaction of the director that such
operations are in accordance with the law and with the
provisions of this article. If the well operator files an answer
which requests a hearing, one shall be held within ten days
of such answer and the director shall fix a time and date and
give both the coal operator and well operator five days' written
notice of the same by certified mail, return receipt requested.
At the hearing, the well operator and coal operator, as well
as the director, shall be permitted to offer any competent and
relevant evidence. Upon conclusion of the hearing, the director
shall grant the request of the coal operator or refuse to grant
the same, or make such other decision with respect to such
proposed underground operation as in its judgment is just and
reasonable under all circumstances and in accordance with law
and the provisions of this article: Provided, That a grant by
the director of a request to mine through a well shall require
an acceptable test to be conducted by the coal operator
establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the
well operator gives, in writing, its consent to the coal operator
to mine within closer than two hundred feet of the specified
well, the director shall grant the request of the coal operator
within five days after the petition's original five day answer
period if the director determines that such operations are just,
reasonable and in accordance with law and the provisions of
this article.

The director shall docket and keep a record of all such
proceedings. From any such final decision or order of the
director, either the well operator or coal operator, or both,
may, within ten days, appeal to the circuit court of the county
in which the well subject to said petition is located. The
procedure in the circuit court shall be substantially as provided
in section four, article five, chapter twenty-nine-a of this code,
with the director being named as a respondent. From any final
order or decree of circuit court, an appeal may be taken to
the supreme court of appeals as heretofore provided.

A copy of the document or documents evidencing the action
of the director with respect to such petition shall promptly be
filed with the director of the division of oil and gas.

(c) Before a coal operator conducts surface or strip mining
operations as defined in this chapter, within two hundred feet
of any well, including the removal of coal and other material,
the operator shall file with the director and furnish to the well
operator by certified mail, return receipt requested, its mining
maps and plans (which it is required to prepare, file and
update to and with the regulatory authority) for the area
within two hundred feet of the well, together with a notice,
on a form furnished by the director, informing them that the
mining maps and plans are being filed or mailed pursuant to
the requirements of this section, and representing that the
planned operations will not unreasonably interfere with access
to or operation of the well and will not damage the well. In
addition, the coal operator shall furnish the well operator with
evidence that it has in force public liability insurance, with at
least the minimum coverage required by article three, of this
chapter and the rules and regulations promulgated thereto and
thereunder.

Once these mining maps and plans are filed with the
director, the coal operator may proceed with its surface or
strip mining operations in the manner and as projected on such
plans or maps, so long as such surface mining operations do
not unreasonably interfere with access to, or operation of, the
well or do not damage the well.

(d) The filing of petitions and notices with the director as
herein provided may be complied with by mailing such petition
or notice to the director by certified mail, return receipt
requested.

GENERAL PROVISIONS

§22A-2-76. Reopening old or abandoned mines.

No person, without first giving to the commissioner ten
days' written notice thereof, shall reopen for any purposes any
old or abandoned mine wherein water or mine seepage has
collected or become impounded or exists in such manner or
quantity that upon the opening of such mine, such water or
seepage may drain into any stream or watercourse. Such notice
shall state clearly the name or names of the owner or owners
of the mine proposed to be opened, its exact location, and the
time of the proposed opening thereof.

Upon receipt of such notice, the commissioner shall have
his representative present at the mine at the time designated
in the notice for such opening, who shall have full supervision
of the work of opening such mine with full authority to direct
the work in such manner as to him seems proper and necessary
to prevent the flow of mine water or seepage from such mine
in such manner or quantity as will kill or be harmful to the
fish in any stream or watercourse into which such mine water
seepage may flow directly or indirectly.

§22A-2-77. Monthly report by operator of mine.

The operator of every coal mine shall, on or before the end
of each calendar month, file with the director a report covering
the preceding calendar month on forms furnished by the
director. Such reports shall state the number of accidents
which have occurred, the number of persons employed, the
days worked and the actual tonnage of coal mined.

§22A-2-78. Examinations to determine compliance with permits.

Whenever permits are issued by the department of energy,
2 frequent examinations shall be made by the mine inspector
during the tenure of the permit to determine that the
requirements and limitations of the permit are complied with.


1 The various provisions of this article shall be construed as
2 separable and severable, and should any of the provisions,
3 sentences, clauses, or parts thereof be construed or held
4 unconstitutional or for any reason be invalid, the remaining
5 provisions of this article shall not be thereby affected.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMA-
TION ACT.

§22A-3-1. Short title.
§22A-3-2. Legislative findings and purpose; jurisdiction vested in department
of energy; authority of commissioner and director of division of
mines and minerals; apportionment of responsibility; interdepart-
mental cooperation.
§22A-3-3. Definitions.
§22A-3-4. Reclamation; duties and functions of commissioner.
§22A-3-5. Surface-mining reclamation supervisors and inspectors; appoint-
ment and qualifications; salary.
§22A-3-6. Duties of surface-mining reclamation inspectors and inspectors in
training.
§22A-3-7. Notice of intention to prospect, requirements therefor; bonding;
commissioner's authority to deny or limit; postponement of
reclamation; prohibited acts; exceptions.
§22A-3-8. Prohibition of surface mining without a permit; permit require-
ments; successor in interest; duration of permits; proof of
insurance; termination of permits; permit fees.
§22A-3-9. Permit application requirements and contents.
§22A-3-9a. Application for permit to mine two acres or less; requirements; fee;
mining requirements; approval; prevention of attempts to
improperly circumvent provisions of this article.
§22A-3-10. Reclamation plan requirements.
§22A-3-11. Performance bonds; amount and method of bonding; bonding
requirements; special reclamation tax and fund; prohibited acts;
period of bond liability.
§22A-3-12. General environmental protection performance standards for
surface mining; variances.
§22A-3-13. Pilot program for the growing of grapes on reclaimed areas.
§22A-3-14. General environmental protection performance standards for the
surface effects of underground mining; application of other
provisions of article to surface effects of underground mining.
§22A-3-15. Inspections; monitoring; right of entry; inspection of records;
identification signs, progress maps.
§22A-3-16. Cessation of operation by order of inspector; informal conference;
imposition of affirmative obligations; appeal.
§22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

§22A-3-18. Approval, denial, revision and prohibition of permit.

§22A-3-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and operator reassignment.

§22A-3-20. Public notice; written objections; public hearings; informal conferences.

§22A-3-21. Decision of commissioner on permit application; hearing thereon.

§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain area; exceptions; taxation of minerals underlying land designated unsuitable.

§22A-3-23. Release of performance bond or deposits; application; notice; duties of commissioner; public hearings; final maps on grade release.

§22A-3-24. Water rights and replacement; waiver of replacement.

§22A-3-25. Citizen suits; order or court; damages.

§22A-3-26. Surface-mining operations not subject to article.

§22A-3-27. Leasing of lands owned by state for surface mining of coal.

§22A-3-28. Special permits for removal of coal incidental to development of land; prohibited acts; application; bond; reclamation for existing abandoned coal processing waste piles.

§22A-3-29. Existing permits and performance bond conversion; exemption from design criteria.

§22A-3-30. Experimental practices.

§22A-3-31. Certification and training of blasters.

§22A-3-32. Surface miner certification required.

§22A-3-33. Certification of surface-mine foremen.

§22A-3-34. Monthly report by operator.

§22A-3-35. Applicability and enforcement of laws safeguarding life and property; regulations; authority of division of mines and minerals regarding enforcing safety laws.

§22A-3-36. Conflicting provisions.

§22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.

§22A-3-38. Severability.

§22A-3-39. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.

§22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

§22A-3-1. Short Title.

1 This article shall be known and cited as the “West Virginia Surface Coal Mining and Reclamation Act.”

§22A-3-2. Legislative findings and purpose; jurisdiction vested in department of energy; authority of commissioner and director of division of mines and minerals; 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 commissioner, as provided in article four, chapter twenty-two of this code 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 property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(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 affects 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 social well-being is provided.

(c) In recognition of these findings and purposes, the Legislature hereby vests authority in the commissioner of the department of energy 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 commissioner of the department of energy and the director of the division of mines and minerals shall cooperate with respect to departmental programs and records to effect an orderly and harmonious administration of the provisions of this article. The commissioner of the department of energy
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.

§22A-3-3. 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 violate the effluent limitations
or cause a violation of 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 reclamation
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 subdivi-
sion (8), subsection (b), section twelve 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) "Assessment officer" means an employee of the depart-
ment, other than a surface-mining reclamation supervisor, 
inspector or inspector-in-training, appointed by the commis-
sioner to issue proposed penalty assessments and to conduct 
informal conferences to review notices, orders and proposed 
penalty assessments.

(g) "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.

(h) "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 
separated from product coal, and slurried or otherwise 
transported from coal processing plants after physical or 
chemical processing, cleaning or concentrating of coal.

(i) "Commissioner" means the commissioner of the depart-
ment of energy or commissioner of energy.

(j) "Department" means the department of energy.

(k) "Director" means the director of the division of mines 
and minerals.

(l) "Disturbed area" means an area where vegetation, topsoil 
or overburden has been removed or placed by surface-mining 
operations, and reclamation is incomplete.

(m) "Division" means the division of mines and minerals of 
the department of energy.

(n) "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.

(o) "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(p) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(q) "Operator" means any person who is granted or who should obtain a permit to engage in any activity covered by this article.

(r) "Permit" means a permit to conduct surface-mining operations pursuant to this article.

(s) "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.

(t) "Permittee" means a person holding a permit issued under this article.

(u) "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.

(v) "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.
(w) "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, common methods as contour, strip, auger, mountaintop removal, boxcut, openpit and area mining; the uses of explosives and blasting; reclamation in situ distillation or retorting, leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation, and 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 seven 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.

(x) "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.

(y) "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 commissioner. Any environmental harm is significant if that harm is appreciable and not immediately repairable.

§22A-3-4. Reclamation; duties and functions of commissioner.

(a) The commissioner shall administer the provisions of this article relating to surface-mining operations. The commissioner shall have within his jurisdiction and supervision all lands and areas of 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 commissioner shall be consistent with other provisions of this chapter.

(b) The commissioner shall have the 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 commissioner shall give notice by publication of the public hearing required in article three, 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, chapter twenty-nine-a of this code were issued, developed or distributed by the commissioner pursuant to or as a result of a rule or regulation, shall be subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct hearings under provisions of this article or rules and regulations adopted by the commissioner; and for the purpose of any investigation or hearing hereunder, the commissioner, or his designated representative, 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 the provisions of this article as provided herein; and

(5) Appoint such advisory committees as may be of assistance to the commissioner 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 commissioner has adopted the regulations required by this article, any person may petition the commissioner to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the commissioner and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The commissioner may hold a public hearing or may conduct such investigation or proceeding as he considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the commissioner shall either grant or deny the petition. If the commissioner grants the petition, he shall promptly commence an appropriate
proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the commissioner denies the petition, he shall notify the petitioner in writing setting forth the reasons for the denial.

§22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The commissioner 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 commissioner.

Every surface-mining reclamation supervisor shall be paid not less than thirty thousand dollars per year. Every surface mining reclamation inspector shall be paid not less than twenty-five thousand dollars per year.

§22A-3-6. 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 required by the provisions of this article, 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 commissioner. 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 commissioner in writing, furnishing at the same time a copy of such report to the operator concerned.

§22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement 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
commissioner, at least fifteen days prior to commencement of
any disturbance associated with prospecting, a notice of
intention 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
promulgated pursuant to this section: Provided, That prior to
the commencement of such prospecting, the commissioner 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 quality, or that the operator has failed to satisfactorily
reclaim other prospecting sites, or that there has been an abuse
of prospecting by previous prospecting operations in the area.

(b) Notice of intention to prospect shall be made in writing
on forms prescribed by the commissioner 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 eleven
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 is conducted in
accordance with the performance standards in section twelve
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 commissioner 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 commissioner.

(g) The bond accompanying said notice of intention to prospect shall be released by the commissioner 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 commissioner 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.

§22A-3-8. 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 commissioner 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
curface-mining operations unless such person has first obtained
a permit from the commissioner: 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 under-
ground 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 commissioner.

(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 commissioner may extend a
permit for such longer term: Provided, however, That subject
to the prior approval of the commissioner, 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 commissioner may grant reasonable
extensions of time upon a showing that such extensions are
necessary by reason of litigation precluding such commence-
ment, 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,
however, 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 commissioner and deposited with the treasurer of the state of West Virginia to the credit of the operating permit fees fund and shall be used, upon requisition of the commissioner, for the administration of this article.

(g) Prior to the issuance of any permit, the commissioner of energy shall ascertain from the commissioner of labor compliance with section fourteen, article five, chapter twenty-one of this code. Upon issuance of the permit, the commissioner of energy shall forward a copy to the commissioner of labor, who shall assure continued compliance under such permit.

§22A-3-9. 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 the 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 submission 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 energy
where the application is available for public inspection and
stating that written protests will be accepted by the commis-
sioner 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
commissioner 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 consequen-
tes 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 commissioner 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 the 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 commissioner, 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;
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 commissioner, showing pertinent elevation and location of test borings or core samplings, where required by the commissioner, and depicting the following information: (A) The nature and depth of the various strata or overburden; (B) the location of subsurface water, if encountered, and its quality; (C) the nature 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;

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 the 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 commissioner with respect to the specific application by a written determination that such requirements are unnecessary;

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 ten 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 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 commissioner, 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) Other information that may be required by rules and regulations reasonably necessary to effectuate the purposes of this article.

(b) If the commissioner 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 commissioner 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 energy as specified in the applicant's advertisement.

(d) Each applicant for a permit shall be required to submit to the commissioner as 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 the permit is sought, or evidence that the applicant has
satisfied state self-insurance requirements. The 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. The 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 commissioner 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 part of his permit application
a schedule listing all notices of violation, 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 notice of violation,
forfeiture, revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an application for
a permit, the commissioner 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 commissioner shall state in writing why
the application is incomplete.

§22A-3-9a. Application for permit to mine two acres or less;
requirements; fee; mining requirements; approval;
prevention of attempts to improperly circumvent
provisions of this article.

(a) Application for a permit to engage in surface mining of
two acres or less 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) Accurate maps prepared by or under the direction of
and certified by a person approved by the director, to an
appropriate scale clearly showing: The land to be affected as
of the date of application; the area of land within the permit
area upon which the applicant has the legal right to enter and
conduct surface-mining operations; and all types of informa-
tion 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;
the location of all structures within one thousand feet of the
proposed area; and cross-section maps or plans of the
proposed affected area, including the actual area to be mined;

(2) The name of owner of the surface of the land to be
mined;

(3) The name of owner of the coal to be mined;

(4) A reasonable estimate of the number of acres of coal
that would be mined: Provided, That in no event may such
number of acres to be mined exceed two acres;

(5) Representative cross-sections showing existing and
proposed site conditions;

(6) A reclamation plan as presented in section eleven of this
article;

(7) A certificate of insurance certifying that the applicant
has in force a public liability insurance policy issued by an
insurance company authorized to do business in this state
affording personal injury protection in accordance with
subsection (d), section ten of this article;

(8) A bond, or cash or collateral securities or certificates of
the same type, in the form as prescribed by the director and
in the minimum amount of five thousand dollars per acre, for
a maximum disturbance of two acres, exclusive of roadways
and temporary spoil placement. The bond shall be payable to
the state of West Virginia and conditioned that the applicant shall complete regrading to approximate original contour and revegetation of all disturbed areas; and

(9) A copy of the applicant’s advertisement to be published for at least one week in a newspaper of general circulation in the locality of the proposed permit area.

(b) A filing fee for the permit in the amount of five hundred dollars. The permit is valid for a period of five years.

(c) A permittee under this section shall conduct surface-mining operations so as to minimize the disturbances to the prevailing hydrologic 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: Avoiding acid or other toxic mine drainage; and 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 permit area, but in no event may contributions be in excess of requirements set by applicable state law.

(d) Due to the two acre maximum of disturbed area, the director shall promulgate rules to authorize the director to tentatively approve permits. Such rules shall also provide that final approval shall be granted or denied within thirty days of submission of the application.

(e) Two or more operations will have to meet all three of the following components before being considered related:

1. They must occur within twelve months of each other;
2. They are physically related in that drainage from both operations flow into the same watershed at or before a point within five aerial miles of either operation; and
3. They are under common ownership or control, directly or indirectly.

§22A-3-10. 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 mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(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 nine 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 twelve 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 twelve or
thirteen 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 tests 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
commissioner, 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 environment, 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 commissioner 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.

§22A-3-11. 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 a permit has been
issued, each operator shall furnish bond, on a form to be
prescribed and furnished by the commissioner, 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 commissioner 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 approved by the commissioner 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 homeowners’ 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 securities or certificates shall be equal to or greater than the sum of the bond. The commissioner 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 the 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 commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The commissioner 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 provisions.

(d) The commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner 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) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) All special reclamation taxes deposited by the commissioner 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 taxes transferred into the special reclamation fund created by this section shall be subject to refund. The fund shall be administered by the commissioner, and he is authorized to expend the moneys 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 commissioner may also expend such amounts as are reasonably necessary to implement and administer the provisions of this chapter and chapters twenty-two-a and twenty-two-b of this code.

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 occupation 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 commissioner shall advise the state tax commissioner and the governor 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 the 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
§22A-3-12. General environmental protection performance standards for surface mining; variances.

(a) Any permit issued by the commissioner pursuant to this article to conduct surface-mining operations shall require that such surface-mining operations will meet all applicable performance standards of this article, and other requirements as the commissioner 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 reaffecting 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 supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable 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 commissioner shall promulgate rules and regulations governing variances to the requirements for return to approximate original contour or highwall 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 farm lands 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 combination 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 quantities 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 manner 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 commissioner;
(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 commissioner 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 commissioner may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic 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 or 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 permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal 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 commissioner 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 commissioner, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the commissioner; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) such other actions as the commissioner 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 waste piles 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 standards 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 commissioner 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 commissioner and (B) the 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 waters, 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 commissioner, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of the 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 the 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 impacts 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 conducted by persons certified by the director of the division of mines and minerals; 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 the structures and submit the results to the commissioner and a copy to the resident or owner making the request. The area of the survey shall be determined by the commissioner in accordance with regulations promulgated by him;

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the commissioner requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the commissioner may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the commissioner finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed under-
ground mining operations;

(ii) The proposed underground mining operations are necessary 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 requirements 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 commissioner 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 commissioner 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 commissioner pursuant to subsection (b), section eleven of this article shall be for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with.

(17) Ensure that the construction, maintenance and postmining 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 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 proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the commissioner, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the commissioner issues a written finding approving a long-term agricultural postmining land use as a part of the mining and reclamation plan, the commissioner may grant exception to the provisions of subdivision (19) of this subsection: Provided, however, That when the commissioner approves an agricultural postmining land use, the applicable five growing seasons of responsibility for revegetation shall commence at the date of initial planting for such agricultural postmining land use;

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the commissioner, after a finding that environmental benefits will result from such;

(22) Place all excess spoil material resulting from surface mining activities in such a manner that: (A) Spoil is
transferred and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placements; (C) appropriate 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 commissioner, 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 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 commissioner 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 these 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 commissioner may prescribe procedures pursuant to which he 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 postmining use of the affected land, the commissioner 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 premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use
will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) supported 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 commissioner 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 commissioner provides the county commission of the county in which the land is located and any state or federal agency which the commissioner, 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 commissioner 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 resource: Provided, however, That, at a minimum, the constructed barrier must be 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 outslopes 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 subsection 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 climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface-mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the commissioner that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The commissioner 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 commissioner 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 abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That
whenever the commissioner 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 a pile or the landowners involved, enter upon the premises where any such coal processing waste pile exists and may take or order to be taken such remedial action as may be necessary or expedient to secure the 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 commissioner under this subsection may be paid for initially by funds appropriated to the department of energy for these purposes, and the 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 commissioner. 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.

§22A-3-13. Pilot program for the growing of grapes on reclaimed areas.

In furtherance of the purposes set forth in subdivision twenty, section twelve of this article, the commissioner is hereby authorized and directed to establish and maintain a pilot program to determine the best procedures for propagating the growth of grapevines and bushes on reclaimed surface-mined areas. Such program shall investigate and implement selections of the best variety of grapes for reclamation purposes based upon environmental considerations and soil quality, the most desirable methods of planting and tending grapes and any other related matters deemed desirable by the commissioner. The cost of such program shall be paid from funds regularly appropriated to the division or department.

§22A-3-14. 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 commissioner 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 commissioner 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 commissioner 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 causing material damage 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 (t), section twelve of this article, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes and solid wastes and used either temporarily or permanently as dams or embankments;

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plan succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in subdivision (20), subsection (b), section twelve of this article;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and ground water systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and
avoiding channel deepening or enlargement in operations
requiring the discharge of water from mines: Provided, That
in recognition of the distinct differences between surface and
underground mining the monitoring of water from under-
ground coal mine workings shall be in accordance with the
provisions of the Clean Water Act of 1977;

(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
twelve of this article for such effects which result from surface-
mining operations: Provided, That the commissioner 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 commissioner 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 a manner as to
prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the
commissioner 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.

§22A-3-15. Inspections; monitoring; right of entry; inspection of
records; identification signs, progress maps.

(a) The commissioner shall cause to be made such inspec-
tions of surface-mining operations as are necessary to
effectively enforce the requirements of this article and for such
purposes the commissioner or his authorized representative
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 commissioner 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 commissioner shall prescribe; and (E) provide such other
information relative to surface-mining operations as the
commissioner 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 commissioner 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 lower most mineral seam to be mined; (C) records
or well logs and boreholed 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 commissioner 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 commissioner
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 commissioner upon an operator by registered or
certified mail, the operator shall furnish to the commissioner
five copies of a progress map prepared by or under the
supervision of a person approved by the commissioner
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 commissioner. 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 commissioner. If no land
has been disturbed by operations during the preceding year,
the operator shall notify the commissioner of that fact.

(g) Whenever on the basis of available information,
including reliable information from any person, the commis-
sioner has cause to believe that any person is in violation of
this article, any permit condition or any regulation promul-
gated under this article, the commissioner 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
commissioner 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 required for his use.

§22A-3-16. Cessation of operation by order of inspector; informal
conference; imposition of affirmative obligations; appeal.

(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
practice exists, 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. The 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 the order
becomes effective or such order shall expire. The conference
shall be held before a surface-mining reclamation 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 aggrieved by the decision of the surface-mining reclamation supervisor may immediately appeal to the commissioner, setting forth reasons why the operation should not be halted. The commissioner forthwith shall determine when the operation or portion thereof may be resumed.

(b) The cessation order shall remain in effect until the commissioner determines that the condition, practice or violation has been abated, or until modified, vacated or released by the commissioner. Where the commissioner finds that the order cessation 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 commissioner shall, in addition to the cessation order, impose affirmative obligations on the operator requiring him to take whatever steps the commissioner deems necessary to abate the imminent danger or the significant 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 terminate a cessation order upon abatement of the violation.

§22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

(a) If any of the requirements of this article, rules and regulations promulgated pursuant thereto or permit conditions have not been complied with, the commissioner may cause a notice of violation to be served upon the operator or his duly authorized agent. A copy of the 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 exceed fifteen days. 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 commissioner 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 seven hundred fifty
dollars per day per violation shall be assessed: Provided, That
if a cessation order is released or expires within twenty-four
hours after issuance no mandatory civil penalty shall be
assessed. A cessation order shall remain in effect until the
commissioner determines that the violation has been abated
or until modified, vacated or terminated by the commissioner
or by a court. In any cessation order issued under this
subsection the commissioner shall determine the steps
necessary to abate the violation in the most expeditious
manner possible and shall include the necessary measures in
the order.

(b) If the commissioner 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 the violations
are willfully caused by the operator, the commissioner 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 commissioner 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 commis-
sioner 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 commissioner shall
immediately revoke the operator's permit, forfeit the operator's
bond or other security posted pursuant to section eleven 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. The 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 notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the reclamation board of review may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to an informal conference and a formal hearing pursuant to this section. When an informal conference is requested, the operator shall have fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board. (A) When an informal conference is held, the assessment officer shall have authority to affirm, modify or vacate the notice, order or proposed penalty assessment. (B) When a
formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the commissioner for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing the board shall affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid.

(2) Civil penalties owed under this section may be recovered by the commissioner in the circuit court of Kanawha County. 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 eleven of this article. If, through the administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commissioner shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States department of the treasury rate, whichever is greater. Failure to forward the money to the commissioner within thirty days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(3) Any person having an interest which is or may be adversely affected by any order of the commissioner or the board may file an appeal only in accordance with the provisions of article four, chapter twenty-two of this code, within thirty days after receipt of the order.

(4) 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 commissioner a written request that the commissioner 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 commissioner 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 the request shall be issued within forty-eight hours of its receipt. The commissioner may grant
such relief, under such conditions as he may prescribe if:

(A) All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

(B) The person requesting the relief shows that there is a substantial likelihood that he will prevail on the merits in the final determination of the proceedings;

(C) The relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources; and

(D) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the commissioner.

(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 commissioner, 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 commissioner, any director, officer or agent of the corporation who willfully and knowingly authorized, ordered or carried out the 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 required 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 imprisoned in the county jail not more than one
year, or both fined and imprisoned.

(h) Whenever any person: (A) Violates or fails or refuses
to comply with any order or decision issued by the commis-
sioner under this article; or (B) interferes with, hinders or
delays the commissioner in carrying out the provisions of this
article; or (C) refuses to admit the commissioner to the mine;
or (D) refuses to permit inspection of the mine by the
commissioner; or (E) refuses to furnish any reasonable
information or report requested by the commissioner in
furtherance of the provisions of this article; or (F) refuses to
permit access to, and copying of, such records as the
commissioner determines necessary in carrying out the
provisions of this article; or (G) violates any other provisions
of this article, the regulations promulgated pursuant thereto,
or the terms and conditions of any permit, the commissioner,
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 approp-
riate order, in the circuit court of Kanawha County or any
court of competent jurisdiction to compel compliance with and
enjoin such violations, failures or refusals. The court or the
judge thereof may issue a preliminary injunction in any case
pending a decision on the merits of any application filed
without requiring the filing of a bond or other equivalent
security.

(i) Any person who shall, except as permitted by law,
willfully resist, prevent, impede or interfere with the commis-
sioner 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.

§22A-3-18. 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
commissioner 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 commissioner 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 nine of this article, has been made by the commissioner 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 commissioner 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 commissioner 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
44 violation of this article or other 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 commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, 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 commissioner 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 commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the 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 commissioner to be adequate to reclaim the disturbed area, and the commissioner is satisfied that the 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 commissioner 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 seven, subsection (b), section twelve 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
(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 commissioner 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 commissioner may delete such part of the land described in the application upon which such overburden exists.

§22A-3-19. Permit revision and renewal requirements; requirements for transfer; assignment and sale of permit rights; and 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 the 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 commissioner 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 renewal requested as required pursuant to section eleven of this article; or (E) any
additional revised or updated information as required pursuant to rules and regulations promulgated by the commissioner 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 commissioner and shall contain such information as the commissioner requires pursuant to rule or regulation.

(b) (1) During the term of the permit, the permittee may submit to the commissioner 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 commissioner shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by regulations. The commissioner 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.
§22A-3-20. 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 commissioner 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 commissioner 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 commissioner to the applicant and to the appropriate office of the department. The commissioner shall provide the name and address of each applicant to the commissioner of labor who shall within fifteen days from receipt notify the commissioner as to the applicant's compliance, if necessary, with section fourteen, article five, chapter twenty-one of this code.

(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 commissioner 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 commissioner 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 commissioner 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 
commissioner in a newspaper of general circulation in the 
locality at least two weeks prior to the scheduled conference 
date. The commissioner 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 proceed-
ing 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 
commissioner’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.

§22A-3-21. Decision of commissioner on permit application; 
hearing thereon.

(a) If an informal conference has been held the commis-
sioner 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 commissioner’s decision, the 
apPLICANT or any person with an interest which is or may be 
adversely affected may request a hearing before the reclama-
tion board of review as provided in article four, chapter 
twenty-two of this code to review the commissioner’s decision.
§22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain area; exceptions; taxation of minerals underlying land designated unsuitable.

(a) The commissioner 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 seven of this article on any area so designated:

(1) Upon petition pursuant to subsection (b) of this section, the commissioner 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 section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations: (A) Conflict with existing state or local land use plans or programs; (B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and esthetic values and natural systems; (C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the 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 the operations could substantially endanger life and property. Such lands to include lands subject to frequent flooding and areas of unstable geology.

(3) The commissioner 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
37 redesignation pursuant to this section.

38 (4) Determinations of the unsuitability of land for surface
39 mining, as provided for in this section, shall be integrated as
40 closely as possible with present and future land use planning
41 and regulation processes at federal, state and local levels.

42 (5) The requirements of this section shall not apply to lands
43 on which surface-mining operations were being conducted on
44 the third day of August, one thousand nine hundred seventy-
45 seven, or under a permit issued pursuant to this article, or
46 where substantial legal and financial commitments in the
47 operations were in existence prior to the fourth day of
48 January, one thousand nine hundred seventy-seven.

49 (b) The commissioner, or any person having an interest
50 which is or may be adversely affected, shall have the right to
51 petition the commissioner to have an area designated as
52 unsuitable for surface-mining operations or to have such a
53 designation terminated. The petition shall contain allegations
54 of fact with supporting evidence which would tend to establish
55 the allegations. After receipt of the petition, the commissioner
56 shall immediately begin an administrative study of the area
57 specified in the petition. Within ten months after receipt of
58 the petition, the commissioner shall hold a public hearing in
59 the locality of the affected area after appropriate notice and
60 publication of the date, time and location of the hearing. After
61 the commissioner or any person having an interest which is
62 or may be adversely affected has filed a petition and before
63 the hearing required by this subsection, any person may
64 intervene by filing allegations of fact with supporting evidence
65 which would tend to establish the allegations. Within sixty
66 days after the hearing, the commissioner shall issue and furnish
67 to the petitioner and any other party to the hearing, a written
68 decision regarding the petition and the reasons therefor. In the
69 event that all the petitioners stipulate agreement prior to the
70 requested hearing and withdraw their request, the hearing need
71 not be held.

72 (c) Prior to designating any land areas as unsuitable for
73 surface-mining operations, the commissioner shall prepare a
74 detailed statement on: (1) The potential coal resources of the
75 area; (2) the demand for the coal resources; and (3) the impact
76 of the 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;

(2) Which will adversely affect any publicly owned park or places included in the national register of historic sites, or national register of natural landmarks unless approved jointly by the commissioner 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 roads or haulage roads join such right-of-way line, and except that the commissioner may permit the roads to be relocated or the area affected to lie within one hundred feet of the road if, after public notice and an opportunity for a public hearing in the locality, the commissioner 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 the lands if the secretary of the interior finds that there are no significant recreational, timber, economic or other values which may be incompatible with the surface-mining operations: Provided, however, That the 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 the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§22A-3-23. Release of performance bond or deposits; application; notice; duties of commissioner; public hearings; final maps on grade release.

(a) The permittee may file a request with the commissioner 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 advertisements shall be submitted to the commissioner 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 commissioner, 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 continuance or future occurrence of such pollution and the estimated cost of abating such pollution. The commissioner 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 commissioner's decision shall be issued within thirty days thereafter.

(c) If the commissioner 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 twelve 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 twelve of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.
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 section twelve or thirteen 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 nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section twelve of this article, or where a road or 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 commissioner.

(d) If the commissioner disapproves the application for release of the bond or portion thereof, the commissioner shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and notifying the operator of his right to a hearing.

(e) When any application for total or partial bond release is filed with the commissioner, 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 commissioner within thirty days after the last publication of the permittee's advertisement. If written objections are filed and a hearing requested, the commissioner 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 commissioner 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 commissioner pursuant to this section, the commissioner 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 commissioner 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 commissioner at the cost of the person requesting the transcript.

§22A-3-24. 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, diminution or interruption proximately caused by such surface-mining operation, unless waived by said owner.

§22A-3-25. 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 commissioner, department, division, reclamation 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 commissioner or to any alleged violator, or (B) if the commissioner 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 commissioner, 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 commissioner, 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
restraining 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
action for damages, including reasonable attorney and expert
witness fees, in any court of competent jurisdiction. Nothing
in this subsection shall affect the rights established by or limits
imposed under state worker’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.

§22A-3-26. Surface-mining operations not subject to article.
1 The provisions of this article do not apply to any of the
2 following activities:

3 (a) The extraction of coal by a landowner for his own
4 noncommercial use from land owned or leased by him.

5 (b) The extraction of coal by a landowner engaged in
6 construction, which construction does not require the
7 disturbance of more than one acre of privately owned land:
8 Provided, That prior to the extraction of coal by such
9 landowner, he shall affirmatively demonstrate that such
10 construction will occur within a reasonable time after surface
11 disturbance.

12 (c) Notwithstanding any other provision of this article, a
13 person or operator shall not be subject to the reclamation
14 requirements of this article when engaged in the removal of
15 borrow and fill material for grading in federal and state
16 highway or other construction projects: Provided, That the
17 provisions of the construction contract require the furnishing
18 of a suitable bond which provides for reclamation, wherever
practicable, of the area affected by such recovery activity.

(d) The extraction of coal for commercial purposes where the surface mining operation affects two acres or less: Provided, That the entity conducting or planning to conduct said operation complies with the provisions of section ten-a of this article.

§22A-3-27. 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.

§22A-3-28. 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-six 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 commissioner a permit therefor as provided in section eight of this article, unless a special permit therefor shall have been first obtained from the commissioner 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 commissioner 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 commissioner, 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 commissioner;

(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; and

(6) Such other information as the commissioner may require to satisfy and assure the commissioner that the surface mining under 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 insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the commissioner 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 preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site preparation plan submitted with the application, the bond conditions shall be satisfied and the bond 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
59 hundred dollars. The special permit shall be valid until work permitted is completed.

61 (c) The purpose of this section is to vest jurisdiction in the commissioner, where the surface mining is incidental or secondary to the preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation 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 evidence has been submitted to the commissioner 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 applicable to the operator holding a special permit: Provided, That the commissioner shall promulgate regulations establishing applicable performance standards for operations permitted under this section.

79 (d) The commissioner may, in the exercise of his sound discretion, 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 commissioner shall promulgate specific regulations for such operations: Provided, That a bond and a reclamation plan shall be required for such operations.

§22A-3-29. Existing permits and performance bond conversion; exemption 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 continue to operate eight months after the approval of the state program shall be released upon notification by the commissioner 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 commissioner upon reclamation of the site in accordance with the underground opening approval reclamation plan, shall release such bonds: Provided, however, That forfeiture proceedings shall begin upon 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, persons need not comply with design criteria if such structures and facilities meet the environmental performance standards of this article.

§22A-3-30. 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 commissioner 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.

§22A-3-31. Certification and training of blasters.

The director of the division of mines and minerals 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.

§22A-3-32. 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 nine and ten, chapter twenty-two of this code and the regulations promul-
§22A-3-33. 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 nine, 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 article nine, 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 person, 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 nine, 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.
The director of the division of mines and minerals shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

§22A-3-34. 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 the division of mines and minerals a report covering the preceding calendar month on forms furnished by said director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage of raw coal mined.

§22A-3-35. Applicability and enforcement of laws safeguarding life and property; regulations; authority of division of mines and minerals regarding enforcing 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 commissioner 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 division of mines and minerals and shall be enforced according to the provisions of chapter twenty-two-a of this code.

§22A-3-36. Conflicting provisions.

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.

§22A-3-37. Conflict of interest prohibited; criminal penalties therefor; employee protection.

(a) No employee of the division of mines and minerals engaged in the enforcement or administration of this article 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 commissioner 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 the employee or
representative has filed, 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 the alleged
violation occurs, petition to the reclamation board of review
for a review of the 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 and the 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) and
(f), section two, article four, chapter twenty-two of this code.

(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 connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.

§22A-3-38. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article, and to this end the provisions of this article are declared to be severable: Provided, That in promulgating rules pursuant to the provisions of this article, the commissioner shall note relevant administrative and judicial decisions from both state and federal systems and action by the United States Congress or the United States department of the interior.

§22A-3-39. Validity of regulations promulgated under section 502(c) of the Surface Mining Control and Reclamation Act of 1977.

(a) All rules and regulations promulgated under section 502(c) of the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), pursuant to the provisions of chapter sixty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-eight, and chapter seventy-one, 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 section 503 of Public Law 95-87 upon proclamation of the governor that the approval has been granted: Provided, That those persons conducting operations under a permit or underground opening approval issued in accordance with said section 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 commissioner.

(b) Permits granted under this article shall be subject to rules and regulations promulgated hereunder.
§22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; National Pollutant Discharge Elimination System; effective date of section.

(a) Notwithstanding any provisions of this chapter to the contrary, all powers, duties and responsibilities of the chief of the division of water resources under article five-a, chapter twenty of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a, chapter twenty of this code are hereby transferred to the commissioner. The commissioner shall have sole authority to issue, amend, transfer, renew or revoke all permits required under article five-a, chapter twenty-two of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom subject to said article five-a. The procedures for issuance, amendment, transferral, renewal and revocation of such permits shall be governed by regulations promulgated pursuant to subsection (b). The commissioner shall consolidate the various permit programs under article five-a, chapter twenty of this code and article three of this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. All provisions of article five-a, chapter twenty of this code heretofore applicable to coal mines, preparation plants and all refuse and waste therefrom shall be continued under this section.

(b) Notwithstanding any provisions of this chapter to the contrary, the commissioner shall have sole authority to promulgate rules and regulations necessary or proper to implement the provisions of article five-a, chapter twenty of this code with respect to all coal mines, preparation plants and all refuse and waste therefrom, except that the water resources board shall have the sole authority pursuant to section three-a, article five-a, chapter twenty of this code to promulgate rules and regulations setting standards of water quality applicable to the waters of the state. To the extent feasible, the commissioner shall promulgate rules and regulations consolidating the various regulatory programs under this chapter applicable to all coal mines, preparation plants and all refuse and waste therefrom. The promulgation of such rules and regulations shall be governed by the provisions of this article.
(c) Notwithstanding any provisions of this chapter to the contrary, the commissioner shall have the sole authority to enforce and shall enforce the rules and regulations promulgated under this article by the commissioner and the rules and regulations of the water resources board setting water quality standards for the waters of the state as they apply to all coal mines, preparation plants and all refuse and waste therefrom. Rules and regulations adopted by the commissioner, pursuant to the requirements of article five-a, chapter twenty of this code shall be enforceable by the commissioner under the provisions of sections seventeen and nineteen, article five-a, chapter twenty of this code, as though the regulations were promulgated by the water resources board: Provided, That the commissioner's authority to enforce such rules and regulations under article five-a, chapter twenty of this code shall not preclude the commissioner or any person from invoking the remedies otherwise provided by article three of this chapter and shall not preclude the commissioner from enforcing the provisions of this article.

(d) Notwithstanding any provisions of this chapter to the contrary, any permit of the commissioner issued pursuant to subsection (a) of this section, or any order issued under article five-a, chapter twenty of this code, or for the purpose of implementing the "National Pollutant Discharge Elimination System" established under the federal Clean Water Act, shall be appealable only to the state water resources board and such appeal shall be governed by the provisions of section fifteen, article five-a, chapter twenty of this code.

(e) This section shall become effective upon a proclamation by the governor stating that final approval of the partial transfer of the National Pollutant Discharge Elimination System established under the federal Clean Water Act contemplated by this section has been given by the Administrator of the United States Environmental Protection Agency.
§22A-4-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

§22A-4-5. Duties of surface-mining reclamation inspectors.

§22A-4-6. Permit required; application; issuance and renewal; fees and use of proceeds.

§22A-4-7. Preplans.

§22A-4-8. Installation of drainage system.

§22A-4-9. Alternative plans; time.

§22A-4-10. Limitations; mandamus.

§22A-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

§22A-4-12. Time in which reclamation shall be done.

§22A-4-13. Obligations of the operator.

§22A-4-14. Cessation of operation by inspector.

§22A-4-15. Completion of planting; inspection and evaluation.

§22A-4-16. Performance bonds.

§22A-4-17. Exception as to highway construction projects for reclamation requirements.

§22A-4-18. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.


§22A-4-20. Rules and regulations.


§22A-4-22. Adjudications, findings, etc., to be by written order; contents; notice.

§22A-4-23. Appeals to board; hearing; record; findings and orders of board.


§22A-4-25. Offenses; penalties; prosecutions; treble damages; injunctive relief.

§22A-4-26. Validity and construction of existing surface-mining permits.

§22A-4-27. Certification of surface miners.

§22A-4-28. Certification of surface mine foremen.

§22A-4-1. Jurisdiction vested in department of energy; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section eighteen of this article, the department of energy 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
The Legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of the 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 commissioner of the department of energy to administer and enforce the provisions of this article.

The commissioner of the department of energy and the director of the division of mines and minerals 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 commissioner of energy 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 energy, the division of mines and minerals, 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 employment, as the case may be.
§22A-4-2. Definitions.

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

(a) "Adequate treatment" means 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" means the release of water which has been trapped or impounded underground, or the release of air into any underground cavity, pocket or area.

(c) "Commissioner" means the commissioner of the department of energy 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 improvement of haulageways, roads or trails.

(e) "Minerals" means 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" means 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" means 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" means the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section seven of this article showing the exact location of end strip markers, permit markers and monuments.
(i) "Person" means any individual, partnership, firm, association, trust or corporation.

(j) "Surface mine" means 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" means 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 commissioner.

(l) "Surface of a regraded bench" means the top portion or part of any regraded area.

§22A-4-3. Department of energy; duties and functions.

Except as otherwise provided in this article, the commissioner shall administer all of the laws of this state relating to surface mining and shall exercise all of the powers and perform all of the duties by law vested in and imposed upon him in relation to said operations. The jurisdiction, supervision and enforcement authority granted the commissioner in this article shall be in addition to the jurisdiction, supervision and enforcement authority granted in this chapter.

§22A-4-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The commissioner 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 eligible civil service employees, but no person shall be qualified for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the commissioner of energy: 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 sixteen thousand dollars per year.

§22A-4-5. 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 commissioner. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. The commissioner 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 commissioner in writing, furnishing at the same time a copy of such report to the operator concerned.

§22A-4-6. 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 energy a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the commissioner of energy, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the commissioner, 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 seven 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 commissioner 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 of 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 commissioner. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this state covering all surface-mining operations of the applicant in this state and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage protection in an amount of not less than three hundred thousand dollars.

The commissioner shall upon receipt of the application for a permit cause to be published, as a Class III legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the commissioner's statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

The publication area of the notices required by this section shall be the county or counties in which the proposed permit
area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the commissioner may issue the permit applied for if the applicant has complied with all of the provisions of this article.

If the commissioner finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface-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,** 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 the first day of July, 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 commissioner to be adequate to reclaim 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 commissioner 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 commissioner shall from year to year renew the permit, if the operation is in compliance 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 provided for in this article shall be revoked.

All registration and renewal fees for surface mining shall be
collected by the commissioner and shall be deposited with the
treasurer of the state of West Virginia to the credit of the
operating permit fees fund and shall be used, upon requisition
of the commissioner, for the administration of this article.

§22A-4-7. Preplans.

Under the provisions of this article, and rules and
regulations adopted by the commissioner, the operator shall
prepare a complete reclamation and mining plan for the area
of land to be disturbed. Said reclamation and mining plan
shall include a proposed method of operation, prepared by a
registered professional engineer or a person approved by the
director, for grading, backfilling, soil preparation, mining and
planting and such other proposals as may be necessary to
develop the complete reclamation and mining plan contem-
plated by this article. In developing this complete reclamation
and mining plan all reasonable measures shall be taken to
eliminate damages to members of the public, their real and
personal property, public roads, streams and all other public
property from soil erosion, rolling stones and overburden,
water pollution and hazards dangerous to life and property.
The plan shall be submitted to the commissioner and the
commissioner 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
commissioner 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 commissioner, he may, by written notice,
request a hearing before the commissioner. The commissioner
shall hold such hearing within thirty days after receipt of this
notice. When a hearing is held by the commissioner, he shall
notify the applicant of his decision by certified mail within
twenty days after the hearing. Any person aggrieved by a final
order of the commissioner 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
commissioner. 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 commissioner a certificate of registration as a qualified engineer or land surveyor;

(b) Identify the area to correspond with 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 commissioner;

(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 commissioner may furnish to the chief of the division of water resources of the department of natural 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.
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 commissioner.

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 information
required by the surface-mining laws of this state." The
certification shall be signed and notarized. The commissioner
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 energy
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 commissioner, 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 energy 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
commissioner. 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 commissioner. If no land has been disturbed
by operations during the preceding year, the operator shall notify the commissioner 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.

§22A-4-8. Installation of drainage system.

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drainage system including any necessary settling ponds in accordance with the rules and regulations as established by the commissioner.

§22A-4-9. Alternative plans; time.

An operator may propose alternative plans not calling for backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this article. Such plans shall be submitted to the commissioner, and if such plans are approved by the commissioner 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 commissioner, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such 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 designate 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 that operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section seven of this article.

Where applicable, suitable soil material shall be used to cover the surface of the regraded and backfilled area of operation in an amount sufficient to support vegetation.
When the backfilling and grading have been completed and approved by the commissioner, the commissioner shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the commissioner, at which time the commissioner shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulageway to the area. Upon abandonment of 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 commissioner. 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 commissioner, 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 commissioner as required by the provisions of section seven of this article.

After the operation has been backfilled, graded and approved by the commissioner, 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 commissioner.

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
commissioner to have such planting done by such district or
private contractor. The commissioner 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-a of this code.

The purpose of this section is to require restoration of land
disturbed by surface mining to a desirable purpose and use.
The commissioner may, in the exercise of his sound discretion
when not in conflict with such purpose, modify such
requirements to bring about a more desirable land use,
including, but not limited to, industrial sites, sanitary landfills,
recreational areas, building sites: Provided, That the person or
agency making such modifications will execute contracts, post
bond or otherwise 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.

§22A-4-10. Limitations; mandamus.

The Legislature finds that there are certain areas in the state
of West Virginia which are impossible to reclaim either by
natural growth or by technological activity and that if surface
mining is conducted in these certain areas such operations may
naturally cause stream pollution, landslides, the accumulation
of stagnant water, flooding, the destruction of land for
agricultural purposes, the destruction of aesthetic values, the
destruction of recreational areas and future use of the area and
surrounding areas, thereby destroying or impairing the health
and property rights of others, and in general creating hazards
dangerous to life and property so as to constitute an imminent
and inordinate peril to the welfare of the state, and that such
areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the commissioner
to delete certain areas from all surface-mining operations.

No application for a permit shall be approved by the
commissioner if there is found on the basis of the information
set forth in the application or from information available to
the commissioner 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 commissioner 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
commissioner may delete such part of the land described in
the application upon which such overburden exists.

If the commissioner finds that the operation will constitute
a hazard to a dwelling house, public building, school, church,
cemetery, commercial or institutional building, public road,
stream, lake or other public property, then he shall delete such
areas from the permit application before it can be approved.

The commissioner shall not give approval to surface mine
any area which is within one hundred feet of any public road,
stream, lake or other public property, and shall not approve
the application for a permit where the surface-mining
operation will adversely affect a state, national or interstate
park unless adequate screening and other measures approved
by the commission are to be utilized and the permit application
so provides: Provided, That the one-hundred-foot restriction
aforesaid shall not include ways used for ingress and egress
to and from the minerals as herein defined and the transpor-
tation 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 commissioner 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
The failure of the commissioner 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.

§22A-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: \( W = \left(\frac{D}{50}\right)^2 \). Where \( W \) equals weight in pounds of explosives detonated at any one instant time, then \( D \) equals distance in feet from nearest point of blast to nearest residence, building or structure, other than operation facilities of the mine. Provided, That explosive charges shall be considered to be detonated at one time if their detonation occurs within eight milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or nonelectric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

(3) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the department of energy with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder-breaking) blasts the following information:
(a) Date and time of blast,
(b) Number of holes,
(c) Typical explosive weight per delay period,
(d) Total explosives in blast at any one time,
(e) Number of delays used,
(f) Weather conditions, and
(g) Signature of operator employee in charge of the blast.

(5) Where inspection by the department of energy 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 hereinabove set forth within a reasonable time established by the commissioner, the permit shall be revoked.

All such assessments as set forth in this section shall be assessed by the commissioner, collected by him and deposited with the treasurer of the state of West Virginia, to the credit of the operating permit fees fund.

The commissioner 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.

§22A-4-12. 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 commissioner 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 commissioner, these practices are not current.

§22A-4-13. Obligations of the operator.

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 commissioner, or with
a permanent water impoundment.

2. Bury under adequate fill, all materials determined by the
commissioner 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 commissioner. 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 break-
through of water, adequate treatment shall be undertaken by
the operator so as to prevent pollution occurring from the
release of such water into the natural drainway or stream.
Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a 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, chapter twenty of this code.

(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 removed 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 constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the commissioner. There shall be no depressions that will accumulate water except those the commissioner may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

With the exception of limestone, sandstone and sand, complete backfilling shall be required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate highwalls and spoil peaks. Whenever directed by the commissioner, 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 commissioner, according to rules and regulations adopted by the commissioner.

§22A-4-14. 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 commissioner 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 immediately appeal to the commissioner, setting forth reasons why the operation should not be halted. The commissioner shall determine immediately when and if the operation may continue.

§22A-4-15. 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 commissioner on a form to be prescribed and furnished
by the commissioner, providing the following information: (1)
Identification of the operation; (2) the type of planting or
seeding, including mixtures and amounts; (3) the date of
planting or seeding; (4) the area of land planted; and (5) such
other relevant information as the commissioner may require.
All planting reports shall be certified by the operator, or by
the party with whom the operator contracted for such
planting, as aforesaid.

§22A-4-16. Performance bonds.

Each operator who shall make application for a permit
under section six of this article shall, at the time such permit
is requested, furnish bond, on a form to be prescribed and
furnished by the commissioner, 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 commissioner shall have the discretion to determine
the amount per acre of the bond that shall be required before
a permit is issued, such amount to be based upon the estimated
reclamation costs per acre, not to exceed a maximum of one
thousand dollars per acre or fraction thereof. The minimum
amount of bond furnished shall be ten thousand dollars. Such
bond shall be executed by the operator and a corporate surety
licensed to do business in the state of West Virginia: Provided,
however, That in lieu of corporate surety, the operator may
elect to deposit with the commissioner cash, or collateral
securities or certificates as follows: Bonds of the United States
or its possessions, of the federal land banks, or of the home
owners' loan corporation; full faith and credit general
obligation bonds of the state of West Virginia, or other states,
and of any county, district or municipality of the state of West
Virginia or other states; or certificates of deposit in a bank
in this state, which certificates shall be in favor of the
commissioner. The cash deposit or market value of such
securities or certificates shall be equal to or greater than the
sum of the bond. The commissioner shall, upon receipt of any
such deposit of cash, securities or certificates, immediately
place the same with the treasurer of the state of West Virginia
whose duty it shall be to receive and hold the same in the name
of the state in trust for the purpose for which such deposit
is made. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash of other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

It shall be unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligation to the state for the reclamation of lands disturbed by him. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The commissioner may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area.

The commissioner 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 nine of this article.

§22A-4-17. Exception as to highway construction projects for 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.

§22A-4-18. 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 commissioner of the department of energy shall promulgate reasonable rules and 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 rules and regulations relating to the safety of those employed in and around surface mines is hereby vested in the division of mines and minerals and shall be enforced according to the provisions of chapter twenty-two-a of this code.


The operator of every surface mine shall, on or before the end of each calendar month, file with the director of the division of mines and minerals 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.

§22A-4-20. Rules and regulations.

The commissioner 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.


If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the commissioner have not been complied with within the time limits set by the commissioner or by this article, the commissioner 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 commissioner 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
If the operator has not reached an agreement with the commissioner 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 commissioner and the performance bond shall then be forfeited. If an agreement satisfactory to the commissioner 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.

When any bond is forfeited pursuant to the provisions of this article, the commissioner shall give notice to the attorney general who shall collect the forfeiture without delay.

§22A-4-22. Adjudications, findings, etc., to be by written order; contents; notice.

Every adjudication, determination or finding by the commissioner 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 commissioner 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.

§22A-4-23. 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 commissioner 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 commissioner should have entered.

The person so appealing to the board shall be known as the appellant and the commissioner shall be known as the appellee. The appellant and the appellee 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 commissioner within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the commissioner shall prepare and certify to the board a complete record of the proceedings before him, 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 commissioner at least ten days' written notice thereof by certified mail. The board may postpone or continue any hearing upon its own motion or upon application of the appellant or of the commissioner.

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 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 subpoenas and subpoenas duces tecum shall be served and returned 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
appellant shall be paid in advance by the appellant, and the
remainder of such fees and expenses shall be paid out of funds
appropriated for the expenses of the department.

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, or any
judge thereof in vacation, on application of the board or any
member thereof, shall compel obedience by attachment
proceedings for contempt 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 administer 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 board 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 commissioner has unreasonably or unlawfully failed to
enter an order, it shall enter such order as it finds the
commissioner would 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
95 mail.
96 The order of the board shall be final unless vacated upon
97 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 commissioner, 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 commissioner, 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. 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.

§22A-4-25. 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 imprison-
ment 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 commissioner 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 commissioner
for deposit in the surface-mining reclamation fund an amount
sufficient to reclaim the area with respect to which such
conviction relates. The commissioner 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 commissioner
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
commissioner 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 commissioner 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 provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any 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.

§22A-4-26. Validity and construction of existing surface-mining permits.

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.

§22A-4-27. 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 nine and ten, chapter twenty-two of this code.

§22A-4-28. 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 ten, 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 ten.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, 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 ten, 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 commissioner shall promulgate such rules and regulations as may be necessary to carry out the provisions of this section.

ARTICLE 5. UNDERGROUND CLAY MINE.

§22A-5-1. Definition.

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay
3 seams or strata, which excavations are ventilated by one
general air current or division thereof, and the surface
structures or equipment connected therewith which contribute
directly or indirectly to the underground mining of clay.

§22A-5-2. Clay mine foreman; when to be employed; qualifications;
assistants.

1 In every underground clay mine where five or more persons
are employed in a period of twenty-four hours, the operator
shall employ a mine foreman who shall be a competent and
practical person holding a certificate of competence for said
position issued to him by the division of mines and minerals
after an examination by such division. In order to receive a
certificate of competence qualifying a foreman in an under-
ground clay mine, the applicant shall take an examination
prescribed by the director of the division of mines and
minerals, be a citizen of this state, of good moral character
and temperate habits, having had at least three years’
experience in the underground working of clay mines.

§22A-5-3. Regulations for protection of health and safety of
employees.

1 The commissioner may from time to time promulgate
reasonable rules and regulations for the protection of the
health and safety of the persons working in or about
underground clay mines, to the extent the same are not more
onerous or restrictive than the laws of this state intended to
safeguard the life and health of persons working in under-
ground coal mines contained in article two of this chapter.

ARTICLE 6. OPEN—PIT MINES, CEMENT MANUFACTURING
PLANTS AND UNDERGROUND LIMESTONE AND
SANDSTONE MINES.

§22A-6-1. Definitions.
§22A-6-2. Applicability of mining laws.
§22A-6-3. Rules and regulations.
§22A-6-4. Monthly report by operator.
§22A-6-5. Inspectors.
§22A-6-6. Penalties.

§22A-6-1. Definitions.

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

3 (a) “Open-pit mine” means an excavation worked from the
surface and open to daylight.

(b) "Underground mine" means subterranean workings for the purpose of obtaining a desired material or materials.

(c) "Sand" means waterworn sandstone fragments transported and deposited by water.

(d) "Gravel" means an occurrence of waterworn pebbles.

(e) "Sandstone" means a compacted or cemented sediment composed chiefly of quartz grains.

(f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.

(g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) "Iron ore" means a mineral or minerals, and gangue when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral when treated will yield manganese at a profit.

§22A-6-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property shall extend to all open-pit mines and any property used in connection therewith for the mining of underground limestone and sandstone mines, insofar as such laws are applicable thereto.

§22A-6-3. Rules and regulations.

The commissioner of the department of energy shall promulgate reasonable rules and regulations, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

§22A-6-4. Monthly report by operator.

The operator of such mine shall, on or before the end of each calendar month, file with the director of the division of mines and minerals a report covering the preceding calendar month on forms furnished by the director. Such reports shall
§22A-6-5. Inspectors.

The director of the division of mines and minerals shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, or good character and reputation, temperate in habits, having a minimum of five years of practical experience in such mining operations and at the time of his appointment is not more than fifty-five years of age. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the division of mines and minerals. No candidate's name shall remain in the register for more than three years without requalifying.

Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (d), section eight, article one-a of this chapter and shall be paid not less than fifteen thousand dollars per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than fifteen cents for each mile actually traveled in the discharge of their duties in a privately owned vehicle. Such inspector shall also be reimbursed for any expense incurred in maintaining an office in his or her home, which office is used in the discharge of official duties: Provided, That such reimbursement shall not exceed two hundred forty dollars per annum.

§22A-6-6. Penalties.

Any person who fails or refuses to discharge any provision of this article, rule and regulation promulgated or order issued pursuant to the provisions of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished
.5 by a fine of not less than one hundred nor more than one
6 thousand dollars or by imprisonment not exceeding six
7 months, or by both.

CHAPTER 22B. OIL AND GAS.

Article
1. Division of Oil and Gas; Oil and Gas Wells; Administration; Enforcement.
2. Oil and Gas Production Damage Compensation.
3. Transportation of Oils.

ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS;
ADMINISTRATION; ENFORCEMENT.

§22B-1-1. Definitions.
§22B-1-2. Director—Powers and duties generally; departmental records open to
public; inspectors.
§22B-1-3. Findings and orders of inspectors concerning violations; determination
of reasonable time for abatement; extensions of time for
abatement; special inspections; notice of findings and orders.
§22B-1-4. Review of findings and orders by director; special inspection; annulment,
revision, etc., of order; notice.
§22B-1-5. Requirements for findings, orders and notices; posting of findings and
orders; judicial review of final orders of director.
§22B-1-6. Permit required for well work; permit fee; application; soil erosion
control plan.
§22B-1-7. Water pollution control permits; powers and duties of the director;
penalties.
§22B-1-8. Permits not to be issued on flat well royalty leases; legislative findings
and declarations; permit requirements.
§22B-1-10. Procedure for filing comments; certification of notice.
§22B-1-11. Review of application; issuance of permit in the absence of objections;
copy of permits to county assessor.
§22B-1-12. Plats prerequisite to drilling or fracturing wells; preparation and contents;
notice and information furnished to coal operators, owners or lessees;
issuance of permits; performance bonds or securities in lieu thereof;
bond forfeiture.
§22B-1-13. Notice to coal operators, owners or lessees and director of division of
mines and minerals of intention to fracture certain other wells;
contents of such notice; bond; permit required.
§22B-1-14. Plats prerequisite to introducing liquids or waste into wells; preparation
and contents; notice and information furnished to coal operators,
owners or lessees and division of mines and minerals chief of water
resources; issuance of permits; performance bonds or security in lieu
thereof.
§22B-1-15. Objections to proposed drilling of deep wells and oil wells; objections
to fracturing, stimulating, notices and hearings; agreed locations or
conditions; indication of changes on plats, etc.; issuance of permits.
§22B-1-1. Definitions.

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

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) "Cement" means hydraulic cement properly mixed with water;
(c) "Chairman" means the chairman of the West Virginia shallow gas well review board as provided for in section four, article seven, chapter twenty-two of this code;

(d) "Chief" means chief of the division of water resources of the department of natural resources;

(e) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(f) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(g) "Commissioner" means commissioner of the department of energy;

(h) "Deep well" means any well drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group" or at a depth of or greater than six thousand feet, whichever is shallower;

(i) "Division" means, for purposes of this article and articles three and four of this chapter, the division of oil and gas of the department of energy;

(j) "Director" means, for the purposes of this article and articles two, three and four of this chapter, the director of the division of oil and gas of the department of energy;

(k) "Expanding cement" means any cement approved by the division of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;

(l) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in article three or four of this chapter, other than a well or well site;

(m) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (n) of this section;

(n) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the
well in liquid form by ordinary production methods and which
are not the result of condensation of gas after it leaves the
underground reservoirs;

(o) "Owner" when used with reference to any well, shall
include any person or persons, firm, partnership, partnership
association or corporation that owns, manages, operates,
controls or possesses such well as principal, or as lessee or
contractor, employee or agent of such principal;

(p) "Owner" when used with reference to any coal seam,
shall include any person or persons who own, lease or operate
such coal seam;

(q) "Person" means any natural person, corporation, firm,
partnership, partnership association, venture, receiver, trustee,
executor, administrator, guardian, fiduciary or other represe­
tative of any kind, and includes any government or any
political subdivision or any agency thereof;

(r) "Plat" means a map, drawing or print showing the
location of a well or wells as herein defined;

(s) "Review board" means the West Virginia shallow gas
well review board as provided for in section four, article seven,
chapter twenty-two of the code;

(t) "Safe mining through of a well" means the mining of
coal in a workable coal bed up to a well which penetrates such
workable coal bed and through such well so that the casing
or plug in the well bore where the well penetrates the workable
coal bed is severed;

(u) "Shallow well" means any gas well drilled and completed
in a formation above the top of the uppermost member of the
"Onondaga Group" or at a depth less than six thousand feet,
whichever is shallower;

(v) "Stimulate" means any action taken by a well operator
to increase the inherent productivity of an oil or gas well,
including, but not limited to, fracturing, shooting or acidizing,
but excluding cleaning out, bailing or workover operations;

(w) "Waste" means (i) physical waste, as the term is
generally understood in the oil and gas industry; (ii) the
locating, drilling, equipping, operating or producing of any oil
or gas well in a manner that causes, or tends to cause a
substantial reduction in the quantity of oil or gas ultimately
recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article eight, chapter twenty-two of this code and the provisions of article seven, chapter twenty-two of this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient and (vi) other underground or surface waste in the production or storage of oil, gas, or condensate, however caused;

(x) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use;

(y) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(z) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(aa) "Pollutant" shall have the same meaning as provided in subsection (x), section two, article five-a, chapter twenty of this code; and

(bb) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection (e), section two,
§22B-1-2. Director—Powers and duties generally; departmental records open to public; inspectors.

(a) The director of the division of oil and gas shall have as his duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles three and four of this chapter, subject to review and approval of the commissioner.

(b) The director of the division of oil and gas is authorized to enact rules and regulations necessary to effectuate the above-stated purposes, subject to review and approval by the commissioner.

(c) The director shall have full charge of the oil and gas matters set out in this article and in articles three and four of this chapter, subject always to the direct supervision and control of the commissioner of the department of energy. In addition to all other powers and duties conferred upon him, the director shall have the power and duty to:

1. Supervise and direct the activities of the division of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

2. Employ a supervising oil and gas inspector and oil and gas inspectors upon approval by the commissioner;

3. Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

4. Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

5. Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this chapter;

6. Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his duties and the purposes of the division of oil and gas and fix their compensation;

7. Hear and determine applications made by owners, well operators and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising
inspector, and to make inspections, in accordance with the provisions of this article and articles three and four of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by oil and gas inspectors or the supervising inspector;

(9) Make annually a full and complete written report to the commissioner as he may from time to time request, so that the commissioner can complete the preparation of the commissioner’s annual report to the governor of the state;

(10) Conduct such research and studies as the commissioner shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(11) Perform any and all acts necessary to carry out and implement the state requirements established by 92 Statutes at Large 3352, et seq., the “Natural Gas Policy Act of 1978,” which are to be performed by a designated state jurisdictional agency regarding determinations that wells within the state qualify for a maximum lawful price under certain categories of natural gas as set forth by the provisions of the said “Natural Gas Policy Act of 1978”;

(12) Collect a filing and processing fee of forty dollars for each well, for which a determination of qualification to receive a maximum lawful price under the provisions of the “Natural Gas Policy Act of 1978” is sought from the director; all revenues from such fees to be placed in the general revenue fund of the state;

(13) Collect a permit fee of two hundred fifty dollars for each permit application filed after the tenth day of June, one thousand nine hundred eighty-three: Provided, That no permit application fee shall be required when an application is submitted solely for plugging or replugging of a well. All application fees required hereunder shall be in addition to any other fees required by the provisions of this article;

(14) Perform all other duties which are expressly imposed upon him by the provisions of this chapter, as well as duties
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77 assigned to him by the commissioner;
78 (15) Perform all duties as the permit issuing authority for
79 the state in all matters pertaining to the exploration,
80 development, production, storage and recovery of this state's
81 oil and gas in accordance with section thirteen, article one,
82 chapter twenty-two of this code;
83 (16) Adopt rules and regulations in accordance with section
84 thirteen, article one, chapter twenty-two of this code with
85 respect to the issuance, denial, retention, suspension or
86 revocation of permits, authorizations and requirements of this
87 chapter, which rules and regulations shall assure that the
88 regulations, permits and authorizations issued by the director
89 are adequate to satisfy the purposes of this chapter and chapter
90 twenty-two of this code particularly with respect to the
91 consolidation of the various state and federal programs which
92 place permitting requirements on the exploration, develop­
93 ment, production, storage and recovery of this state's oil and
94 gas: Provided, That notwithstanding any provisions of this
95 chapter or chapter twenty-two of this code to the contrary,
96 the water resources board shall have the sole authority
97 pursuant to section three-a, article five-a of chapter twenty to
98 promulgate rules and regulations setting standards of water
99 quality applicable to waters of the state;
100 (17) Perform such acts as may be necessary or appropriate
101 to secure to this state the benefits of federal legislation
102 establishing programs relating to the exploration, develop­
103 ment, production, storage and recovery of this state's oil and
104 gas, which programs are assumable by the state.
105 (d) The director shall have authority to visit and inspect any
106 well or well site and any other oil or gas facility in this state
107 and may call for the assistance of any oil and gas inspector
108 or inspectors or supervising inspector whenever such assistance
109 is necessary in the inspection of any such well or well site or
110 any other oil or gas facility. Similarly, all oil and gas inspectors
111 and the supervising inspector shall have authority to visit and
112 inspect any well or well site and any other oil or gas facility
113 in this state. Any well operator, coal operator operating coal
114 seams beneath the tract of land, or the coal seam owner or
115 lessee, if any, if said owner or lessee is not yet operating said
116 coal seams beneath said tract of land may request the director
117 to have an immediate inspection made. The operator or owner
of every well or well site or any other oil or gas facility shall cooperate with the director, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

(f) All records of the division shall be open to the public.

§22B-1-3. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

(a) If an oil and gas inspector, upon making an inspection of a well or well site or any other oil or gas facility, finds that any provision of this article is being violated, he shall also find whether or not an imminent danger to persons exists, or whether or not there exists an imminent danger that a fresh water source or supply will be contaminated or lost. If he finds that such imminent danger exists, he shall forthwith make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations until such imminent danger has been abated. If he finds that no such imminent danger exists, he shall determine what would be a reasonable period of time within which such violation should be totally abated. Such findings shall contain reference to the provisions of this article which he finds are being violated, and a detailed description of the conditions which cause and constitute such violation.

(b) The period of time so found by such oil and gas inspector to be a reasonable period of time shall not exceed seven days. Such period may be extended by such inspector, or by any other oil and gas inspector duly authorized by the director, from time to time, for good cause, but not to exceed a total of thirty days, upon the making of a special inspection to ascertain whether or not such violation has been totally abated: Provided, That such thirty-day period may be extended beyond thirty days by such inspectors where abatement is shown to be incapable of accomplishment because of circumstances or conditions beyond the control of
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28 the well operator. The director shall cause a special inspection to be made: (A) Whenever an operator of a well or well site or any other oil or gas facility, prior to the expiration of any such period of time, requests him to cause a special inspection to be made at such well or well site or any other oil or gas facility; and (B) Upon expiration of such period of time as originally fixed or as extended, unless the director is satisfied that the violation has been abated. Upon making such special inspection, such oil and gas inspector shall determine whether or not such violation has been totally abated. If he determines that such violation has not been totally abated, he shall determine whether or not such period of time as originally fixed, or as so fixed and extended, should be extended. If he determines that such period of time should be extended, he shall determine what a reasonable extension would be. If he determines that such violation has not been totally abated, and if such period of time as originally fixed, or as so fixed and extended, has then expired, and if he also determines that such period of time should not be further extended, he shall thereupon make an order requiring the operator of such well or well site or other oil or gas facility to cease further operations of such well, well site or facility, as the case may be. Such findings and order shall contain reference to the specific provisions of this article which are being violated.

(c) Notice of each finding and order made under this section shall promptly be given to the operator of the well or well site or other oil or gas facility to which it pertains by the person making such finding or order.

(d) No order shall be issued under the authority of this section which is not expressly authorized herein.

§22B-1-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

1 (a) Any well operator, complaining coal operator, owner or lessee, if any, aggrieved by findings or an order made by an oil or gas inspector pursuant to section three of this article, may within fifteen days apply to the director for annulment or revision of such order. Upon receipt of such application the director shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the supervising
inspector and one duly authorized oil and gas inspector other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection himself, or upon receiving the report of such special inspection, as the case may be, the director shall make an order which shall include his findings and shall annul, revise or affirm the order of the oil and gas inspector.

(b) The director shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or other oil or gas facility to which such findings and order pertain, and the complainant under section three if any.

(c) At any time while an order made pursuant to section three of this article is in effect, the operator of the well, well site or other oil or gas facility affected by such order may apply to the director for annulment or revision of such order. The director shall thereupon proceed to act upon such application in the manner provided in this section.

(d) In view of the urgent need for prompt decision of matters submitted to the director under this article, all actions which he, or oil and gas inspectors, or the supervising inspector, is required to take under this article, shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

§22B-1-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

(a) All findings and orders made pursuant to section three or four of this article, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Notice of any finding or order required by section three or four of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding
or order pertains, to be delivered to such operator by causing
a copy thereof to be sent by registered mail to the permanent
address of such operator as filed with the division and by
causing a copy thereof to be posted upon the drilling rig or
other equipment at the well, well site or other oil and/or gas
facility, as the case may be. The requirement of this article
that a notice shall be “addressed to the operator of the well,
well site or other oil and/or gas facility to which such finding
or order pertains,” shall not require that the name of the
operator for whom it is intended shall be specifically set out
in such address. Addressing such notice to “Operator of
..........,” specifying the well, well site or other oil and/or gas
facility sufficiently to identify it, shall satisfy such requirement.

(c) Any well operator, complaining coal operator, owner or
lessee, if any, adversely affected by a final order issued by the
director under section four of this article shall be entitled to
judicial review thereof. All of the pertinent provisions of
section four, article five, chapter twenty-nine-a of this code
shall apply to and govern such judicial review with like effect
as if the provisions of said section four were set forth in
extenso in this section.

(d) The judgment of the circuit court shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals in accordance with the provisions of section one,
article six, chapter twenty-nine-a of this code.

(e) Legal counsel and services for the director in all appeal
proceedings in any circuit court and the supreme court of
appeals shall be provided by the attorney general or his
assistants and in any circuit court by the prosecuting attorney
of the county as well, all without additional compensation. The
director, with written approval of the attorney general, may
employ special counsel to represent the director at any such
appeal proceedings.

§22B-1-6. Permit required for well work; permit fee; application;
soil erosion control plan.

(a) It is unlawful for any person to commence any well
work, including site preparation work which involves any
disturbance of land, without first securing from the director
a well work permit. An application may propose and a permit
may approve two or more activities defined as well work.
(b) The application for a well work permit shall be accompanied by applicable bond as prescribed section twelve, fourteen or twenty-three of this article, and the applicable plat required by section twelve or fourteen of this article.

c) Every permit application filed under this section shall be verified and shall contain the following:

1. The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person whom the applicant must notify under any section of this article together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

2. The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by section twelve, if any, if said owner or lessee is not yet operating said coal seams;

3. The number of the well or such other identification as the director may require;

4. The type of well;

5. The well work for which a permit is requested;

6. The approximate depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled;

7. Any permit application fee required by law;

8. If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set, and the extent to which each such string is to be cemented;

9. If the proposed well work is to convert an oil well or a combination well or to drill a new well for the purpose of introducing pressure for the recovery of oil as provided in section twenty-five of this article, specifications in accordance with the data requirements of section fourteen of this article;

10. If the proposed well work is to plug or replug the well, (i) specifications in accordance with the data requirements of section twenty-three of this article, (ii) a copy of all logs in the operator's possession as the director may require, and (iii) a work order showing in detail the proposed manner of
plugging or unplugging the well, in order that a representative of the director and any interested persons may be present when the work is done. In the event of an application to drill, redrill or deepen a well, if the well work is unsuccessful so that the well must be plugged and abandoned, and if the well is one on which the well work has been continuously progressing pursuant to a permit, the operator may proceed to plug the well as soon as he has obtained the verbal permission of the director or his designated representative to plug and abandon the well, except that the operator shall make reasonable effort to notify as soon as practicable the surface owner and the coal owner, if any, of the land at the well location, and shall also timely file the plugging affidavit required by section twenty-three of this article;

(11) If the proposed well work is to stimulate an oil or gas well, specifications in accordance with the data requirements of section thirteen of this article;

(12) The erosion and sediment control plan required under subsection (d) of this section for applications for permits to drill; and

(13) Any other relevant information which the director may require by rule.

(d) An erosion and sediment control plan shall accompany each application for a well work permit except for a well work permit to plug or replug any well. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and from time to time amended by the division of oil and gas, in consultation with the several soil conservation districts pursuant to the control program established in this state through section 208 of the federal Water Pollution Control Act Amendments of 1972 [33 U.S.C. 1288]. The erosion and sediment control plan shall become part of the terms and conditions of a well work permit, except for a well work permit to plug or replug any well, which is issued and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section thirty of this
For the purpose of ascertaining whether or not issuance of any permit for well work will cause or contribute to a pollution problem, the director shall consult with the director of the department of natural resources.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West Virginia upon whom notices, orders or other communications issued pursuant to this article or article five-a, chapter twenty, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the division of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the director in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the director.

(g) The director may waive the requirements of this section and sections nine, ten and eleven of this article in any emergency situation, if he deems such action necessary. In such case the director may issue an emergency permit which would be effective for not more than thirty days, but which would be subject to reissuance by the director.

(h) The director shall deny the issuance of a permit if he determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation within the time prescribed by the director pursuant to the provisions of sections three and four of this article and the rules promulgated hereunder, which time may not be unreasonable: Provided, That in the event that the director does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, he may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit:
Provided, however, That the director may reinstate the permit without further notice, at which time the well work may be continued. The director shall make written findings of any such determination made by him and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section forty of this article. The director shall make a written finding of any such determination.

(i) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22B-1-7. Water pollution control permits; powers and duties of the director; penalties.

(a) In addition to a permit for well work, the director, after public notice and an opportunity for public hearings, may either issue a separate permit, general permit or a permit consolidated with the well work permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of the director.

(b) It shall be unlawful for any person conducting activities which are subject to the requirements of this article, unless he holds a water pollution control permit therefor from the director, which is in full force and effect to: (I) Allow pollutants or the effluent therefrom, produced by the discharge of any pollutant or combination of pollutants into waters of this state; (2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of this state; (3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge of any effluent into the waters of this state; (4) Discharge or dispose of any pollutant or combination of pollutants into waters of this state; (5) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge of any pollutant or combination of pollutants into the waters of this state; (6) Alter any water pollution control permit issued by the director, which is in full force and effect; (7) Discharge or dispose of any pollutant or combination of pollutants into waters of this state; (8) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge of any pollutant or combination of pollutants into the waters of this state.

Such determination shall be made in the circuit courts of this state and the operator may appeal such determination made by him and may enforce the same continued. The director shall make written findings of any such determination, without further notice, at which time the well work may be continued. Provided, however, That the director may reinstate the permit.
(4) Increase in volume or concentration any pollutants in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any pollutants discharging or flowing into the waters of the state;

(6) Operate any disposal well for the injection or reinjection underground of any pollutant, including, but not limited to, liquids or gasses, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Notwithstanding any provision of this chapter to the contrary, the director shall have the same powers and duties relating to inspection and enforcement as those granted to the chief of water resources, his authorized agent or any authorized employee as the case may be under article five-a, chapter twenty of this code in connection with the issuance of any water pollution control permit or any person required to have such permit.

(d) Any person who violates any provision of this section, any order issued under this section or any permit issued pursuant to this section or any rule or regulation of the director relating to water pollution or who willfully or negligently violates any provision of this section or any permit issued pursuant to this section or any rule or regulation or order of the director relating to water pollution or who fails or refuses to apply for and obtain a permit or who intentionally misrepresents any material fact in an application, record, report, plan or other document files or required to be maintained under this section shall be subject to the same penalties for such violations as are provided for in sections seventeen and nineteen, article five-a, chapter twenty of this code: Provided, That the provisions of section twenty, article five-a, chapter twenty of this code relating to exceptions to criminal liability shall also apply.

All applications for injunction filed pursuant to section seventeen, article five-a, chapter twenty of the code shall take priority on the docket of the circuit court in which pending, and shall take precedence over all other civil cases.

(e) Notwithstanding any provisions of this chapter or
chapter twenty-two of this code to the contrary, any water pollution permit of the director of the division of oil and gas issued pursuant to this section or any order issued in connection with it or for the purpose of implementing the "national pollutant discharge elimination system" established under the Clean Water Act or the requirements of this section, shall be appealable only to the state water resources board and such appeal shall be governed by the provisions of section fifteen, article five-a, chapter twenty of this code.

(f) If any loss of game-fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon him by this section, the West Virginia department of natural resources shall have a cause of action on behalf of the state of West Virginia to recover from such person or persons causing such a loss a sum equal to the cost of replacing such game-fish or aquatic life. Any moneys so collected by the director of the department of natural resources shall be deposited in a special revenue fund entitled "natural resources game-fish and aquatic life fund" and shall be expended as hereinafter provided. The fund shall be expended to stock waters of this state with game-fish and aquatic life. Where feasible, the director of the department of natural resources shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in the fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever located in this state, with game-fish and aquatic life. The commissioner shall assist the director of the department of natural resources by providing witnesses, records, reports or other evidence relating to such cause of action.

§22B-1-8. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well,
and thus is not inherently related to the volume of the oil and
gas produced or marketed;

(2) That continued exploitation of the natural resources of
this state in exchange for such wholly inadequate compensa-
tion is unfair, oppressive, works an unjust hardship on the
owners of the oil and gas in place, and unreasonably deprives
the economy of the state of West Virginia of the just benefit
of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other
continuing contracts based upon or calling for an annual flat
well royalty, have been in existence for a great many years
and were entered into at a time when the techniques by which
oil and gas are currently extracted, produced or marketed,
were not known or contemplated by the parties, nor was it
contemplated by the parties that oil and gas would be
recovered or extracted or produced or marketed from the
depths and horizons currently being developed by the well
operators;

(4) That while being fully cognizant that the provisions of
section 10, article I of the United States constitution and of
section 4, article III of the constitution of West Virginia,
proscribe the enactment of any law impairing the obligation
of a contract, the Legislature further finds that it is a valid
exercise of the police powers of this state and in the interest
of the state of West Virginia and in furtherance of the welfare
of its citizens, to discourage as far as constitutionally possible
the production and marketing of oil and gas located in this
state under the type of leases or other continuing contacts
described above.

(b) In the light of the foregoing findings, the Legislature
hereby declares that it is the policy of this state, to the extent
possible, to prevent the extraction, production or marketing
of oil or gas under a lease or leases or other continuing
contract or contracts providing a flat well royalty or any
similar provisions for compensation to the owner of the oil
and gas in place, which is not inherently related to the volume
of oil or gas produced or marketed, and toward these ends,
the Legislature further declares that it is the obligation of this
state to prohibit the issuance of any permit required by it for
the development of oil or gas where the right to develop,
extract, produce or market the same is based upon such leases
or other continuing contractual agreements.

(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

(1) A brief description of the tract of land including the district and county wherein the tract is located;

(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced and marketed.

(e) To avoid the permit prohibition of subsection (d), the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the total amount paid to or received by or allowed to the
90 owner of the working interest at the wellhead for the oil or
gas so extracted, produced or marketed before deducting the
amount to be paid to or set aside for the owner of the oil
or gas in place, on all such oil or gas to be extracted, produced
or marketed from the well. If such affidavit be filed with such
application, then such application for permit shall be treated
as if such lease or leases or other continuing contract or
contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause
of action to enforce his rights established by this section.

(g) The provisions of this section shall not affect or apply
to any lease or leases or other continuing contract or contracts
for the underground storage of gas or any well utilized in
connection therewith or otherwise subject to the provisions of
article four of this chapter.

(h) The director shall enforce this requirement irrespective
of whether such lease or other continuing contract was
executed before or after the effective date of this chapter.

(i) The provisions of this section shall not adversely affect
any rights to free gas.


(a) No later than the filing date of the application, the
applicant for a permit for any well work shall deliver by
personal service or by certified mail, return receipt requested,
copies of the application, well plat and erosion and sediment
control plan required by section six of this article to each of
the following persons:

(1) The owners of record of the surface of the tract on which
the well is, or is to be located; and

(2) The owners of record of the surface tract or tracts
overlying the oil and gas leasehold being developed by
proposed well work, if such surface tract is to be utilized for
roads or other land disturbance as described in the erosion and
sediment control plan submitted pursuant to section six of this
article.

(b) If more than three tenants in common or other co-
owners of interests described in subsection (a) of this section
hold interests in such lands, the applicant may serve the
documents required upon the person described in the records
of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule and regulation, with the first publication date being at least ten days prior to the filing of the permit application: Provided, That all owners occupying the tracts where the well work is, or is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Materials served upon persons described in subsections (a) and (b) of this section shall contain a statement of the methods and time limits for filing comments, who may file comments and the name and address of the director for the purpose of filing comments and obtaining additional information and a statement that such persons may request, at the time of submitting comments, notice of the permit decision and a list of persons qualified to test water as provided in this section.

(d) Any person entitled to submit comments shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comments concerning said permit application.

(e) Persons entitled to notice may contact the district office of the division to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the division shall consult with the state and local health departments.

§22B-1-10. Procedure for filing comments; certification of notice.

(a) All persons described in subsections (a) and (b), section nine of this article may file comments with the director as to the location or construction of the applicant's proposed well work within fifteen days after the application is filed with the director.

(b) Prior to the issuance of any permit for well work, the applicant shall certify to the director that the requirements of
section nine of this article have been completed by the applicant. Such certification may be by affidavit of personal service or the return receipt card, or other postal receipt for certified mailing.

§22B-1-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The director shall review each application for a well work permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the director may issue the well work permit at any time.

The director may cause such inspections to be made of the proposed well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or

(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

The director shall promptly review all comments filed. If after review of the application and all comments received, the
application for a well work permit is approved, and no timely objection or comment has been filed with the director or made by the director under the provisions of section fifteen, sixteen or seventeen of this article, the permit shall be issued, with conditions, if any. Nothing in this section shall be construed to supersede the provisions of sections six, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

The director shall mail a copy of the permit as issued or a copy of the order denying a permit to any person who submitted comments to the director concerning said permit and requested such copy.

Upon the issuance of any permit pursuant to the provisions of this article, the director shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§22B-1-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is proposed that such well be fractured and shall forward by registered or certified mail a copy of the plat to the director. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlaid with one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said coal seams beneath said tract of land, who has mapped the same and filed his maps with the division of mines and minerals in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the
declaration provided in section thirty-six of this article, and
if said owner or lessee is not yet operating said coal seams
beneath said tract of land. With each of such plats there shall
be enclosed a notice (form for which shall be furnished on
request by the director) addressed to the director and to each
such coal operator, owner and lessee, if any, at their respective
addresses, informing them that such plat and notice are being
mailed to them respectively by registered or certified mail,
pursuant to the requirements of this article.

(b) If no objections are made, or are found by the director,
to such proposed location or proposed fracturing within fifteen
days from receipt of such plat and notice by the director, the
same shall be filed and become a permanent record of such
location or fracturing subject to inspection at any time by any
interested person, and the director may forthwith issue to the
well operator a permit reciting the filing of such plat, that no
objections have been made by the coal operators, owners and
lessees, if any, or found thereto by the director, and
authorizing the well operator to drill at such location, or to
fracture the well. Unless the director has objections to such
proposed location or proposed fracturing or stimulating, such
permit may be issued prior to the expiration of such fifteen-
day period upon the obtaining by the well operator of the
consent in writing of the coal operator or operators, owners
and lessees, if any, to whom copies of the plat and notice shall
have been mailed as herein required, and upon presentation
of such written consent to the director. The notice above
provided for may be given to the coal operator by delivering
or mailing it by registered or certified mail as above to any
agent or superintendent in actual charge of mines.

(c) A permit to drill, or to fracture or stimulate an oil or
gas well shall not be issued unless the application therefor is
accompanied by a bond as provided in section twenty-six of
this article.

§22B-1-13. Notice to coal operators, owners or lessees and director
of division of mines and minerals of intention to
fracture certain other wells; contents of such notice;
bond; permit required.

Before fracturing any well the well operator shall, by
registered or certified mail, forward a notice of intention to
fracture such well to the director and to each and every coal
operator operating coal seams beneath said tract of land, who
has mapped the same and filed his maps with the division of
mines and minerals in accordance with chapter twenty-two-a
of this code, and the coal seam owner and lessee, if any, if
said owner of record or lessee of record has recorded the
declaration provided in section thirty-six of this article, and
if said owner or lessee is not yet operating said coal seams
beneath said tract of land.

The notice shall be addressed to the director and to each
such coal operator at their respective addresses, shall contain
the number of the drilling permit for such well and such other
information as may be required by the director to enable that
division and the coal operators to locate and identify such well
and shall inform them that such notice is being mailed to them,
respectively, by registered or certified mail, pursuant to the
requirements of this article. (The form for such notice of
intention shall be furnished on request by the director.)

If no objections are made, or are found by the director to
such proposed fracturing within fifteen days from receipt of
such notice by the director, the same shall be filed and become
a permanent record of such fracturing, subject to inspection
at any time by any interested person, and the director shall
forthwith issue to the well operator a permit reciting the filing
of such notice, that no objections have been made by the coal
operators, or found thereto by the director, and authorizing
the well operator to fracture such well. Unless the director has
objections to such proposed fracturing, such permit shall be
issued prior to the expiration of such fifteen-day period upon
the obtaining by the well operator of the consent in writing
of the coal operator or operators, owners or lessees, if any,
to whom notice of intention to fracture shall have been mailed
as herein required, and upon presentation of such written
consent to the director. The notice above provided for may
be given to the coal operator by delivering or mailing it by
registered or certified mail as above to any agent or
superintendent in actual charge of mines.

§22B-1-14. Plats prerequisite to introducing liquids or waste into
wells; preparation and contents; notice and information furnished to coal operators, owners or lessees
and division of mines and minerals chief of water resources; issuance of permits; performance bonds or
security in lieu thereof.
(a) Before drilling a well for the introduction of liquids for
the purposes provided for in section twenty-five of this article
or for the introduction of liquids for the disposal of pollutants
or the effluent therefrom on any tract of land, or before
converting an existing well for such purposes, the well operator
shall have a plat prepared by a registered engineer or licensed
land surveyor showing the district and county in which the
tract of land is located, the name and acreage of the same,
the names of the owners of all adjacent tracts, the proposed
or actual location of the well or wells determined by a survey,
the courses and distances of such location from two permanent
points of land marked on said tract and the number to be
given to the well, and shall forward by registered or certified
mail the original and one copy of the plat to the division of
oil and gas. In addition, the well operator shall provide the
following information on the plat or by way of attachment
thereto to the director of the division of oil and gas in the
manner and form prescribed by the director's rules and
regulations: (1) The location of all wells, abandoned or
otherwise located within the area to be affected; (2) where
available, the casing records of all such wells; (3) where
available, the drilling log of all such wells; (4) the maximum
pressure to be introduced; (5) the geological formation into
which such liquid or pressure is to be introduced; (6) a general
description of the liquids to be introduced; (7) the location of
all water-bearing horizons above and below the geological
formation into which such pressure, liquid or waste is to be
introduced; and (8) such other information as the director by
rule and regulation may require.

(b) In the event the tract of land on which said well
proposed to be drilled or converted for the purposes provided
for in this section is located is known to be underlaid with
colm seams, copies of the plat and all information required by
this section shall be forwarded by the operator by registered
or certified mail to each and every coal operator operating coal
seams beneath said tract of land, who has mapped the same
and filed his maps with the division of mines and minerals in
accordance with chapter twenty-two-a of this code, and the
coal seam owner of record and lessee of record, if any, if said
owner or lessee has recorded the declaration provided in
section thirty-six of this article, and if said owner or lessee is
not yet operating said seams beneath said tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be furnished on request by the director) addressed to the director and to each such coal operator, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section.

(c) If no objections are made by any such coal operator, owner or lessee, or the chief of the division of water resources of the department of natural resources or are found by the director of the division of oil and gas to such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the director, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time by any interested person, and the director may after public notice and opportunity to comment, issue such permit authorizing the well operator to drill at such location or convert such existing well or wells for the purposes provided for in this section. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of the mines.

(d) A permit to drill a well or wells or convert an existing well or wells for the purposes provided for in this section shall not be issued until all of the bonding provisions required by the provisions of section twelve of this article have been fully complied with and all such bonding provisions shall apply to all wells drilled or converted for the purposes provided for in this section as if such wells had been drilled for the purposes provided for in section twelve of this article, except that such bonds shall be conditioned upon full compliance with all laws, rules and regulations relating to the drilling of a well or the converting of an existing well for the purposes provided for in said section twenty-five, or introducing of liquids for the disposal of pollutants including the redrilling, deepening, casing, plugging or abandonment of all such wells.

§22B-1-15. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.
(a) When a proposed deep well drilling site or oil well drilling site or any site is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, or within fifteen days from the receipt by the director of notice required by section thirteen of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling or fracturing with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the director, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections. In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat on file with the director, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such parties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the director, at which time the plat and notice required by section twelve or the notice required by section thirteen, as the case may be, shall be filed and become a permanent record.
Whereupon the director shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section twelve, or the notice required by said section thirteen, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such location or to fracture at the site shown on such plat, or to fracture the well identified in the notice required by section thirteen, as the case may be.

(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with the article. The director shall take into consideration in arriving at his decision:

(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof in any operated or abandoned or operating coal mine or coal mines already surveyed and platted, but not yet being operated;

(2) Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

(3) Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

(4) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the director shall issue an order stating:
(1) That he refuses to issue a permit;
(2) That he will issue a permit for the proposed drilling location;
(3) That he will issue a permit for a drilling location different from that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after he has mailed such order, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice mailed to him as provided in section twelve of this article, and each notice mailed to him as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The director shall take into consideration upon his decision whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other
disturbances.

At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances. If such fracturing cannot be done safely, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after it has mailed such order, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice mailed to him as provided in section twelve of this article, and each notice mailed to him as provided in section thirteen of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22B-1-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

(a) When a well is proposed to be drilled or converted for the purposes provided for in section fourteen of this article, and is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from
the receipt by the director of the plat and notice required by
section twelve of this article, file objections in writing (forms
for which will be furnished by the director on request) to such
proposed drilling or conversion.

(b) In any case wherein a well proposed to be drilled or
converted for the purposes provided for in section fourteen of
this article shall, in the opinion of the chief of the division
of water resources of the department of natural resources,
affect detrimentally the reasonable standards of purity and
quality of the waters of the state, such chief shall, within the
time period established by the director for the receipt of public
comment on such proposed drilling or conversion, file with the
director his objections in writing to such proposed drilling or
conversion, setting out therein as definitely as is reasonably
possible the ground or grounds upon which such objections
are based and indicating the conditions, consistent with the
provisions of this article and the rules or regulations
promulgated thereunder, as may be necessary for the
protection of the reasonable standards of the purity and
quality of such waters under which such proposed drilling or
conversion may be completed to overcome such objections, if
any.

(c) If any objection or objections are so filed, or are made
by the director, the director shall notify the well operator of
the character of the objections and by whom made and fix
a time and place, not less than thirty days from the end of
said thirty-day period, at which such objections will be
considered, of which time and place the well operator and all
objecting coal operators, the owners or lessees, if any, or such
chief, shall be given at least ten days' written notice by the
director by registered or certified mail, and summoned to
appear. At the time and place so fixed the well operator and
the objecting coal operators, owners or lessees, if any, or such
of them as are present or represented, or such chief, shall
proceed to consider the objections. In the case of proposed
drilling or converting of a well for the purposes provided for
in section fourteen of this article, such parties present or
represented may agree upon either the location as made or so
moved as to satisfy all objections and meet the approval of
the director, and any change in the original location so agreed
upon and approved by the director shall be indicated on said
plat on file with the director, and the distance and direction
of the new location from the original location shall be shown,
and, as so altered, the plat shall be filed and become a
permanent record. In the case of proposed conversion, such
parties present or represented may agree upon conditions
under which the conversion is to take place for the protection
of life and property or for protection of reasonable standards
of purity and quality of the waters of the state. At which time
the plat and notice required by section fourteen shall be filed
and become a permanent record. Whereupon the director may
issue to the well operator a permit to drill or convert, as the
case may be, reciting the filing of the plat and notice required
by said section fourteen that at a hearing duly held a location
as shown on the plat or the conditions under which the
conversion is to take place for the protection of life and
property and reasonable standards of purity and quality of the
waters of the state where agreed upon and approved, and that
the well operator is authorized to drill at such location or to
convert at the site shown on such plat, as the case may be.

(d) (1) In the case the well operator and the objecting coal
operators, owners or lessees, if any, and such chief, or such
as are present or represented at such hearing are unable to
agree upon a drilling location, or upon a drilling location that
meets the approval of the director, then the director shall
proceed to hear the evidence and testimony in accordance with
sections one and two, article five, chapter twenty-nine-a of this
code, except where such provisions are inconsistent with this
article. The director shall take into consideration upon his
decision:

(a) Whether the drilling location is above or in close
proximity to any mine opening or shaft, entry, traveling, air
haulage, drainage or passageway, or to any proposed extension
thereof, in any operated or abandoned or operating coal mine,
or coal mine already surveyed and platted, but not yet being
operated;

(b) Whether the proposed drilling can reasonably be done
through an existing or planned pillar of coal, or in close
proximity to an existing well or such pillar of coal, taking into
consideration the surface topography;

(c) Whether a well can be drilled safely, taking into
consideration the dangers from creeps, squeezes or other disturbances, due to the extraction of coal;

(d) The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

(2) At the close of the hearing or within ten days thereafter the director shall issue an order stating:

(a) That he refuses to issue a permit;

(b) That he will issue a permit for the proposed drilling location;

(c) That he will issue a permit for a drilling location different than that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that he will issue a permit, he shall issue a permit effective ten days after he has mailed such order: Except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

(3) If a permit is issued, the director shall indicate the new drilling location on the plat on file with the director and shall number and keep an index of and docket each plat and notice mailed to it as provided in section twelve of this article, and each notice mailed to it as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director, permits issued or refused, the papers filed and a transcript of the hearing. This shall constitute a record of the proceedings before the director and shall be open to inspection of the public.

(e) (1) In the case, the well operator and the objecting coal operators, owners or lessees, if any, and such chief, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be converted as to protect life and property, and the reasonable standards of purity and quality of the waters of the state, or upon conditions of converting that meet with the approval of the director, then the director shall proceed to hear the
evidence and testimony in accordance with sections one and
two, article five, chapter twenty-nine-a of this code, except
where such provisions are inconsistent with this article. The
director shall take into consideration upon his decision:

(a) Whether the well can be converted safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances;

(b) Whether the well can be converted, taking into
consideration the reasonable standards of the purity and
quality of the waters of the state.

(2) At the close of the hearing, or within ten days thereafter,
the director shall issue an order stating the conditions under
which the conversion is to take place, providing the well can
be converted safely, taking into consideration the dangers from
creeps, squeezes or other disturbances and the reasonable
standards of purity and quality of the waters of this state. If
such converting cannot be done safely, or if the reasonable
standards of purity and quality of such waters will be
endangered, the director shall issue an order stating with
particularity the reasons for refusing to issue a permit.

(3) The order shall state with particularity the reasons for
the director’s order and shall be mailed by registered or
certified mail to the parties present or represented at such
hearing. If the director has ruled that he will issue a permit,
he shall issue a permit effective ten days after the division has
mailed such order: Except for good cause shown, the director
may stay the issuance of a permit for a period not to exceed
thirty days.

(4) If a permit is issued, the director shall indicate the well
to be converted on the plat on file with the director, and shall
number and keep an index of and docket each plat and notice
mailed to him as provided in section fourteen of this article,
entering in such docket the name of the well operator, and
names and addresses of all persons notified, the dates of
hearings and all actions taken by the director, permits issued
or refused, the papers filed and a transcript of the hearings.
This shall constitute a record of the proceedings before the
director and shall be open to inspection by the public.
§22B-1-17. Objections to proposed drilling of shallow gas wells; notice to chairman of review board; indication of changes on plats; issuance of permits.

When a proposed shallow well drilling site is above a seam or seams of coal, then the owner of any such coal seam may, within fifteen days from the receipt by the director of the plat and notice required by section twelve of this article, file objections in writing (forms for which will be furnished by the director on request) to such proposed drilling with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any such objection is filed, or if any objection is made by the director of the division of oil and gas the director shall forthwith mail, by registered or certified mail, to the chairman of the review board a notice that an objection to the proposed drilling or deepening of a shallow well has been filed with or made by the director, and shall enclose in such notice a copy of all objections and of the application and plat filed with the director in accordance with the provisions of section twelve of this article.

Thereafter, no further action shall be taken on such application by the director until he receives an order from the review board directing the director to:

(a) Refuse a drilling permit; or

(b) Issue a drilling permit for the proposed drilling location; or

(c) Issue a drilling permit for an alternate drilling location different from that requested by the well operator; or

(d) Issue a drilling permit either for the proposed drilling location or for an alternative drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more that one year from the date of issuance of such permit.

Upon receipt of such board order, the director shall promptly undertake the action directed by the review board, except that he shall not issue a drilling permit unless all other provisions of this article (except section fifteen) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the director pursuant to
this section shall be effective ten days after issuance unless the
review board orders the director to stay the effectiveness of
a permit for a period not to exceed thirty days from the date
of issuance.

If a permit is issued, the director shall indicate the approved
drilling location on the plat filed with the director in
accordance with the provisions of section twelve of this article
and shall number and keep an index of and docket each plat
and notice mailed to him as provided in section twelve of this
article, and each notice mailed to him as provided in section
thirteen of this article, entering in such docket the name of
the well operator, and the names and addresses of all persons
notified, the dates of conferences, hearings and all other
actions taken by the director and the review board. The
director shall also prepare a record of the proceedings, which
record shall include all applications, plats and other documents
filed with the director, all notices given and proof of service
thereof, all orders issued, all permits issued and a transcript
of the hearing. The record prepared by the director shall be
open to inspection by the public.

§22B-1-18. Protective devices—When well penetrates workable coal
bed; when gas is found beneath or between workable
coal beds.

(a) When a well penetrates one or more workable coal beds,
the well operator shall run and cement a string of casing in
the hole through the workable coal bed or beds in such a
manner as will exclude all oil, gas or gas pressure from the
coal bed or beds, except such oil, gas or gas pressure as may
be found in such coal bed or beds. Such string of casing shall
be run to a point at least thirty feet below the lowest workable
coal bed which the well penetrates and shall be circulated and
cemented from such point to the surface in such a manner as
provided for in reasonable rules and regulations promulgated
by the director in accordance with the provisions of chapter
twenty-nine-a. After any such string of casing has been so run
and cemented to the surface, drilling may proceed to the
permitted depth.

(b) In the event that gas is found beneath a workable coal
bed before the hole has been reduced from the size it had at
the coal bed, a packer shall be placed below the coal bed, and
above the gas horizon, and the gas by this means diverted to
the inside of the adjacent string of casing through perforations
made in such casing, and through it passed to the surface
without contact with the coal bed. Should gas be found
between two workable beds of coal, in a hole, of the same
diameter from bed to bed, two packers shall be placed, with
perforations in the casing between them, permitting the gas to
pass to the surface inside the adjacent casing. In either of the
cases here specified, the strings of casing shall extend from
their seats to the top of the well.

§22B-1-19. Same—Continuance during life of well; dry or
abandoned wells.

In the event that a well becomes productive of natural gas
or petroleum, or is drilled for or converted for the introduction
of pressure, whether liquid or gas, or for the introduction of
liquid for the purposes provided for in section twenty-five of
this article or for the disposal of pollutants or the effluent
therefrom, all coal-protecting strings of casing and all water-
protecting strings of casing shall remain in place until the well
is plugged or abandoned. During the life of the well the
annular spaces between the various strings of casing adjacent
to workable beds of coal shall be kept open, and the top ends
of all such strings shall be provided with casing heads, or such
other suitable devices as will permit the free passage of gas
and prevent filling of such annular spaces with dirt or debris.

Any well which is completed as a dry hole or which is not
in use for a period of twelve consecutive months shall be
presumed to have been abandoned and shall promptly be
plugged by the operator in accordance with the provisions of
this article, unless the operator furnishes satisfactory proof to
the director that there is a bona fide future use for such well.

§22B-1-20. Same—When well is drilled through horizon of coal bed
from which coal has been removed.

When a well is drilled through the horizon of a coal bed
from which the coal has been removed, the hole shall be drilled
at least thirty feet below the coal bed, of a size sufficient to
permit the placing of a liner which shall start not less than
twenty feet beneath the horizon of the coal bed and extend
not less than twenty feet above it. Within this liner, which may
be welded to the casing to be used, shall be centrally placed
the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coal beds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon.

§22B-1-21. Same—Installation of fresh water casings.

When a permit has been issued for the drilling of an oil or gas well or both, each well operator shall run and permanently cement a string of casing in the hole through the fresh water bearing strata in such a manner and to the extent provided for in rules and regulations promulgated by the director in accordance with the provisions of chapter twenty-two and twenty-nine-a of this code.

No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.

§22B-1-22. Well log to be filed; contents; authority to promulgate regulations.

Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations and such other information as the director may require to effectuate the purposes of this chapter and chapter twenty-two of this code.

The director may promulgate such reasonable rules and regulations in accordance with article three, chapter twenty-nine-a of this code, as he may deem necessary to insure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, That the director
§22B-1-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section nineteen of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules and regulations promulgated by the director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the director and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this article, of its intention to plug and abandon any such well (using such form of notice as the director may provide), giving the number of the well and its location and fixing the time at which the work of plugging and filling will be commenced, which time shall be not less than five days after the day on which such notice so mailed is received or in due course should be received by the director, in order that a representative or representatives of the director and such coal operator, owner or lessee, if any, may be present at the plugging and filling of the well: Provided, That whether such representatives appear or do not appear, the well operator may proceed at the time fixed to plug and fill the well in the manner hereinafter described, or (b) first obtain the written approval of the director and such coal operator, owner or lessee, if any, or (c) in the event the well to be plugged and abandoned is one on which drilling or reworking operations have been continuously progressing pursuant to authorization granted by the director, first obtain the verbal permission of the director or his designated representative to plug and abandon such well, except that the well operator shall, within a reasonable period not to exceed five days after the commencement of such plugging operations, give the written notices required by subdivision (a) above.
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No well may be plugged or abandoned unless prior to the 
commencement of plugging operations and the abandonment 
of any well the director is furnished a bond as provided in 
section twenty-six of this article.

When the plugging, filling and reclamation of a well have 
been completed, an affidavit, in triplicate, shall be made (on 
a form to be furnished by the director) by two experienced 
persons who participated in the work, the director for oil and 
gas or his designated representative, in which affidavit shall 
be set forth the time and manner in which the well was plugged 
and filled and the land reclaimed. One copy of this affidavit 
shall be retained by the well operator, another (or true copies 
of same) shall be mailed to the coal operator or operators, 
if any, and the third to the director.

§22B-1-24. Methods of plugging well.

Upon the abandonment or cessation of the operation of any 
well drilled for natural gas or petroleum, or drilled or 
converted for the introduction of pressure, whether liquid or 
gas, or for the introduction of liquid for the purposes provided 
for in section twenty-five of this article or for the disposal of 
pollutants or the effluent therefrom the well operator, at the 
time of such abandonment or cessation, shall fill and plug the 
well in the following manner:

(a) Where the well does not penetrate workable coal beds, 
it shall either be filled with mud, clay or other nonporous 
material from the bottom of the well to a point twenty feet 
above the top of its lowest oil, gas or water-bearing stratum; 
or a permanent bridge shall be anchored thirty feet below its 
lowest oil, gas or water-bearing stratum, and from such bridge 
it shall be filled with mud, clay or other nonporous material 
to a point twenty feet above such stratum; at this point there 
shall be placed a plug of cement or other suitable material 
which will completely seal the hole. Between this sealing plug 
and a point twenty feet above the next higher oil, gas or water-
bearing stratum, the hole shall be filled, in the manner just 
described; and at such point there shall be placed another plug 
of cement or other suitable material which will completely seal 
the hole. In like manner the hole shall be filled and plugged, 
with reference to each of its oil, gas or water-bearing strata.

However, whenever such strata are not widely separated and
are free from water, they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid filling and plugging be performed as though there were but one horizon. After the plugging of all oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately ten feet below the bottom of the largest casing in the well; from this point to the surface the well shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the manner above described, the well operator shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement shall then be placed in the well so that the top of such plug
is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the director shall then be installed on the top of the coal protection string of casing in such a manner that will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The coal protection string of casing and the vent or other device approved by the director shall extend, when finally in place, a distance of not less than thirty inches above ground level and shall be permanently marked with the well number assigned by the director.

(c) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been circulated and cemented to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point not less than forty feet below the lowest workable coal bed. After the cement plug has been securely placed in the well, the well shall be filled with cement to a point twenty feet above the lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous material to a point forty feet beneath the next overlying workable coal bed, if such there be, and the well shall then be filled with cement from this point to a point twenty feet above such workable coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and plugging of the well to a point above the highest workable coal bed, filling and plugging of the well shall continue in the manner provided in subsection (a) of this section to a point fifty feet below the surface, and a plug of cement shall be installed from the point fifty feet below the surface to the surface with a monument installed therein extending thirty inches above ground level.

(d) (1) Where the well penetrates one or more workable coal beds and a coal protection string of casing has not been
108 circulated and cemented in to the surface, a coal operator or
109 coal seam owner may request that the well be plugged in the
110 manner provided in subdivision (3) of this subsection rather
111 than by the method provided in subsection (c) of this section.
112 Such request (forms for which shall be provided by the
113 director) must be filed in writing with the director prior to the
114 scheduled plugging of the well, and must include the number
115 of the well to be plugged and the name and address of the
116 well operator. At the time such request is filed with the
117 director, a copy of such request must also be mailed by
118 registered or certified mail to the well operator named in the
119 request.

(2) Upon receipt of such request, the director shall issue an
120 order staying the plugging of the well and shall promptly
121 determine the cost of plugging the well in the manner provided
122 in subdivision (3) of this subsection and the cost of plugging
123 the well in the manner provided in subsection (c) of this
124 section. In making such determination, the director shall take
125 into consideration any agreement previously made between the
126 well operator and the coal operator or coal seam owner
127 making the request. If the director determines that the cost
128 of plugging the well in the manner provided in subsection (c)
129 of this section exceeds the cost of plugging the well in the
130 manner provided in subdivision (3) of this subsection, the
131 director shall grant the request of the coal operator or owner
132 and shall issue an order requiring the well operator to plug
133 the well in the manner provided in subdivision (3) of this
134 subsection. If the director determines that the cost of plugging
135 the well in the manner provided in subsection (c) of this section
136 is less than the cost of plugging the well in the manner
137 provided in subdivision (3) of this subsection, the director shall
138 request payment into escrow of the difference between the
139 determined costs by the coal operator or coal seam owner
140 making the request. Upon receipt of satisfactory notice of such
141 payment, or upon receipt of notice that the well operator has
142 waived such payment, the director shall grant the request of
143 the coal operator or coal seam owner and shall issue an order
144 requiring the well operator to plug the well in the manner
145 provided in subdivision (3) of this subsection. If satisfactory
146 notice of payment into escrow, or notice that the well operator
147 has waived such payment, is not received by the director within
148 fifteen days after the request for payment into escrow, the
director shall issue an order permitting the plugging of the well in the manner provided in subsection (c) of this section. Copies of all orders issued by the director shall be sent by registered or certified mail to the coal operator or coal seam owner making the request and to the well operator. When the escrow agent has received certification from the director of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the director's determination of plugging cost in the manner provided in subsection (c) of this section and the well operator's actual plugging cost in the manner provided in subdivision (3) of this subsection), he shall pay the reimbursable sum to the well operator or his nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or his nominee is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall pay the deficiency to the well operator or his nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall have a right of action and be entitled to recover damages as if for wrongful conversion of personalty, and his reasonable attorney fees.

(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the director, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning at the point approximately two hundred feet below the lowest workable coal bed and extending to a point approximately one hundred feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one-half inches shall then be run into the well to a point approximately one hundred feet below the lowest workable coal bed and such string of casing shall be circulated and cemented in to the surface. The casing shall then be emptied of liquid from a point approximately one hundred feet below the lowest workable coal bed to the surface, and a vent or
other device approved by the director shall be installed on the top of the string of casing in such a manner that it will prevent liquids and solids from entering the well but will permit ready access to the full internal diameter of the coal protection string of casing when required. The string of casing and the vent or other device approved by the director shall extend, when finally in place, a distance of no less than thirty inches above ground level and shall be permanently marked with the well number assigned by the director. Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a different method of plugging is required to obtain the approval of another governmental agency for the safe mining through of said well, the director may approve such different method of plugging if he finds the same to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method above specified.

(e) Any person may apply to the director for an order to clean out and replug a previously plugged well in a manner which will permit the safe mining through of such well. Such application shall be filed with the director and shall contain the well number, a general description of the well location, the name and address of the owner of the surface land upon which the well is located, a copy of or record reference to a deed, lease or other document which entitles the applicant to enter upon the surface land, a description of the methods by which the well was previously plugged, and a description of the method by which such applicant proposes to clean out and replug the well. At the time an application is filed with the director, a copy shall be mailed by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of record, if any, of the site land upon which the well is located. If no objection to the replugging of the well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the application, and if the director determines that the method proposed for replugging the well will permit the safe mining through of such well, the director shall grant the application by an order authorizing the replugging of the well. Such order shall specify the method by which the well shall be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of
the site upon which such well is located. If any such landowner
or oil and gas lessee objects to the replugging of the well, the
director shall notify the applicant of such objection. Thereafter,
the director shall schedule a hearing to consider the
objection, which hearing shall be held after notice by registered
or certified mail to the objectors and the applicant. After
consideration of the evidence presented at the hearing, the
director shall issue an order authorizing the replugging of the
well if he determines that replugging of the well will permit
the safe mining through of such well. Such order shall specify
the manner in which the well shall be replugged and copies
thereof shall be sent by registered or certified mail to the
applicant and objectors. The director shall issue an order
rejecting the application if he determines that the proposed
method for replugging the well will not permit the safe mining
through of such well.

(f) All persons adversely affected by a determination or
order of the director issued pursuant to the provisions of this
section shall be entitled to judicial review in accordance with
the provisions of articles five and six, chapter twenty-nine-a
of this code.

§22B-1-25. Introducing liquid pressure into producing strata to
recover oil contained therein.

The owner or operator of any well or wells which produce
oil or gas may allow such well or wells to remain open for
the purpose of introducing water or other liquid pressure into
and upon the producing strata for the purpose of recovering
the oil contained therein, and may drill additional wells for
like purposes, provided that the introduction of such water or
other liquid pressure shall be controlled as to volume and
pressure and shall be through casing or tubing which shall be
so anchored and packed that no water-bearing strata or other
oil, or gas-bearing sand or producing stratum, above or below
the producing strata into and upon which such pressure is
introduced, shall be affected thereby, fulfilling requirements as
set forth under section fourteen.

§22B-1-26. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless
a bond which is required for a particular activity by this article
is or has been furnished as provided in this section.
(b) A separate bond may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Every such bond shall be in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing and stimulating oil and gas wells (or, if applicable, with all laws, rules and regulations relating to drilling or converting wells for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas wells or to drill or convert a number of wells for the introduction of liquids for the purposes provided in section twenty-five of this article, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, and conditioned as aforesaid in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in this state as surety thereon: Provided, That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the director cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such
45 securities, and if at the time of the deposit such other state,  
46 territory, or the District of Columbia is not in default in the  
47 payment of any part of the principal or interest owing by it  
48 upon any part of its funded indebtedness; (3) direct general  
49 obligation bonds of any county, district, city, town, village,  
50 school district or other political subdivision of this state issued  
51 pursuant to law and payable from ad valorem taxes levied on  
52 all taxable property located herein, that the total indebtedness  
53 after deducting sinking funds and all debts incurred for self-  
54 sustaining public works does not exceed five percent of the  
55 assessed value of all taxable property therein at the time of  
56 the last assessment made before the date of such deposit, and  
57 that the issuer has not, within five years prior to the making  
58 thereof, been in default for more than ninety days in the  
59 payment of any part of the principal or interest on any debt,  
60 evidenced by its bonds; (4) revenue bonds issued by this state  
61 or any agency of this state when such bonds are payable from  
62 revenues or earnings specifically pledged for the payment of  
63 principal and interest, and a lawful sinking fund or reserve  
64 fund has been established and is being maintained for the  
65 payment of such bonds; (5) revenue bonds issued by a  
66 municipality in this state for the acquisition, construction,  
67 improvement or extension of a waterworks system, or a  
68 sewerage system, or a combined waterworks and sewerage  
69 system, when such bonds are payable from revenue or earnings  
70 specifically pledged for the payment of principal and interest,  
71 and a lawful sinking fund or reserve fund has been established  
72 and is being maintained for the payment of such bonds; (6)  
73 revenue bonds issued by a public service board of a public  
74 service district in this state for the acquisition, construction,  
75 improvement or extension of any public service properties, or  
76 for the reimbursement or payment of the costs and expenses  
77 of creating the district, when such bonds are payable from  
78 revenue or earnings specifically pledged for the payment of  
79 principal and interest, and a lawful sinking fund or reserve  
80 fund has been established and is being maintained for the  
81 payment of such bonds; (7) revenue bonds issued by a board  
82 of trustees of a sanitary district in this state for the corporate  
83 purposes of such district, when such bonds are payable from  
84 revenue or earnings specifically pledged for the payment of  
85 principal and interest, and a lawful sinking fund or reserve  
86 fund has been established and is being maintained for the
(b) A separate bond may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Every such bond shall be in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing and stimulating oil and gas wells (or, if applicable, with all laws, rules and regulations relating to drilling or converting wells for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas wells or to drill or convert a number of wells for the introduction of liquids for the purposes provided in section twenty-five of this article, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the state of West Virginia, and conditioned as aforesaid in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in this state as surety thereon: Provided, That in lieu of corporate surety on a separate or blanket bond, as the case may be, the operator may elect to deposit with the director cash or the following collateral securities or any combination thereof: (1) Bonds of the United States or agency thereof, or those guaranteed by, or for which the credit of the United States or agency therefor is pledged for the payment of the principal and interest thereof; (2) direct general obligation bonds of this state, or any other state, or territory of the United States, or the District of Columbia, unconditionally guaranteed as to the principal and interest by such other state or territory of the United States, or the District of Columbia if such other state, territory, or the District of Columbia has the power to levy taxes for the payment of the principal and interest of such
securities, and if at the time of the deposit such other state, 
territory, or the District of Columbia is not in default in the 
payment of any part of the principal or interest owing by it 
upon any part of its funded indebtedness; (3) direct general 
obligation bonds of any county, district, city, town, village, 
school district or other political subdivision of this state issued 
pursuant to law and payable from ad valorem taxes levied on 
all taxable property located herein, that the total indebtedness 
after deducting sinking funds and all debts incurred for self-
sustaining public works does not exceed five percent of the 
assessed value of all taxable property therein at the time of 
the last assessment made before the date of such deposit, and 
that the issuer has not, within five years prior to the making 
thereof, been in default for more than ninety days in the 
payment of any part of the principal or interest on any debt, 
evidenced by its bonds; (4) revenue bonds issued by this state 
or any agency of this state when such bonds are payable from 
revenues or earnings specifically pledged for the payment of 
principal and interest, and a lawful sinking fund or reserve 
fund has been established and is being maintained for the 
payment of such bonds: (5) revenue bonds issued by a 
municipality in this state for the acquisition, construction, 
improvement or extension of a waterworks system, or a 
sewerage system, or a combined waterworks and sewerage 
system, when such bonds are payable from revenue or earnings 
specifically pledged for the payment of principal and interest, 
and a lawful sinking fund or reserve fund has been established 
and is being maintained for the payment of such bonds; (6) 
revenue bonds issued by a public service board of a public 
service district in this state for the acquisition, construction, 
improvement or extension of any public service properties, or 
for the reimbursement or payment of the costs and expenses 
of creating the district, when such bonds are payable from 
revenue or earnings specifically pledged for the payment of 
principal and interest, and a lawful sinking fund or reserve 
fund has been established and is being maintained for the 
payment of such bonds; (7) revenue bonds issued by a board 
of trustees of a sanitary district in this state for the corporate 
purposes of such district, when such bonds are payable from 
revenue or earnings specifically pledged for the payment of 
principal and interest, and a lawful sinking fund or reserve 
fund has been established and is being maintained for the
payment of such bonds; and (8) bonds issued by a federal land
bank or home owners' loan corporation. The cash deposit or
market value, or both, of the collateral securities shall be equal
to or greater than the penalty of the separate or blanket bond,
as the case may be. Upon receipt of any such deposit or cash
or collateral securities, the director shall immediately deliver
the same to the treasurer of the state of West Virginia. The
treasurer shall determine whether any such securities satisfy the
requirements of this section. If the securities are approved they
shall be accepted by the treasurer. If the securities are not
approved, they shall be rejected and returned to the operator
and no permit shall be issued until a corporate surety bond
is filed or cash or proper collateral securities are filed in lieu
of such surety. The treasurer shall hold any cash or securities
in the name of the state in trust for the purposes for which
the deposit was made. The operator shall be entitled to all
interest and income earned on the collateral securities filed by
such operator so long as the operator is in full compliance with
all laws, rules and regulations relating to the drilling, redrilling,
deepening, casing and fracturing of oil and gas wells (or, if
applicable, with all laws, rules and regulations relating to
drilling or converting wells for the introduction of liquids for
the purposes provided for in section twenty-five of this article
for the introduction of liquids for the disposal of pollutants
or the effluent therefrom) and the plugging, abandonment and
reclamation of wells and for furnishing such reports and
information as may be required by the director. The operator
making the deposit shall be entitled from time to time to
receive from the treasurer, upon the written order of the
director, the whole or any portion of such securities upon
depositing with the treasurer in lieu thereof cash equal to or
greater than the penalty of the bond, in other approved
securities of the classes herein specified having a market value
equal to or greater than the penalty of the bond, or a corporate
surety bond.

(e) When an operator has furnished a separate bond from
a corporate bonding or surety company to drill, fracture or
stimulate an oil or gas well and the well produces oil or gas
or both, its operator may deposit with the director cash from
the sale of the oil or gas or both until the total deposited is
ten thousand dollars. When the sum of the cash deposited is
ten thousand dollars, the separate bond for the well shall be
released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules and regulations relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as he has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities, as provided in the next preceding paragraph of this section, with the director, he shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law, rules and regulations applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws, rules and regulations.

(f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue to be valid for all work on the well permitting prior to the effective date of this chapter; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the
171 effective date of this chapter shall be replaced with a new
172 blanket bond conforming to the requirements of this section,
173 at which time the prior bond shall be discharged by operation
174 of law; and if the director determines that any operator has
175 not furnished a new blanket bond, the director shall notify the
176 operator by certified mail, return receipt requested, of the
177 requirement for a new blanket bond; and failure to submit a
178 new blanket bond within sixty days after receipt of the notice
179 from the director shall work a forfeiture under subsection (h)
180 of this section of the blanket bond furnished prior to the
181 effective date of this chapter.
182
183 (g) Any such bond shall remain in force until released by
184 the director, and the director shall release the same when it
185 is satisfied the conditions thereof have been fully performed.
186 Upon the release of any such bond, any cash or collateral
187 securities deposited shall be returned by the director to the
188 operator who deposited same.
189
190 (h) If any of the requirements of this article or rules and
191 regulations promulgated pursuant thereto or the orders of the
192 director have not been complied with within the time limit set
193 by the violation notice as defined in sections three, four and
194 five of this article, the performance bond shall then be
195 forfeited.
196
197 (i) When any bond is forfeited pursuant to the provisions
198 of this article or rules and regulations promulgated pursuant
199 thereto the director shall give notice to the attorney general
200 who shall collect the forfeiture without delay.
201
202 (j) All forfeitures shall be deposited in the treasury of the
203 state of West Virginia in the special reclamation fund as
204 defined in section twenty-nine of this article.
205
206 §22B-1-27. Cause of action for damages caused by explosions.
207
208 Any person suffering personal injury or property damage
209 due to any explosion caused by any permittee, shall have a
210 cause of action against such permittee for three years after the
211 explosion regardless of whether the explosion occurred before
212 or after the effective date of this article.
213
214 §22B-1-28. Supervision by director over drilling and reclamation
215 operations; complaints; hearings; appeals.
The director shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and shall have such access to the plans, maps and other records and to the properties of the well operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the director may himself enter, or shall permit any aggrieved person to file before him, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or to the order of the director. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least five days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the director may offer in evidence the results of such investigations as it may have made, the director shall make his findings of fact and enter such order as in his judgment is just and right and necessary to secure the proper administration of this article, and if he deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging, filling or reclaiming the same, except under such conditions as the director may impose in order to ensure a strict compliance with the provisions of this article relating to such matters.

Any well operator or coal operator adversely affected by a final decision or order of the director, may appeal in the manner prescribed in section four, article five, chapter twenty-nine-a of this code.

§22B-1-29. Special reclamation fund; fees.

In addition to any other fees required by the provisions of this article, every applicant for a permit to drill a well shall, before the permit is issued, pay to the director a special reclamation fee of one hundred dollars for each well to be drilled. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the director and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.
There is hereby created within the treasury of the state of West Virginia a special fund to be known as the oil and gas reclamation fund, and the director shall deposit with the state treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by the director. The director shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The director, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the reclaiming and plugging of wells and all rules and regulations promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The director may avail himself of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The director shall make an annual report to the governor and to the Legislature setting forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the director on a competitive bid basis as provided for under the provisions of article three, chapter five-a of this code and the rules and regulations promulgated thereunder.
§22B-1-30. Reclamation requirements.

The operator of a well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

(a) Within six months after the completion of the drilling process, the operator shall fill all the pits for containing muds, cuttings, salt water and oil that are not needed for production purposes, or are not required or allowed by state or federal law or rule and remove all concrete bases, drilling supplies and drilling equipment. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the well where necessary to bind the soil and prevent substantial erosion and sedimentation. No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed, and properly disposed of, from any pit that is retained so the pit is kept reasonably free of salt water and oil.

(b) Within six months after a well that has produced oil or gas is plugged, or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment, and any oil, salt water and debris, and fill any remaining excavations. Within such period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

The director may, upon written application by an operator showing reasonable cause, extend the period within which reclamation shall be completed, but not to exceed a further six-month period.

If the director refuses to approve a request for extension, he shall do so by order.

(c) It shall be the duty of an operator to commence the reclamation of the area of land disturbed in siting, drilling, completing or producing the well in accordance with soil erosion and sediment control plans approved by the director or his designate.

(d) The director shall promulgate rules setting forth requirements for the safe and efficient installation and burying of all production and gathering pipelines where practical and
reasonable except that such rules shall not apply to those pipelines regulated by the public service commission.

§22B-1-31. Preventing waste of gas; plan of operation required for wasting gas in process of producing oil; rejection thereof.

Natural gas shall not be permitted to waste or escape from any well or pipeline, when it is reasonably possible to prevent such waste, after the owner or operator of such gas, or well, or pipeline, has had a reasonable length of time to shut in such gas in the well, or make the necessary repairs to such well or pipeline to prevent such waste: Provided, That (a) if, in the process of drilling a well for oil or gas, or both, gas is found in such well, and the owner or operator thereof desires to continue to search for oil or gas, or both, by drilling deeper in search of lower oil or gas-bearing strata, or (b) if it becomes necessary to make repairs to any well producing gas, commonly known as “cleaning out,” and if in either event it is necessary for the gas in such well to escape therefrom during the process of drilling or making repairs, as the case may be, then the owner or operator of such well shall prosecute such drilling or repairs with reasonable diligence, so that the waste of gas from the well shall not continue longer than reasonably necessary, and if, during the progress of such deeper drilling or repairs, any temporary suspension thereof becomes necessary, the owner or operator of such well shall use all reasonable means to shut in the gas and prevent its waste during such temporary suspension: Provided, however, That in all cases where both oil and gas are found and produced from the same oil and gas-bearing stratum, and where it is necessary for the gas therefrom to waste in the process of producing the oil, the owner or operator shall use all reasonable diligence to conserve and save from waste so much of such gas as it is reasonably possible to save, but in no case shall such gas from any well be wasted in the process of producing oil therefrom until the owner or operator of such well shall have filed with the director a plan of operation for said well showing, among other things, the gas-oil production ratio involved in such operation, which plan shall govern the operation of said well unless the director shall, within ten days from the date on which such plan is submitted to the director, make a finding that such plan fails, under all the facts and
circumstances, to propose the exercise of all reasonable
diligence to conserve and save from waste so much of such
gas as it is reasonably possible to save, in which event
production of oil at such well by the wasting of gas shall cease
and determine until a plan of operation is approved by the
director. Successive plans of operation may be filed by the
owner or operator of any such well with the director.

§22B-1-32. Right of adjacent owner or operator to prevent waste
of gas; recovery of cost.

If the owner or operator of any such well shall neglect or
refuse to drill, case and equip, or plug and abandon, or shut
in and conserve from waste the gas produced therefrom, as
required to be done and performed by the preceding sections
of this article, for a period of twenty days after a written notice
so to do, which notice may be served personally upon the
owner or operator, or may be posted in a conspicuous place
at or near the well, it shall be lawful for the owner or operator
of any adjacent or neighboring lands or the director to enter
upon the premises where such well is situated and properly
case and equip such well, or, in case the well is to be
abandoned, to properly plug and abandon it, or in case the
well is wasting gas, to properly shut it in and make such
needed repairs to the well to prevent the waste of gas, in the
manner required to be done by the preceding sections of this
article; and the reasonable cost and expense incurred by an
owner or operator or the director in so doing shall be paid
by the owner or operator of such well and may be recovered
as debts of like amount are by law recoverable.

The director may utilize funds and procedures established
pursuant to section twenty-nine of this article for the purposes
set out in the section. Amounts recovered by the director
pursuant to this section shall be deposited in the oil and gas
reclamation fund established pursuant to section twenty-nine
of this article.

§22B-1-33. Restraining waste.

Aside from and in addition to the imposition of any
penalties under this article, it shall be the duty of any circuit
court in the exercise of its equity jurisdiction to hear and
determine any bill or bills in equity which may be filed to
restrain the waste of natural gas in violation of this article,
and to grant relief by injunction or by other decrees or orders, in accordance with the principles and practice in equity. The plaintiff in such bill shall have sufficient standing to maintain the same if he shall aver and prove that he is interested in the lands situated within the distance of one mile from such well, either as an owner of such land, or of the oil or gas, or both, thereunder, in fee simple, or as an owner of leases thereof or of rights therein for the production of oil and gas or either of them or as the director.

§22B-1-34. Offenses; penalties.

(a) Any person or persons, firm, partnership, partnership association or corporation who willfully violates any provision of this article or any rule or order promulgated hereunder shall be subject to a civil penalty not exceeding two thousand five hundred dollars. Each day a violation continues after notice by the division of oil and gas constitutes a separate offense. The penalty shall be recovered by a civil action brought by the division of oil and gas, in the name of the state, before the circuit court of the county in which the subject well or facility is located. All such civil penalties collected shall be credited to the general fund of the state.

(b) Any person or persons, firm, partnership, partnership association or corporation willfully violating any of the provisions of this article which prescribe the manner of drilling and casing or plugging and filling any well, or which prescribe the methods of conserving gas from waste shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or imprisonment in jail for not exceeding twelve months, or both, in the discretion of the court, and prosecutions under this section may be brought in the name of the state of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizens of this state.

§22B-1-35. Civil action for contamination or deprivation of fresh water source or supply; presumption.

In any action for contamination or deprivation of a fresh water source or supply within one thousand feet of the site of drilling for an oil or gas well, there shall be a rebuttable
presumption that such drilling, and such oil or gas well, or
either, was the proximate cause of the contamination or
deprivation of such fresh water source or supply.

§22B-1-36. Declaration of oil and gas notice by owners and lessees of coal seams.

For purposes of notification under this article, any owner
or lessee of coal seams shall file a declaration of his interest
in such coal seams with the clerk of the county commission
in the county where such coal seams are located. Said clerk
shall file and index such declaration in accordance with section
two, article one, chapter thirty-nine of this code, and shall
index the name of the owner or lessee of such coal seams in
the grantor index of the record maintained for the indexing
of leases.

The declaration shall entitle such owner or lessee to the
notices provided in sections twelve, thirteen, fourteen and
twenty-three of this article: Provided, That the declaring owner
shall be the record owner of the coal seam, and the declaring
lessee shall be the record lessee with his source or sources of
title recorded prior to recording such lessee’s declaration.

The declaration shall be acknowledged by such owner or
lessee, and in the case of a lessee, may be a part of the coal
lease under which the lessee claims. Such declaration may be
in the following language:

“DECLARATION OF OIL AND GAS NOTICE”

“The undersigned hereby declares:

(1) The undersigned is the (‘owner’ or ‘lessee’) of one or
more coal seams or workable coal beds as those terms are
defined in section one, article two, chapter twenty-two-a of the
code of West Virginia.

(2) The coal seam(s) or workable coal bed(s) owned or
leased partly or wholly by the undersigned lie(s) under the
surface of lands described as follows:

(Here insert a description legally adequate for a deed,
whether by metes and bounds or other locational description,
or by title references such as a book and page legally sufficient
to stand in lieu of a locational description.)
33 (3) The undersigned desires to be given all notices of oil and
gas operations provided by sections twelve, thirteen, fourteen
and twenty-three, article one, chapter twenty-two-b of the code
of West Virginia, addressed as follows:

37 (Here insert the name and mailing address of the under-
signed owner or lessee.)

39 (Signature)

41 (Here insert an acknowledgement legally adequate for a
deed).”

43 The benefits of the foregoing declaration shall be personal
to the declaring owner or lessee, and not transferable or
assignable in any way.

§22B-1-37. Rules, regulations, orders and permits remain in effect.

1 The rules and regulations promulgated and all orders and
permits in effect upon the effective date of this chapter
pursuant to the provisions of former article four, chapter
twenty-two, of this code, shall remain in full force and effect
as if such rules, regulations, orders and permits were adopted
by the director established in this chapter but all such rules,
regulations, orders and permits shall be subject to review by
the director to ensure they are consistent with the purposes
and policies set forth in this chapter.

§22B-1-38. Application of article; exclusions.

1 This article shall not apply to or affect any well work
permitted prior to the effective date of this chapter under
former article four, chapter twenty-two of this code, unless
such well is, after completion (whether such completion is
prior to or subsequent to the effective date of this chapter)
deepened subsequent to the effective date of this chapter
through another coal seam to another formation above the top
of the uppermost member of the “Onondaga Group” or to a
depth of less than six thousand feet, whichever is shallower.

§22B-1-39. Injunctive relief.

1 (a) In addition to other remedies, and aside from various
penalties provided by law, whenever it appears to the director
that any person is violating or threatening to violate any
provision of this article, any order or final decision of the
director, or any lawful rule or regulation promulgated
hereunder, the director may apply in the name of the state to
the circuit court of the county in which the violations or any
part thereof has occurred, is occurring or is about to occur,
or the judge thereof in vacation, for an injunction against such
persons and any other persons who have been, are or are about
to be, involved in any practices, acts or admissions so in
violation, enjoining such person or persons from any violation
or violations. Such application may be made and prosecuted
to conclusion, whether or not any violation or violations have
resulted or shall result, in prosecution or conviction under the
provisions of this article.

(b) Upon application by the director, the circuit courts of
this state may, by mandatory or prohibitory injunction compel
compliance with the provisions of this article, and all orders
and final decisions of the director. The court may issue a
temporary injunction in any case pending a decision on the
merits of any application filed. Any other section of this code
to the contrary notwithstanding, the state shall not be required
to furnish bond or other undertaking as a prerequisite to
obtaining mandatory, prohibitory or temporary injunctive
relief under the provisions of this article.

(c) The judgment of the circuit court upon application
permitted by the provisions of this section, shall be final unless
reversed, vacated or modified on appeal to the supreme court
of appeals. Any such appeal shall be sought in the manner
and within the time provided by law for appeals from circuit
courts in other civil actions.

(d) The director shall be represented in all such proceedings
by the attorney general or his assistants or in such proceedings
in the circuit courts by the prosecuting attorney of the several
counties as well, all without additional compensation. The
director with the written approval of the attorney general, may
employ special counsel to represent the director in any such
proceedings.

(e) If the director shall refuse or fail to apply for an
injunction to enjoin a violation or threatened violation of any
provision of this article, any order or final decision of the
director, or any rules or regulations promulgated hereunder,
within ten days after receipt of a written request to do so by any well operator, coal operator, operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land, adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the director might have brought suit. The director shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provisions of this article, any final order or decision of the director, or any rule or regulation promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the director: Except that the court may require a bond or other undertaking from the plaintiff.

§22B-1-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to the proceeding under section fifteen of this article or section seven, article seven, chapter twenty-two of this code, adversely affected by the issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22B-1-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

Any party to the proceedings under section sixteen of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit
is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

ARTICLE 2. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.

§22B-2-1. Legislative findings and purpose.
§22B-2-4. Common law right of action preserved; offsets.
§22B-2-5. Notification of claim.
§22B-2-6. Agreement; offer of settlement.
§22B-2-7. Rejection; legal action; arbitration; fees and costs.
§22B-2-8. Application of article.

§22B-2-1. Legislative findings and purpose.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require the use of substantially more surface area than the methods commonly in use at the time most mineral estates in this state were severed from the fee tract; and, specifically, the drilling of wells by the rotary drilling method was virtually unknown in this state prior to the year one thousand nine hundred sixty, so that no person theretofore severing his oil and gas from his surface land and no person theretofore leasing his oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reasonably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling
methods has spread slowly but steadily in this state, with concomitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be entitled to fair compensation for the loss of the use of his surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.

(3) Prior to the first day of January, one thousand nine hundred sixty, the rotary method of drilling oil or gas wells was virtually unknown to the surface owners of this state nor was such method reasonably contemplated during the negotiations which occasioned the severance of either oil or gas from the surface.

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the ninth day of June, one thousand nine hundred eighty-three, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear preponderance of the evidence showing that the surface owner or his predecessor of record did in fact know of the rotary drilling method at the time he or his predecessor executed a severance deed or lease of oil and gas and that he fairly contemplated the rotary drilling method, and received compensation for the same.

(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the ninth day of June, one thousand nine hundred eighty-three.

(d) It is the purpose of this article to provide constitution-
ally permissible protection and compensation to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the ninth day of June, one thousand nine hundred eighty-three. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.


(a) In this article, unless the context or subject matter otherwise requires:

(1) “Agricultural production” means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) “Drilling operations” means the actual drilling or redrilling of an oil or gas well commenced subsequent to the ninth day of June, one thousand nine hundred eighty-three, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(3) “Oil and gas developer” means the person who secures the drilling permit required by article one of this chapter;

(4) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) “Surface estate” means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) “Surface owner” means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.

(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

1. Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed,
2. The market value of crops destroyed, damaged or prevented from reaching market,
3. Any damage to a water supply in use prior to the commencement of the permitted activity,
4. The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality,
5. The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22B-2-4. Common law right of action preserved; offsets.

(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent, or otherwise wrongful exercise of the contractual
right, whether express or implied, to use the surface of the land for the benefit of his mineral interest.

(b) An oil and gas developer shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

§22B-2-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that he is commencing reclamation under section thirty, article one of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule.

§22B-2-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.
§22B-2-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section six, article one of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common-law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in his notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which rotary drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to
any person having such personal interest, or who stands in the
relation of guardian and ward, master and servant, principal
and agent, or partner, real estate broker, or surety to any
person having such personal interest, or who has enmity
against or bias in favor of any person who has such personal
interest or who is the owner of, or interested in, such land
or the oil and gas development thereof. No person shall be
deemed interested or incompetent to act as arbitrator by
reason of his being an inhabitant of the county, district or
municipal corporation wherein the land is located, or holding
an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take
such testimony and receive such exhibits as shall be necessary
to determine the amount of compensation to be paid to the
surface owner. However, no award of compensation shall be
made to the surface owner unless the panel of arbitrators has
first viewed the surface estate in question. A transcript of the
evidence may be made but shall not be required.

(e) Each party shall pay the compensation of his own
arbitrator and one half of the compensation of the third
arbitrator, or his own court costs as the case may be.

§22B-2-8. Application of article.

1 The remedies provided by this article shall not preclude any
2 person from seeking other remedies allowed by law.


1 If any section, subsection, subdivision, subparagraph,
2 sentence or clause of this article is adjudged to be unconsti-
3 tutional or invalid, such invalidation shall not affect the
4 validity of the remaining portions of this article, and, to this
5 end, the provisions of this article are hereby declared to be
6 severable.

ARTICLE 3. TRANSPORTATION OF OILS.

§22B-3-1. Scope of article.
§22B-3-2. Duty of pipeline companies to accept and transport oil.
§22B-3-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and
1 measurement; receipt; deduction for waste.
§22B-3-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.
§22B-3-5. Lien for charges.
§22B-3-6. Accepted orders and certificates for oil—Negotiability.
§22B-3-7. Same—Further provisions.
§22B-3-8. Dealing in oil without consent of owner.
§22B-3-9. Monthly statements.
§22B-3-10. Statements of amount of oil.
§22B-3-11. Penalty—Wrongful issuance, sale or alteration of receipts, orders, etc.
§22B-3-12. Same—Dealing in oil without consent of owner in interest.
§22B-3-13. Same—Failure to make report and statement.

§22B-3-1. Scope of article.

Every person, corporation or company now engaged, or which shall hereafter engage, in the business of transporting or storing petroleum, by means of pipeline or lines or storage by tanks, shall be subject to the provisions of this article and shall conduct such business in conformity herewith: Provided, That the provisions of this article shall be subject to all federal laws regulating interstate commerce on the same subject.

§22B-3-2. Duty of pipeline companies to accept and transport oil.

Any company heretofore or hereafter organized for the purpose of transporting petroleum or other oils or liquids by means of pipeline or lines shall be required to accept all petroleum offered to it in merchantable order in quantities of not less than two thousand gallons at the wells where the same is produced, making at its own expense all necessary connections with the tanks or receptacles containing such petroleum, and to transport and deliver the same at any delivery station, within or without the state, on the route of its line of pipes, which may be designated by the owners of the petroleum so offered.

§22B-3-3. Oil of 35° Baume at 60° Fahrenheit; inspection, grading and measurement; receipt; deduction for waste.

All petroleum of a gravity of thirty-five degrees Baume or under, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall, before the same is transported, as provided by section two of this article, be inspected, graded and measured at the expense of the pipeline company, and the company accepting the same for transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of the owner or his assigns, shall deliver to him at the point of delivery a like quantity and grade or gravity of petroleum in merchantable
condition as specified in such receipt; except that the company may deduct for waste one percent of the amount of petroleum specified in such receipt.

§22B-3-4. Oil over 35° Baume at 60° Fahrenheit; inspection and measurement; loss.

All petroleum of a gravity exceeding thirty-five degrees Baume, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported. The company accepting the same for transportation shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from such tank, and the number of feet and inches of petroleum which remained in the tank after such run was completed. All deductions made for water, sediment or the like shall be made at the time such petroleum is measured. Within a reasonable time thereafter the company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to his assignee, at such delivery station on the route of its line of pipes as he may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from such tank, or receptacle, which shall be ascertained by computation; except that the company transporting such petroleum may deduct for evaporation and waste two percent of the amount of petroleum so run, as shown by such run ticket, and except that in case of loss of any petroleum while in the custody of company caused by fire, lightning, storm or other like unavoidable cause, such loss shall be borne pro rata by all the owners of such petroleum at the time thereof. But the company shall be liable for all petroleum that is lost while in its custody by the bursting of pipes or tanks, or by leakage from pipes or tanks; and it shall also be liable for all petroleum lost from tanks at the wells produced before the same has been received for transportation, if such loss be due to faulty connections made to such tanks; and the company shall be liable for all petroleum lost by the overflow of any tanks with which pipeline connections have been made, if such overflow be due
to the negligence of such company, and for all the petroleum
lost by the overflow of any tanks with which pipeline
connections should have been made under the provisions of
this article, but were not so made by reason of negligence or
delay on the part of the company.

§22B-3-5. Lien for charges.

Any company engaged in transporting or storing petroleum
shall have a lien upon such petroleum until all charges for
transporting and storing the same are paid.

§22B-3-6. Accepted orders and certificates for oil—Negotiability.

Accepted orders and certificates for petroleum, issued by
any company engaged in the business of transporting and
storing petroleum in this state by means of pipeline or lines
and tanks, shall be negotiable, and may be transferred by
endorsement either in blank or to the order of another, and
any person to whom such accepted orders and certificates shall
be so transferred shall be deemed and taken to be the owner
of the petroleum therein specified.

§22B-3-7. Same—Further provisions.

No receipt, certificate, accepted order or other voucher shall
be issued or put in circulation, nor shall any order be accepted
or liability incurred for the delivery of any petroleum, crude
or refined, unless the amount of such petroleum represented
in or by such receipt, certificate, accepted order, or other
voucher or liability, shall have been actually received by and
shall then be in the tanks and lines, custody and control of
the company issuing or putting in circulation such receipt,
certificate, accepted order or voucher, or written evidence of
liability. No duplicate receipt, certificate, accepted order or
other voucher shall be issued or put in circulation, or any
liability incurred for any petroleum, crude or refined, while
any former liability remains in force, or any former receipt,
certificate, accepted order or other voucher shall be outstand-
ing and uncanceled, except such original papers shall have
been lost, in which case a duplicate, plainly marked "duplicate"
upon the face, and dated and numbered as the lost original
was dated and numbered, may be issued. No receipt, voucher,
accepted order, certificate or written evidence of liability of
such company on which petroleum, crude or refined, has been
delivered, shall be reissued, used or put in circulation. No
petroleum, crude or refined, for which a receipt, voucher,
accepted order, certificate or liability incurred, shall have been
issued or put in circulation, shall be delivered, except upon
the surrender of the receipt, voucher, order or liability
representing such petroleum, except upon affidavit of loss of
such instrument made by the former holder thereof. No
duplicate receipt, certificate, voucher, accepted order or other
evidence of liability, shall be made, issued or put in circulation
until after notice of the loss of the original, and of the
intention to apply for a duplicate thereof, shall have been given
by advertisement over the signature of the owner thereof as
a Class II legal advertisement in compliance with the
provisions of article three, chapter fifty-nine of this code, and
the publication area for such publication shall be the county
where such duplicate is to be issued. Every receipt, voucher,
accepted order, certificate or evidence of liability, when
surrendered or the petroleum represented thereby delivered,
shall be immediately canceled by stamping and punching the
same across the face in large and legible letters with the word
"canceled," and giving the date of such cancellation; and it
shall then be filed and preserved in the principal office of such
company for a period of six years.

§22B-3-8. Dealing in oil without consent of owner.

No company, its officers or agents, or any person or persons
engaged in the transportation or storage of petroleum, crude
or refined, shall sell or encumber, ship, transfer, or in any
manner remove or procure, or permit to be sold, encumbered,
shipped, transferred, or in any manner removed from the tanks
or pipes of such company engaged in the business aforesaid,
any petroleum, crude or refined, without the written order of
the owner or a majority of the owners in interest thereof.

§22B-3-9. Monthly statements.

Every company now or hereafter engaged in the business of
transporting by pipelines or storing crude or refined petroleum
in this state shall, on or before the tenth day of each month,
make or cause to be made and posted in its principal business
office in this state, in an accessible and convenient place for
the examination thereof by any person desiring such exami-
nation, and shall keep so posted continuously until the next
succeeding statement is so posted, a statement plainly written or printed, signed by the officer, agent, person or persons having charge of the pipes and tanks of such company, and also by the officer or officers, person or persons, having charge of the books and accounts thereof, which statement shall show in legible and intelligent form the following details of the business: (a) How much petroleum, crude or refined, was in the actual and immediate custody of such company at the beginning and close of the previous month, and where the same was located or held; describing in detail the location and designation of each tank or place of deposit, and the name of its owner; (b) how much petroleum, crude or refined, was received by such company during the previous month; (c) how much petroleum, crude or refined, was delivered by such company during the previous month; (d) for how much petroleum, crude or refined, such company was liable for the delivery or custody of to other corporations, companies or persons at the close of the month; (e) how much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances; and (f) that all the provisions of this article have been faithfully observed and obeyed during the previous month. The statement so required to be made shall also be sworn to by such officer, agent, person or persons before some officer authorized by law to administer oaths, which shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in such report are true.

§22B-3-10. Statements of amount of oil.

All amounts in the statements required by this article, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels, reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgements, evidences of
liability, and credit balances, on the books thereof.

§22B-3-11. Penalty—Wrongful issuance, sale or alteration of receipts, orders, etc.

Any company, its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this article, or shall do or cause to be done any of the acts prohibited by section seven of this article, or omit to do any of the acts by said section directed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding one thousand dollars, and, if the offender be a natural person, imprisoned not less than ten days nor exceeding one year.

§22B-3-12. Same—Dealing in oil without consent of owner in interest.

Any company, its officers or agents, who shall sell, encumber, transfer or remove, or cause or procure to be sold, transferred or removed from the tanks or pipes of such company, any petroleum, crude or refined, without the written consent of the owner or a majority of the owners in interest thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined one thousand dollars and, if the offender be a natural person, imprisoned in the county jail not less than ninety days nor more than one year.

§22B-3-13. Same—Failure to make report and statement.

Any company engaged in the business of transporting by pipelines or storing petroleum, crude or refined, and each and every officer or agent of such company, who shall neglect or refuse to make the report and statement required by section nine of this article, within the time and the manner directed by said section, shall forfeit and pay the sum of one thousand dollars, and in addition thereto the sum of five hundred dollars for each day after the tenth day of the month that the report and statement required by said section nine shall remain unposted as therein directed.
ARTICLE 4. UNDERGROUND GAS STORAGE RESERVOIRS.

§22B-4-1. Definitions.

§22B-4-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

§22B-4-3. Filing of maps and data by persons operating coal mines.

§22B-4-4. Notice by persons operating coal mines.

§22B-4-5. Obligations to be performed by persons operating storage reservoirs.

§22B-4-6. Inspection of facilities and records; reliance on maps; burden of proof.

§22B-4-7. Exemptions.

§22B-4-8. Alternative method.

§22B-4-9. Powers and duties of director.

§22B-4-10. Conferences, hearings and appeals.

§22B-4-11. Enforcement.

§22B-4-12. Penalties.

§22B-4-13. Orders remain in effect.

§22B-4-1. Definitions.

In this article unless the context otherwise requires:

(1) The term “coal mine” means those operations in a coal seam which include the excavated and abandoned portions as well as the places actually being worked; also all underground workings and shafts, slopes, tunnels, and other ways and openings and all such shafts, slopes, tunnels, and other openings in the course of being sunk or driven, together with all roads and facilities connected with them below the surface.

(2) The term “operating coal mine” means (a) a coal mine which is producing coal or has been in production of coal at any time during the twelve months immediately preceding the date its status is put in question under this article and any worked out or abandoned coal mine connected underground with or contiguous to such operating coal mine as herein defined and (b) any coal mine to be established or reestablished as an operating coal mine in the future pursuant to section four of this article.

(3) The term “outside coal boundaries” when used in conjunction with the term “operating coal mine” means the boundaries of the coal acreage assigned to such coal mine and which can be practicably and reasonably expected to be mined through such coal mine.

(4) The term “well” means a borehole drilled or proposed to be drilled within the storage reservoir boundary or reservoir protective area for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid but excluding boreholes drilled to produce potable water to be
used as such.

(5) The term "gas" means any gaseous substance.

(6) The term "storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage or for the purpose of testing whether said stratum is suitable for storage.

(7) The term "bridge" means an obstruction placed in a well at any specified depth.

(8) The term "linear foot" means a unit of measurement in a straight line on a horizontal plane.

(9) The term "person" means any individual, association, partnership or corporation.

(10) The term "reservoir protective area" means all of that area outside of and surrounding the storage reservoir boundary but within two thousand linear feet thereof.

(11) The term "retreat mining" means the removal of such coal, pillars, ribs and stumps as remain after the development mining has been completed in that section of a coal mine.

(12) The term "pillar" means a solid block of coal surrounded by either active mine workings or a mined out area.

(13) The term "inactivate" means to shut off all flow of gas from a well by means of a temporary plug, or other suitable device or by injecting aquagel or other such equally nonporous material into the well.

(14) The term "storage operator" means any person as herein defined who proposes to or does operate a storage reservoir, either as owner or lessee.

(15) The term "workable coal seam" shall have the same meaning as the term "workable coal bed" as set out in section one, article one of this chapter.

(16) The terms "owner," "coal operator," "well operator," "division," "division of mines and minerals," "plat," "casing," "oil" and "cement," shall have the meanings set out in section one, article one of this chapter.
§22B-4-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on the eighth day of June, one thousand nine hundred fifty-five is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the division a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the director may fix.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the director not less than six months prior to the starting of actual injection or storage.

The map provided for herein shall be prepared by a competent engineer or geologist. It shall show the stratum or strata in which the existing or proposed storage reservoir is or is to be located, the geographic location of the outside boundaries of the said storage reservoir and the reservoir protective area, the location of all known oil or gas wells which have been drilled into or through the storage stratum within the reservoir or within three thousand linear feet thereof, indicating which of these wells have been, or are to be cleaned out and plugged or reconditioned for storage and also indicating the proposed location of all additional wells which are to be drilled within the storage reservoir or within three thousand linear feet thereof.

The following information, if available, shall be furnished for all known oil or gas wells which have been drilled into or through the storage stratum within the storage reservoir or within three thousand linear feet thereof; name of the operator, date drilled, total depth, depth of production if the well was
productive of oil or gas, the initial rock pressure and volume, the depths at which all coal seams were encountered and a copy of the driller's log or other similar information. At the time of the filing of the aforesaid maps and data such person shall file a detailed statement of what efforts he has made to determine, (1) that the wells shown on said map are accurately located thereon, and (2) that to the best of his knowledge they are all the oil or gas wells which have ever been drilled into or below the storage stratum within the proposed storage reservoir or within the reservoir protective area. This statement shall also include information as to whether or not the initial injection is for testing purposes, the maximum pressures at which injection and storage of gas is contemplated, and a detailed explanation of the methods to be used or which theretofore have been used in drilling, cleaning out, reconditioning or plugging wells in the storage reservoir or within the reservoir protective area. The map and data required to be filed hereunder shall be amended or supplemented semiannually in case any material changes have occurred: Provided, That the director may require a storage operator to amend or supplement such map or data at more frequent intervals if material changes have occurred justifying such earlier filing.

At the time of the filing of the above maps and data, and the filing of amended or supplemental maps or data, the director shall give written notice of said filing to all persons who may be affected under the provisions of this subsection by the storage reservoir described in such maps or data. Such notices shall contain a description of the boundaries of such storage reservoir. When a person operating a coal mine or owning an interest in coal properties which are or may be affected by the storage reservoir, requests in writing a copy of any map or data filed with the director such copy shall be furnished by the storage operator.

(b) Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in any other storage reservoir in this state not subject to subsection (a) of this section shall, on or before the first day of July, one thousand nine hundred eighty-three, file with the division a map in the same detail as the map required for a storage reservoir subject to subsection (a) of this section; and, if the initial injection of gas into the storage reservoir by such
person or any predecessor occurred after the thirty-first day of December, one thousand nine hundred seventy, data in the same detail as the data required for a storage reservoir shall be filed subject to subsection (a) of this section: Provided, That in the case of a storage reservoir the operation of which has been certificated by the federal power commission or the federal energy regulatory commission under section seven of the federal Natural Gas Act, the person may, in lieu of the data, submit copies of the application and all amendments and supplements of record in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the division a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage: Provided, That in the case of a storage reservoir the operation of which will be required to be certificated by the federal energy regulatory commission, the person may, in lieu of the data, submit copies of the application and all amendments and supplementals filed in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto, within twenty days after the same have been filed by such person or issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or documents in lieu of data and filing of amended or supplemental maps or data or documents in lieu of data, or upon receipt of an application filed with the federal energy regulatory commission for a new storage reservoir, the director shall give notice of said filing by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, the publication area for which shall be the county or counties in which the storage reservoir is located. Such legal advertisement shall contain a description of the boundaries of such storage reservoir. The storage operator shall pay for the legal advertisements upon receipt of the invoice therefor from the division. When any person owning
an interest in land which is or may be affected by the storage reservoir requests in writing a copy of any map or data or documents in lieu of data filed with the division such copy shall be furnished by the storage operator.

(c) The director shall also intervene in the federal docket, and participate in the proceedings for the purpose of assuring that the certificate of public convenience and necessity issued by the federal energy regulatory commission does not authorize operations or practices in conflict with the provisions of this article. The director may cooperate with the public service commission if the commission also intervenes. The attorney general is hereby directed to provide legal representation to the director to achieve the purposes of this subsection.

(d) For all purposes of this article, the outside boundaries of a storage reservoir shall be defined by the location of those wells around the periphery of the storage reservoir which had no gas production when drilled in said storage stratum: *Provided*, That the boundaries as thus defined shall be originally fixed or subsequently changed where, based upon the number and nature of such wells, upon the geological and production knowledge of the storage stratum, its character, permeability, and distribution, and operating experience, it is determined in a conference or hearing under section ten of this article that modification should be made.

§228-4-3. Filing of maps and data by persons operating coal mines.

(a) Any person owning or operating a coal mine, who has not already done so with respect to the department of mines pursuant to the former provisions of article seven, chapter twenty-two of this code, shall, within thirty days from the effective date of this article, file with the director of the division of mines and minerals a map, prepared by a competent engineer, showing the outside coal boundaries of the said operating coal mine, the existing workings and exhausted areas and the relationship of said boundaries to identifiable surface properties and landmarks. Any person who is storing or contemplating the storage of gas in the vicinity of such operating coal mines shall, upon written request, be furnished a copy of the aforesaid map by the coal operator and such person and the director shall thereafter be informed
of any boundary changes at the time such changes occur. The director shall keep a record of such information and shall promptly notify both the coal operator and the storage operator if it is found that the coal mine and the storage reservoir are within ten thousand linear feet of each other.

(b) Any person owning or operating any coal mine which, on the tenth day of March, one thousand nine hundred fifty-five, is or which thereafter comes within ten thousand linear feet of a storage reservoir, and where the coal seam being operated extends over the storage reservoir or the reservoir protective area, shall within forty-five days after he has notice from the director of such fact, file with the director, and furnish to the person operating such storage reservoir, a map in the form hereinabove provided and showing in addition, the existing and projected excavations and workings of such operating coal mine for the ensuing eighteen-month period, and also the location of any oil or gas wells of which said coal operator has knowledge. Such person owning or operating said coal mine shall each six months thereafter file with the director and the director of the division of mines and minerals and furnish to the person operating such storage reservoir a revised map showing any additional excavations and workings, together with the projected excavations and workings for the then ensuing eighteen-month period which may be within ten thousand linear feet of said storage reservoir: Provided, That the director of mines and minerals may require a coal operator to file such revised map at more frequent intervals if material changes have occured justifying such earlier filing. Such person owning or operating said coal mine shall also file with the director and furnish the person operating said reservoir prompt notice of any wells which have been cut into, together with all available pertinent information.

§22B-4-4. Notice by persons operating coal mines.

(a) Any person owning or operating a coal mine on the eighth day of June, one thousand nine hundred fifty-five, and having knowledge that it overlies or is within two thousand linear feet of a gas storage reservoir, shall within thirty days notify the director and the storage operator of such fact unless such notification has already been provided to the director of mines pursuant to the provisions of former article seven, chapter twenty-two of this code.
(b) When any person owning or operating a coal mine hereafter expects that within the ensuing nine-month period such coal mine will be extended to a point which will be within two thousand linear feet of any storage reservoir, he shall notify the director and the storage operator in writing of such fact.

(c) Any person hereafter intending to establish or reestablish an operating coal mine which when established or reestablished will be over a storage reservoir or within two thousand linear feet of a storage reservoir, or which upon being established or reestablished may within nine months thereafter be expected to be within two thousand linear feet of a storage reservoir, shall notify the director and the storage operator in writing before doing so and such notice shall include the date on which it is intended the operating coal mine will be established or reestablished.

Any person who serves such notice of an intention to establish or reestablish an operating coal mine under this subsection, without intending in good faith to establish or reestablish such mine, shall be liable for continuing damages to any storage operator injured by the serving of such improper notice and shall be guilty of a misdemeanor under this article and subject to the same penalties as set forth in section twelve of this article.

§22B-4-5. Obligations to be performed by persons operating storage reservoirs.

(a) Any person who, on or after the eighth day of June, one thousand nine hundred fifty-five, is operating a storage reservoir which underlies or is within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall:

(1) Use every known method which is reasonable under the circumstances for discovering and locating all wells which have or may have been drilled into or through the storage stratum in that acreage which is within the outside coal boundaries of such operating coal mine and which overlies the storage reservoir or the reservoir protective area;

(2) Plug or recondition, in the manner provided by sections
twenty-three and twenty-four, article one of this chapter and subsection (e) of this section, all known wells (except to the extent otherwise provided in subsections (e), (f), (g) and (h) of this section) drilled into or through the storage stratum and which are located within that portion of the acreage of the operating coal mine overlying the storage reservoir or the reservoir protective area: Provided, That where objection is raised as to the use of any well as a storage well, and after a conference or hearing in accordance with section ten of this article it is determined, taking into account all the circumstances and conditions, that such well should not be used as a storage well, such well shall be plugged: Provided, however, That if, in the opinion of the storage operator, the well to which such objection has been raised may at some future time be used as a storage well, the storage operator may recondition and inactivate such well instead of plugging it, if such alternative is approved by the director after taking into account all of the circumstances and conditions.

The requirements of clause (2) of this subsection shall be deemed to have been fully complied with if, as the operating coal mine is extended, all wells which, from time to time, come within the acreage described in said clause (2) are reconditioned or plugged as provided in subsection (e) or (f) of this section and in section twenty-four, article one of this chapter so that by the time the coal mine has reached a point within two thousand linear feet of any such wells, they will have been reconditioned or plugged so as to meet the requirements of said subsection (e) or (f) and of said section twenty-four of article one.

(b) Any person operating a storage reservoir referred to in subsection (a) of this section, who has not already done so with respect to the department of mines pursuant to the provisions of former article seven, chapter twenty-two of this code, shall within sixty days after the effective date of this article file with the director and furnish a copy to the person operating the affected operating coal mine, a verified statement setting forth:

(1) That the map and any supplemental maps required by subsection (a), section two of this article have been prepared and filed in accordance with section two;
(2) A detailed explanation of what the storage operator has done to comply with the requirements of clauses (1) and (2), subsection (a) of this section and the results thereof;

(3) Such additional efforts, if any, as the storage operator is making and intends to make to locate all oil and gas wells; and

(4) Any additional wells that are to be plugged or reconditioned to meet the requirements of clause (2), subsection (a) of this section.

If such statement is not filed by the storage reservoir operator within the time specified herein, the director shall summarily order such operator to file such statement.

(c) Within one hundred twenty days after the receipt of any such statement, the director may, and he shall, if so requested by either the storage operator or the coal operator affected, direct that a conference be held in accordance with section ten of this article to determine whether the information as filed indicates that the requirements of section two of this article and of subsection (a) of this section have been fully complied with. At such conference, if any person shall be of the opinion that such requirements have not been fully complied with, the parties shall attempt to agree on what additional things are to be done and the time within which they are to be completed, subject to the approval of the director, to meet the said requirements.

If such agreement cannot be reached, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine whether the requirements of said section two of this article and of subsection (a) of this section have been met and shall issue an order setting forth such determination. If the director shall determine that any of the said requirements have not been met, the order shall specify, in detail, both the extent to which such requirements have not been met, and the things which the storage operator must do to meet such requirements. The order shall grant to the storage operator such time as is reasonably necessary to complete each of the things which he is directed to do. If, in carrying out said order, the storage operator encounters conditions which were not known to exist at the time of the hearing and which materially affect the
validity of said order or the ability of the storage operator to
comply with the order, the storage operator may apply for a
rehearing or modification of said order.

(d) Whenever, in compliance with subsection (a) of this
section, a storage operator, after the filing of the statement
provided for in subsection (b) of this section, plugs or
reconditions a well, he shall so notify the director and the coal
operator affected in writing, setting forth such facts as will
indicate the manner in which the plugging or reconditioning
was done. Upon receipt thereof, the coal operator affected or
the director may request a conference or hearing in accordance
with section ten of this article.

(e) In order to meet the requirements of subsection (a) of
this section, wells which are to be plugged shall be plugged
in the manner specified in section twenty-four, article one of
this chapter. When a well located within the storage reservoir
or the reservoir protective area has been plugged prior to the
ten day of March, one thousand nine hundred fifty-five, and
on the basis of the data, information and other evidence
submitted to the director, it is determined that: (1) Such
plugging was done in the manner required in section twenty-
four, article one of this chapter; and (2) said plugging is still
sufficiently effective to meet the requirements of this article,
the obligations imposed by subsection (a) of this section as to
plugging said well shall be considered fully satisfied.

(f) In order to meet the requirements of subsection (a) of
this section, wells which are to be reconditioned shall be
cleaned out from the surface through the storage horizon and
the following casing strings shall be pulled and replaced with
new casing, using the same procedure as is applicable to
drilling a new well as provided for in sections eighteen,
ten and twenty, article one of this chapter: (1) The
producing casing; (2) the largest diameter casing passing
through the lowest workable coal seam unless such casing
extends at least twenty-five feet below the bottom of such coal
seam and is determined to be in good physical condition:
Provided, That the storage operator may, instead of replacing
the largest diameter casing, replace the next largest casing
string if such casing string extends at least twenty-five feet
below the lowest workable coal seam; and (3) such other casing
strings which are determined not to be in good physical
condition. In the case of wells to be used for gas storage, the annular space between each string of casing, and the annular space behind the largest diameter casing to the extent possible, shall be filled to the surface with cement or aquagel or such equally nonporous material as is approved by the director pursuant to section eight of this article. At least fifteen days prior to the time when a well is to be reconditioned the storage operator shall give notice thereof to the coal operator or owner and to the director setting forth in such notice the manner in which it is planned to recondition such well and any pertinent data known to the storage operator which will indicate the then existing condition of such well. In addition the storage operator shall give the coal operator or owner and such representative of the director as the director shall have designated at least seventy-two hours notice of the time when such reconditioning is to begin. The coal operator or owner shall have the right to file, within ten days after the receipt of the first notice required herein, objections to the plan of reconditioning as submitted by the storage operator. If no such objections are filed or if none is raised by the director within such ten-day period, the storage operator may proceed with the reconditioning in accordance with the plan as submitted. If any such objections are filed by the coal operator or owner or are made by the director, the director shall fix a time and place for a conference in accordance with section ten of this article at which conference the well operator and the person who has filed such objections shall endeavor to agree upon a plan of reconditioning which meets the requirements herein and which will satisfy such objections. If no plan is approved at such conference, the director shall direct that a hearing be held in accordance with section ten of this article and, after such hearing, shall by an appropriate order determine whether the plan as submitted meets the requirements set forth herein, or what changes, if any, should be made to meet such requirements. If, in reconditioning a well in accordance with said plan, physical conditions are encountered which justify or necessitate a change in said plan, the storage operator or the coal operator may request that the plan be changed. If the storage operator and the coal operator cannot agree upon such change, the director shall arrange for a conference or hearing in accordance with section ten of this article to determine the matter in the same manner as set forth herein in connection
with original objections to said plan. Application may be made to the director in the manner prescribed in section eight of this article for approval of an alternative method of reconditioning a well. When a well located within the storage reservoir or the reservoir protective area has been reconditioned prior to the tenth day of March, one thousand nine hundred fifty-five, or was so drilled and equipped previously and on the basis of the data, information and other evidence submitted to the director, it is determined that: (1) Such reconditioning or previous drilling and equipping was done in the manner required in this subsection, or in a manner approved as an alternative method in accordance with section eight of this article and (2) such reconditioning or previous drilling and equipping is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) as to reconditioning said well shall be considered fully satisfied. Where a well requires emergency repairs this subsection shall not be construed to require the storage operator to give the notices specified herein before making such repairs.

(g) When a well located within the reservoir protective area is a producing well in a stratum below the storage stratum the obligations imposed by subsection (a) of this section shall not begin until such well ceases to be a producing well.

(h) When a well within a storage reservoir or the reservoir protective area penetrates the storage stratum but does not penetrate the coal seam being mined by an operating coal mine the director may, upon application of the operator of such storage reservoir, exempt such well from the requirements of this section. Either party affected may request a conference and hearing with respect to the exemption of any such well in accordance with section ten of this article.

(i) In fulfilling the requirements of clause (2), subsection (a) of this section with respect to a well within the reservoir protective area, the storage operator shall not be required to plug or recondition such well until he has received from the coal operator written notice that the mine workings will within the period stated in such notice, be within two thousand linear feet of such well. Upon the receipt of such notice the storage operator shall use due diligence to complete the plugging or reconditioning of such well in accordance with the require-
ments of this section and of section twenty-four, article one of this chapter. If the said mine workings do not, within a period of three years after said well has been plugged, come within two thousand linear feet of said well, the coal operator shall reimburse the storage operator for the cost of said plugging, provided such well is still within the reservoir protective area as of that time.

(j) When retreat mining approaches a point where within ninety days it is expected that such retreat work will be at the location of the pillar surrounding an active storage well the coal operator shall give written notice of such approach to the storage operator and by agreement said parties shall determine whether it is necessary or advisable to inactivate effectively said well temporarily. The well shall not be reactivated until a reasonable period has elapsed, such reasonable period to be determined by the said parties. In the event that the said parties cannot agree upon either of the foregoing matters, such question shall be submitted to the director for decision in accordance with section ten of this article. The number of wells required to be temporarily inactivated during the retreat period shall not be such as to materially affect the efficient operation of such storage pool. This provision shall not preclude the temporary inactivation of a particular well where the practical effect of inactivating such well is to render the pool temporarily inoperative.

(k) The requirements of subsections (a), (I) and (m) of this section shall not apply to the injection of gas into any stratum when the sole purpose of such injection (such purpose being herein referred to as testing) is to determine whether the said stratum is suitable for storage purposes: Provided, That such testing shall be conducted only in compliance with the following requirements:

(1) The person testing or proposing to test shall comply with all the provisions and requirements of section two of this article and shall verify the statement required to be filed thereby;

(2) If any part of the proposed storage reservoir is under or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the proposed storage reservoir or the reservoir protective area, the
storage operator shall give at least six months' written notice
to the director and to the coal operator of the fact that
injection of gas for testing purposes is proposed;

(3) The coal operator affected may at any time file
objections with the director in accordance with subsection (d),
section nine of this article. If any such objections are filed by
the coal operator or if the director shall have any objections,
the director shall fix a time and place for a conference in
accordance with section ten of this article, not more than ten
days from the date of the notice to the storage operator, at
which conference the storage operator and the person who has
filed such objections shall attempt to agree, subject to the
approval of the director, on the questions involved. If such
agreement cannot be reached at such conference, the director
shall direct that a hearing be held in accordance with section
ten of this article. At such hearing the director shall determine
and set forth in an appropriate order the conditions and
requirements which he shall deem necessary or advisable in
order to prevent gas from such storage reservoir from entering
any operating coal mine. The storage operator shall comply
with such conditions and requirements throughout the period
of the testing operations. In determining such conditions and
requirements the director shall take into account the extent to
which the matters referred to in subsection (a) of this section
have been performed. If, in carrying out said order, either the
storage operator or the coal operator encounters or discovers
conditions which were not known to exist at the time of the
hearing and which materially affect said order or the ability
of the storage operator to comply with the order, either
operator may apply for a rehearing or modification of said
order;

(4) Where, at any time, a proposed storage reservoir being
tested comes under or within two thousand linear feet of an
operating coal mine either because of the extension of the
storage reservoir being tested or because of the extension or
establishment or reestablishment of the operating coal mine,
then and at the time of any such event the requirements of
this subsection shall become applicable to such testing.

(1) Any person who, after the effective date of this article,
proposes to establish a storage reservoir under, or within two
thousand linear feet of an operating coal mine which is
operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall, prior to establishing such reservoir, in addition to complying with the requirements of section two of this article and subsection (a) of this section, file the verified statement required by subsection (b) of this section and fully comply with such order or orders, if any, as the director may issue in the manner provided for under subsections (b) or (c) of this section before beginning the operation of such storage reservoir. After the person proposing to operate such storage reservoir shall have complied with such requirements and shall have thereafter begun to operate such reservoir, he shall continue to be subject to all of the provisions of this article.

(m) When a gas storage reservoir, (1) was in operation on the eighth day of June, one thousand nine hundred fifty-five, and at any time thereafter it is under or within two thousand linear feet of an operating coal mine, or (2) when a gas storage reservoir is put in operation after the eighth day of June, one thousand nine hundred fifty-five, and at any time after such storage operations begin it is under or within two thousand linear feet of an operating coal mine, then and in either such event, the storage operator shall comply with all of the provisions of this section except that the time for filing the verified statement under subsection (b) shall be sixty days after the date stated in the notice filed by the coal operator under subsection (b) or (c), section four of this article as to when the operating coal mine will be at a point within two thousand linear feet of such reservoir: Provided, That if the extending of the projected workings or the proposed establishment or reestablishment of the operating coal mine is delayed after the giving of the notice provided in subsections (b) and (c), section four of this article, the coal operator shall give notice of such delay to the director and the director shall, upon the request of the storage operator, extend the time for filing such statement by the additional time which will be required to extend or establish such operating coal mine to a point within two thousand linear feet of such reservoir. Such verified statement shall also indicate that the map referred to in subsection (a), section two of this article has been currently amended as of the time of the filing of such statement. The person operating any such storage reservoir shall continue to be subject to all of the provisions of this article.
(n) If, in any proceeding under this article, the director shall determine that any operator of a storage reservoir has failed to carry out any lawful order of the director issued under this article, the director shall have authority to require such storage operator to suspend the operation of such reservoir and to withdraw the gas therefrom until such violation is remedied. In such an event the gas shall be withdrawn under the following conditions. The storage operator shall remove the maximum amount of gas which is required by the director to be removed from the storage reservoir that can be withdrawn in accordance with recognized engineering and operating procedures and shall proceed with due diligence insofar as existing facilities used to remove gas from the reservoir will permit.

(o) In addition to initial compliance with the other provisions of this article and any lawful orders issued thereunder, it shall be the duty at all times of the person owning or operating any storage reservoir which is subject to the provisions of this article to keep all wells drilled into or through the storage stratum in such condition and to operate the same in such manner as to prevent the escape of gas into any coal mine therefrom, and to operate and maintain such storage reservoir and its facilities in such manner and at such pressures as will prevent gas from escaping from such reservoir or its facilities into any coal mine: Provided. That this duty shall not be construed to include the inability to prevent the escape of gas where such escape results from an act of God or an act of any person not under the control of the storage operator other than in connection with any well which the storage operator has failed to locate and to make known to the director: Provided, however, That if any escape of gas into a coal mine does result from an act of God or an act of any person not under the control of the storage operator, the storage operator shall be under the duty of taking such action thereafter as is reasonably necessary to prevent further escape of gas into the coal mine.

§22B-4-6. Inspection of facilities and records; reliance on maps; burden of proof.

(a) In determining whether a particular coal mine or operating coal mine is or will be within any distance material under this article from any storage reservoir, the owner or
operator of such coal mine and the storage operator may rely
on the most recent map of the storage reservoir or coal mine
filed by the other with the director.

(b) In any proceeding under this article where the accuracy
of any map or data filed by any person pursuant to the
requirements of this article is in issue, the person filing the
same shall at the request of any party to such proceeding be
required to disclose the information and method used in
compiling such map and data and such information as is
available to such person that might affect the current validity
of such map or data. If any material question is raised in such
proceeding as to the accuracy of such map or data with respect
to any particular matter or matters contained therein, the
person filing such map or data shall then have the burden of
proving the accuracy of the map or data with respect to such
matter or matters.

(c) The person operating any storage reservoir affected by
the terms of this article shall, at all reasonable times, be
permitted to inspect the applicable records and facilities of any
coal mine overlying such storage reservoir or the reservoir
protective area, and the person operating any such coal mine
affected by the terms of this article, shall similarly, at all
reasonable times, be permitted to inspect the applicable
records and facilities of any such storage reservoir underlying
any such coal mine. In the event that either such storage
operator or coal operator shall refuse to permit any such
inspection of records or facilities, the director shall, on his own
motion, or on application of the party seeking the inspection
after reasonable written notice, and a hearing thereon, if
requested by either of the parties affected, make an order
providing for such inspection.

§22B-4-7. Exemptions.

(a) The provisions of this article shall not apply to strip
mines and auger mines operating from the surface.

(b) Injection of gas for storage purposes in any workable
coal seam, whether or not such seam is being or has been
mined, shall be prohibited. Nothing in this article shall be
construed to prohibit the original extraction of natural gas,
crude oil or coal. No storage operator shall have authority to
appropriate any coal or coal measure whether or not being
§22B-4-8. Alternative method.

(a) Whenever provision is made in this article by reference to this section for using an alternative method or material in carrying out any obligation imposed by the article, the person seeking the authority to use such alternative method or material shall file an application with the director describing such proposed alternative method or material in reasonable detail. Notice of filing of any such application shall be given by registered mail to any coal operator or operators affected. Any such coal operator may within ten days following such notice, file objections to such proposed alternative method or material. If no objections are filed within said ten-day period or if none is raised by the director, the director shall forthwith issue a permit approving such proposed alternative method or material.

(b) If any such objections are filed by any coal operator or are raised by the director, the director shall direct that a conference be held in accordance with section ten of this article within the ten days following the filing of such objections. At such conference the person seeking approval of the alternative method or material and the person who has filed such objections shall attempt to agree on such alternative method or material or any modification thereof, and if such agreement is reached and approved by the director, the director shall forthwith issue a permit approving the alternative method or material. If no such agreement is reached and approved, the director shall direct that a hearing be held in accordance with section ten of this article: Provided, That if the alternative method or material involves a new development in technology or technique the director may, before such a hearing is held, grant such affected parties a period not to exceed ninety days to study and evaluate said proposed alternative method or material. Following such hearing, if the director shall find that such proposed alternative method or material will furnish adequate protection to the workable coal seams, the director shall by order approve such alternative method or material; otherwise the director shall deny the said application.

§22B-4-9. Powers and duties of director.

(a) The director may review the maps and data filed under
sections two and three hereof for the purpose of determining
the accuracy thereof. Where any material question is raised by
any interested storage operator or coal operator or owner as
to the accuracy of any such map or data, the director shall
hold hearings thereon and shall by an appropriate order
require the person filing such map or data to correct the same
if they are found to be erroneous.

(b) It shall be the duty of the director to receive and keep
in a safe place for public inspection any map, data, report,
well log, notice or other writing required to be filed with it
pursuant to the provisions of this article. The director shall
keep such indices of all such information as will enable any
person using the same to readily locate such information either
by the identity of the person who filed the same or by the
person or persons affected by such filing or by the geographic
location of the subject matter by political subdivision. The
director shall also keep a docket for public inspection of all
proceedings, in which shall be entered the dates of any notices,
the names of all persons notified and their addresses, the dates
of hearings, conferences and all orders, decrees, decisions,
determinations, rulings or other actions issued or taken by the
director and such docket shall constitute the record of each
and every proceeding before the director.

(c) The director shall have authority to make any inspec-
tions and investigations of records and facilities which he shall
deem necessary or desirable to perform his functions under this
article.

(d) Where in any section of this article provision is made
for the filing of objections, such objections shall be filed in
writing with the director, by the person entitled to file the same
or by the director, and shall state as definitely as is reasonably
possible the reasons for such objections. The person filing such
objections shall send a copy thereof by registered mail to the
person or persons affected thereby.

§22B-4-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest in
the subject matter of this article may at any time request that
a conference be held for the purpose of discussing and
endeavoring to resolve by mutual agreement any matter arising
under the provisions of this article. Prompt notice of any such
conference shall be given by the director to all such interested parties. At such conference a representative of the director shall be in attendance, and the director may make such recommendations as he deems appropriate. Any agreement reached at such conference shall be consistent with the requirements of this article and, if approved by such representative of the director, it shall be reduced to writing and shall be effective unless reviewed and rejected by the director within ten days after the close of the conference. The record of any such agreement approved by the director shall be kept on file by the director with copies furnished to the parties. The conference shall be deemed terminated as of the date any party refuses to confer thereafter. Such a conference shall be held in all cases prior to conducting any hearing under this section.

(b) Within ten days after termination of the conference provided for in this section at which no approved agreement has been reached or within ten days after the rejection by the director of any agreement approved at any such conference, any person who has a direct interest in the subject matter of the conference may submit the matter or matters, or any part thereof, considered at the conference, to the director for determination at a public hearing. The hearing procedure shall be formally commenced by the filing of a petition with the director upon forms prescribed by the director or by specifying in writing the essential elements of the petition, including name and address of the petitioner and of all other persons affected thereby, a clear and concise statement of the facts involved, and a specific statement of the relief sought. The hearing shall thereafter be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and with such regulations and such provisions as to reasonable notice as the director may prescribe. Consistent with the requirements for reasonable notice all hearings under this article shall be held by the director promptly. All testimony taken at such hearings shall be under oath and shall be reduced to writing by a reporter appointed by the director, and the parties shall be entitled to appear and be heard in person or by attorney. The director may present at such hearing any evidence which is material to the matter under consideration and which has come to the director's attention in any investigation or inspection made pursuant to provisions of this article.
(c) After the conclusion of hearings, the director shall make and file his findings and order with his opinion, if any. A copy of such order shall be served by registered mail upon the person against whom it runs, or his attorney of record, and notice thereof shall be given to the other parties to the proceedings, or their attorney of record.

(d) The director may, at any time after notice and after opportunity to be heard as provided in this section, rescind or amend any approved agreement or order made by him. Any order rescinding or amending a prior agreement or order shall, when served upon the person affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders; but no such order shall affect the legality or validity of any acts done by such person in accordance with the prior agreement or order before receipt by such person of the notice of such change.

(e) The director shall have power, either personally or by any of his authorized representatives, to subpoena witnesses and take testimony, and administer oaths to any witness in any hearing, proceeding or examination instituted before the director or conducted by him with reference to any matter within the jurisdiction of the director. In all hearings or proceedings before the director the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process the director or any party to the proceedings before the director may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of such books, records, maps, plats, papers, documents and other writings as he may deem necessary or proper in and pertinent to any hearing, proceeding or investigation held or had by it. Such court, in case of the refusal of any such person to obey the subpoena, shall issue an order requiring such person to appear before the director and produce the required documentary evidence, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that any such testimony or evidence may tend to criminate the person giving the same shall not excuse such witness from testifying, but such witness shall not be prosecuted for any offense concerning
which he is compelled hereunder to testify.

(f) With the consent of the director, the testimony of any witness may be taken by deposition at the instance of a party to any hearing before the director at any time after hearing has been formally commenced. The director may, of his own motion, order testimony to be taken by deposition at any stage in any hearing, proceeding or investigation pending before it. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

(g) Whether or not it be so expressly stated, an appeal from any final order, decision or action by the director in administering the provisions of this article may be taken by any aggrieved person within ten days of notice of such order, decision or action, to the circuit court of the county in which the subject matter of such order, decision or action is located, and in all cases of appeals to the circuit court, that court shall certify its decisions to the director. The circuit court to which the appeal is taken shall hear the appeal without a jury on the record certified by the director. In any such appeal the findings of the director shall, if supported by substantial evidence, be conclusive. If the order of the director is not affirmed, the court may set aside or modify it, in whole or in part, or may remand the proceedings to the director for further disposition in accordance with the order of the court. From all final decisions of the circuit court an appeal shall lie to the supreme court of appeals as is now provided by law in cases in equity, by the director as well as by any other party of record before the circuit court.

Any party feeling aggrieved by the final order of the circuit court affecting him, may present his petition in writing to the supreme court of appeals, or to a judge thereof in vacation, within twenty days after the entry of such order, praying for the suspension or modification of such final order. The applicant shall deliver a copy of such petition to the director and to all other parties of record before presenting the same to the court or judge. The court or judge shall fix a time for the hearing on the application, but such hearing shall not be held sooner than seven days after its presentation unless by agreement of the parties, and notice of the time and place of such hearing shall be forthwith given to the director and to
all other parties of record. If the court or judge, after such
hearing, be of opinion that such final order should be
suspended or modified, the court or the judge may require
bond, upon such conditions and in such penalty, and impose
such terms and conditions upon the petitioner as are just and
reasonable. For such hearing the entire record before the
circuit court, or a certified copy thereof, shall be filed in the
supreme court, and that court, upon such papers, shall
promptly decide the matter in controversy as may seem to it
to be just and right, and may award costs in each case as to
it may seem just and equitable.

§22B-4-11. Enforcement.

(a) The director or any person having a direct interest in
the subject matter of this article may complain in writing
setting forth that any person is violating or is about to violate,
any provisions of this article, or has done, or is about to do,
any act, matter or thing therein prohibited or declared to be
unlawful, or has failed, omitted, neglected or refused, or is
about to fail, omit, neglect or refuse, to perform any duty
enjoined upon him by this article. Upon the filing of a
complaint against any person, the director shall cause a copy
thereof to be served upon such person by registered mail
accompanied by a notice from the director setting such
complaint for hearing at a time and place specified in such
notice. At least five days' notice of such hearing shall be given
to the parties affected and such hearing shall be held in
accordance with the provisions of section ten of this article.
Following such hearing, the director shall, if he finds that the
matter alleged in the complaint is not in violation of this
article, dismiss the complaint, but if the director shall find that
the complaint is justified, he shall by appropriate order compel
compliance with this article.

(b) Whenever the director shall be of the opinion that any
person is violating, or is about to violate, any provisions of
this article, or has done, or is about to do, any act, matter
or thing therein prohibited or declared to be unlawful, or has
failed, omitted, neglected or refused, or is about to fail, omit,
eglect or refuse, to perform any duty enjoined upon him by
this article, or has failed, omitted, neglected or refused, or is
about to fail, omit, neglect or refuse to obey any lawful
requirement or order made by the director, or any final
30 judgment, order or decree made by any court pursuant to this
31 article, then and in every such case the director may institute
32 in the circuit court of the county or counties wherein the
33 operation is situated, injunction, mandamus or other approp-
34 riate legal proceedings to restrain such violations of the
35 provisions of this article or of orders of the director to enforce
36 obedience therewith. No injunction bond shall be required to
37 be filed in any such proceeding. Such persons or corporations
38 as the court may deem necessary or proper to be joined as
39 parties in order to make its judgment, order or writ effective
40 may be joined as parties. The final judgment in any such action
41 or proceedings shall either dismiss the action or proceeding or
42 direct that the writ of mandamus or injunction or other order,
43 issue or be made permanent as prayed for in the petition or
44 in such modified or other form as will afford appropriate
45 relief. An appeal may be taken as in other civil actions.
46
47 (c) In addition to the other remedies herein provided, any
48 storage operator or coal operator affected by the provisions
49 of this article may proceed by injunction or other appropriate
50 remedy to restrain violations or threatened violations of the
51 provisions of this article or of orders of the director or the
52 judgments, orders or decrees of any court or to enforce
53 obedience therewith.
54
55 (d) Each remedy prescribed in this section shall be deemed
56 concurrent or contemporaneous with any other remedy
57 prescribed herein and the existence or exercise of any one such
58 remedy shall not prevent the exercise of any other such
59 remedy.

§22B-4-12. Penalties.

1 Any person who shall willfully violate any order of the
director issued pursuant to the provisions of this article shall
be guilty of a misdemeanor, and, on conviction thereof, shall
be punished by a fine not exceeding two thousand dollars, or
imprisoned in jail for not exceeding twelve months, or both,
in the discretion of the court, and prosecutions under this
section may be brought in the name of the State of West
Virginia in the court exercising criminal jurisdiction in the
county in which the violation of such provisions of the article
or terms of such order was committed, and at the instance and
upon the relation of any citizen of this state.
§22B-4-13. Orders remain in effect.

1 All orders in effect upon the effective date of this article pursuant to the provisions of former article seven, chapter twenty-two of this code, shall remain in full force and effect as if such orders were adopted by the division established in this chapter but all such orders shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

CHAPTER 78
(S. B. 1—By Mr. Tonkovich, Mr. President)

[Passed March 11, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to surface coal mining and reclamation generally; requiring advertisement and notification of application for surface-mining permit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

1 (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. The director shall provide the name and
address of each applicant to the commissioner of labor who
shall within fifteen days from receipt notify the director as
to the applicant's compliance, if necessary, with section
fourteen, article five, chapter twenty-one of this code.
(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.

CHAPTER 79
(H. B. 1136—By Delegate Wiedebusch)
[Passed March 15, 1985; in effect from passage. Approved by the Governor.] AN ACT to amend and reenact section four, article four-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the oil and gas conservation commission.

Be it enacted by the Legislature of West Virginia:

That section four, article four-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 4A. OIL AND GAS CONSERVATION.
§22-4A-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) There is hereby created the "West Virginia Oil and Gas Conservation Commission" which shall be composed of five members. The director of the department of natural resources and the deputy director for oil and gas shall be members of the commission ex officio. The remaining three members of
the commission shall be appointed by the governor, by and
with the advice and consent of the Senate. Of the three
members appointed by the governor, one shall be an
independent producer and at least one shall be a public
member not engaged in full-time employment in an activity
under the jurisdiction of the public service commission or the
federal power commission. As soon as practical after
appointment of the members of the commission, the governor
shall call a meeting of the commission to be convened at the
state capitol for the purpose of organizing and electing a
chairman.

(b) The members of the commission appointed by the
governor shall be appointed for overlapping terms of six years
each, except that the original appointments shall be for terms
of two, four and six years, respectively. Each member
appointed by the governor shall serve until his successor has
been appointed and qualified. Members may be appointed by
the governor to serve any number of terms. The members of
the commission appointed by the governor, before performing
any duty hereunder, shall take and subscribe to the oath
required by section five, article four of the Constitution of
West Virginia. Vacancies in the membership appointed by the
governor shall be filled by appointment by him for the
unexpired term of the member whose office shall be vacant
and such appointment shall be made by the governor within
sixty days of the occurrence of such vacancy. Any member
appointed by the governor may be removed by the governor
in case of incompetency, neglect of duty, gross immorality or
malfeasance in office.

(c) The commission shall meet at such times and places as
shall be designated by the chairman. The chairman may call
a meeting of the commission at any time, and he shall call
a meeting of the commission upon the written request of two
members or upon the written request of the oil and gas
conservation commissioner. Notification of each meeting shall
be given in writing to each member by the chairman at least
five days in advance of the meeting. Any three members, one
of which may be the chairman, shall constitute a quorum for
the transaction of any business as herein provided for. A
majority of the commission shall be required to determine any
issue brought before it.
(d) Each member of the commission appointed by the governor shall receive thirty-five dollars per diem not to exceed one hundred days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.

(e) The commission shall appoint the oil and gas conservation commissioner, fix his salary within available funds, and advise him regarding his duties and authority under this article and consult with him prior to his reaching any final decisions and entering orders hereunder. However, the commissioner has full and final authority under this article with the commission serving in an advisory capacity to him. The commissioner shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry.

(f) The oil and gas commissioner is hereby empowered and it shall be his duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the commissioner shall have jurisdiction and authority over all persons and property necessary therefor. The commissioner is authorized to make such investigation of records and facilities as he deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commissioner’s duty to prevent waste shall be paramount. He shall serve as secretary of the oil and gas conservation commission.

(g) Without limiting his general authority, the commissioner shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and regulations and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and
subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgement of the commissioner, it is necessary to do so for the effective discharge of his duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the deputy director for oil and gas, to the department of natural resources and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a performance 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 oil and gas conservation commission should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the oil and gas conservation commission shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 80
(Com. Sub. for H. B. 1707—By Delegate Jordan and Delegate Garrett)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article five of said chapter, all relating to the appointment of a nonresident as executor of an estate; when such executor may be required to give security or bond; the form and amount of such surety; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eight, article one, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three, article five of said chapter be amended and reenacted, all to read as follows:
Article.
1. Personal Representatives.
5. General Provisions as to Fiduciaries.

ARTICLE 1. PERSONAL REPRESENTATIVES.
§44-1-8. When executor not to give security on bond.

Subject to the provisions of section three, article five of this chapter governing the appointment of a nonresident of this state as an executor, where the will directs that an executor shall not give security, it shall not be required of him, unless at the time the will is admitted to probate or at any time subsequently, on the application of any person interested, or from the knowledge of the court or clerk admitting the will to probate, it is deemed proper that security ought to be given.

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.
§44-5-3. Appointment of nonresident; bond; service of notice and process; fees; penalty.

Notwithstanding any other provision of law, no person not a resident of this state nor any nonresident banking institution nor any corporation having its principal office or place of business outside this state may be appointed or act as executor, administrator, curator, guardian or committee, except that a testator who is a nonresident of this state at the time of his death may name, and there may be appointed and act, a nonresident as his executor, and except that for the guardian of an infant who is a nonresident of this state there may be appointed and act the same person who is appointed guardian at the domicile of the infant: Provided, That whenever the will of a decedent who was a resident of this state at the time of his death, hereinafter in this section referred to as “resident decedent,” designates an individual, who is the husband, wife, father, mother, brother, sister, child, grandchild or sole beneficiary of such resident decedent as executor, then such designated individual may qualify and act as executor notwithstanding the fact that he is a nonresident: Provided, however, That a nonresident individual or individuals may be appointed as the testamentary guardian of a resident infant if appointed in accordance with the provisions of section one, article twelve of this chapter: Provided further, That a nonresident individual may be appointed as administrator of
an estate in accordance with the provisions of section four, article one of this chapter and act as such administrator and, notwithstanding any other provision of law as to the form or amount of surety, shall give bond with such surety as may be approved by the clerk if such individual be the husband, wife, father, mother, brother, sister, child, grandchild or the sole beneficiary of a decedent who was a resident of this state at the time of his death, hereinafter in this section also referred to as a “resident decedent,” and if such individual may otherwise qualify as such administrator. Nonresident executors and administrators of resident decedents, and nonresident testamentary guardians who are not such relatives named above or sole beneficiary shall give bond with corporate surety thereon, qualified to do business in this state, in such penalty as may be fixed pursuant to the provisions of section seven, article one of this chapter, except that such penalty in the case of a nonresident executor shall not be less than (1) double the value of the personal estate, and (2) double the value of any real property authorized to be sold under the will or the value of any rents and profits from any real property which the will authorizes the nonresident executor to receive, and except that such penalty in the case of a nonresident administrator shall not be less than double the value of the personal estate: And provided further, That where the will directs that a nonresident executor who is the husband, wife, father, mother, brother, sister, child or grandchild or sole beneficiary of the decedent shall not give security, it may be required of that person only as hereinbefore provided. The personal estate of a resident decedent may not be removed from this state until the inventory or appraisement of the resident decedent's estate has been filed and any new or additional bond required to satisfy the penalty specified above in this section has been furnished. The liability of a nonresident executor or administrator and such surety shall be several and a civil action on any such bond may be instituted and maintained against the surety, notwithstanding any other provision of this code to the contrary, even though no civil action has been instituted against the nonresident executor or administrator.

When a nonresident qualifies as an executor, administrator or guardian of an infant pursuant to the provisions of this section, he thereby constitutes the clerk of the county...
commission wherein the will was admitted to probate or wherein he was appointed as administrator, or such clerk's successor in office, his true and lawful attorney-in-fact upon whom may be served all notices and process in any action or proceeding against him as executor, administrator or guardian or with respect to such estate, and such qualification shall be a signification of the executor's, or administrator's or guardian's agreement that any notice or process, which is served in the manner hereinafter in this section provided, shall be of the same legal force and validity as though the executor, administrator or guardian were personally served with notice and process within this state. Service shall be made by leaving the original and two copies of any notice or process, together with a fee of five dollars, with the clerk of such county commission. Such clerk shall thereupon endorse upon one copy thereof the day and hour of service and shall file such copy in his office and said service shall constitute personal service upon such nonresident executor, administrator or guardian: Provided, That the other copy of such notice or process shall be forthwith sent by registered or certified mail, return receipt requested, deliver to addressee only, by said clerk to the nonresident executor, administrator or guardian at the address last furnished by him to said clerk and either (a) such nonresident executor's, administrator's or guardian's return receipt signed by him or (b) the registered or certified mail bearing thereon the stamp of the post-office department showing that delivery therefor was refused by such nonresident executor, administrator or guardian is appended to the original notice or process and filed therewith in the office of the clerk of the county commission from which such notice or process was issued. No notice or process may be served on such clerk of the county commission or accepted by him less than twenty days before the return day thereof. The clerk of such county commission shall keep a record in his office of all such notices and process and the day and hour of service thereof. The provision for service of notice or process herein provided is cumulative and nothing herein contained shall be construed as a bar to service by publication where proper or to the service of notice or process in any other lawful mode or manner. The fee of five dollars shall be deposited in the county treasury.

If a nonresident testamentary guardian appointed pursuant
to this section fails or refuses to file an accounting required
by this chapter while his ward remains a resident of this state,
and the failure continues for two months after the due date,
he may, upon notice and hearing, be removed or subjected to
any other appropriate order by the county commission, and
if his failure or refusal to account continues for six months,
he shall be removed as testamentary guardian by the county
commission.

Any nonresident executor, administrator or guardian who
removes from this state the personal estate of a resident
decedent or of the infant of a resident decedent without
complying with the provisions of this section, the provisions
of article eleven, chapter forty-four of this code or any other
requirement pertaining to fiduciaries generally, 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 the county jail for not more than one year,
or, in the discretion of the court, by both such fine and
imprisonment.

CHAPTER 81
(Com. Sub. for H. B. 1070—By Delegate Blatnik)

[Passed April 9, 1985; in effect July 1, 1985. Approved by the Governor.]
supervisor may charge to settle an estate.

Be it enacted by the Legislature of West Virginia:

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

Article.
2. Proof and Allowance of Claims Against Estates of Decedents.
3A. Optional Procedure for Proof and Allowance of Claims Against Estates of Decedents; County Options.

ARTICLE 2. PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS.

§44-2-1. Reference of decedents' estates; proceedings thereon.

(a) Upon the return of the appraisement by the personal representative to the county clerk, the estate of his decedent shall, by order of the county commission to be then made, be referred to a fiduciary commissioner for proof and determination of debts and claims, establishment of their priority, determination of the amount of the respective shares of the legatees and distributees, and any other matter necessary and proper for the settlement of the estate: Provided, That in counties where there are two or more such commissioners, the estates of decedents shall be referred to such commissioners in rotation, in order that, so far as possible, there may be an equal division of the work: Provided, however, That if the personal representative shall deliver to the clerk an appraisement of the assets of the estate showing their value to be fifty thousand dollars or less, exclusive of property held by the decedent and another person or other persons as joint tenants with rights of survivorship, the clerk shall record said appraisement and publish a notice as set forth herein: Provided further, That a fiduciary commissioner may not charge to the estate a fee greater than two hundred dollars for the settlement of an estate, except upon approval of the county commission because of complicating issues or problems attendant to such settlement and amount of time involved in and about their resolution. The personal representative shall, within two months from the date of recordation of the appraisement in such case, make report to the clerk of his receipts, disburse-
ments and distribution, and shall make affidavit that all claims
against the estate, for expenses of administration, taxes and
debts of the decedent, have been paid in full; the clerk shall
be entitled to collect and receive a fee of ten dollars for
recording such report and affidavit, and for publication of the
notice hereinafter provided, said fee to be in lieu of any other
fee provided by law for recording a report of settlement of
the accounts of a decedent's personal representative. It shall
be the duty of the clerk, at least once a month, to cause to
be published once a week for two successive weeks in a
newspaper of general circulation within the county of the
administration of the estate, a notice substantially as follows:

NOTICE OF FILING OF ESTATE ACCOUNTS

I have before me the account of the executor(s) or
administrator(s) of the estates of the following deceased
persons:

Any person having a claim against the estate of any such
deceased person, or who has any beneficial interest therein,
may appear before me or the county commission at any time
within thirty days after first publication of this notice, and
request reference of said estate to a commissioner or object
to confirmation of said accounting. In the absence of such
request or objection, the accounting may be approved by the
county commission.

Clerk of the County Commission

of........................................County, W. Va.

If no such request or objection be made to the clerk or to
the county commission, the county commission may confirm
the report of the personal representative, and thereupon the
personal representative and his surety shall be discharged; but
if such objection or request be made, the county commission
may confirm the accounting or may refer the estate to one of
its fiduciary commissioners.

(b) If upon the return and recordation of the appraisement,
it shall appear to the clerk that there is only one beneficiary
of the estate and that said beneficiary is competent at law,
there shall be no further administration upon the estate, and
no reference to a fiduciary commissioner, unless, for due cause,
the county commission shall order further administration and
a reference to a fiduciary commissioner. The bond of the
personal representative and his surety shall be discharged one
year after the date of qualification of the personal repre­
sentative if no claim shall have been filed with the county clerk
and no suit shall have been instituted against the personal
representative. The clerk shall publish a notice once a week
for two successive weeks in a newspaper of general circulation
within the county of administration of the estate, substantially
as follows:

NOTICE OF UNADMINISTERED ESTATE

Notice is hereby given that, there being only one beneficiary
of the estate of the deceased, there will be no administration
of said estate unless within ninety days demand for adminis­
tration be made by a party in interest or an unpaid creditor.

Dated this........................ day of ............................................................

........................................................................................................

                        Clerk of the County Commission

                        of..............................................................County, W. Va.

The clerk shall charge to the personal representative, and
receive, the reasonable cost of publication of said notice.

If no person demands administration and no creditor
appears in response to the notice hereinabove provided,
alienation of the decedent's real estate more than six months
after the date of the notice to a bona fide purchaser for value
without notice of any claim against the estate shall be free of
any lien for taxes or debts of the decedent, notwithstanding
the provisions of section five, article eight, chapter forty-four
of this code.

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE
OF CLAIMS AGAINST ESTATES OF DECEDENTS;
COUNTY OPTIONS.

§44-3A-1. Election to make article applicable.
§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.
§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; 
disposition of fees.

§44-3A-1. Election to make article applicable.
(a) Any county commission which has not heretofore elected to proceed under provisions of this article may do so in accord with this section.

(b) Prior to the adoption of the optional procedure provided for under this article, the county commission shall fix a time for public hearing on the issue of adoption of the fiduciary supervisor system as described in this article and cause to be published as a Class II-0 legal advertisement, as provided in section two, article three, chapter fifty-nine of the code, setting forth the reasons for the hearing, its date, place and time. Whenever ten percent or more of the voters of the county participating in the next preceding general election shall so petition the county commission in writing, the commission shall within sixty days of the filing of such petition conduct the public hearing provided by this subsection. The provisions hereof relating to the publication of notice of such hearing shall apply to the hearing held pursuant to such petition. The notice in either case shall also recite that within fifteen days after the public hearing the commission, after consideration of the following factors, will make a final determination whether to proceed under this article:

(1) The relatively expeditious and efficient administration and settlement of estates;

(2) The relative cost and convenience to the public and to the estates;

(3) Whether the fees provided under this article would be insufficient to fund the salary and expenses of a fiduciary supervisor as described in this article;

(4) Whether the county commission and the public interest is served by the availability of the unsupervised administration of estates having sole beneficiaries based upon the local needs of the county;

(5) The availability of physical facilities necessary for the administration of this article.

(c) At the hearing the county commission shall receive both written and oral comment from any citizen upon the desirability of proceeding under the provisions of this article. It may limit the time for oral presentations and permit additional written presentations to be filed up to three days
(d) Within sixty days of the public hearing, the commission shall enter an order either adopting or rejecting the provisions of this article.

(e) The county commission shall make such orders for the closing of estates opened prior to the effective date of the order adopting the provisions of this article as it may deem expedient which are not inconsistent with the express provisions of this chapter.

§44-3A-5. Reference to fiduciary commissioner; exceptions and limitations.

When the personal representative shall deliver to the fiduciary supervisor the appraisement required by section fourteen, article one of this chapter, and is notified as to the completeness thereof, the fiduciary supervisor shall, unless otherwise ordered by the county commission, proceed to receive claims and proceed to supervise settlement of the estate.

The county commission shall not remove the estate from supervision by the fiduciary supervisor and no reference to a fiduciary commissioner shall be made if the appraisement, properly completed, shows the total value of all assets included in the estate which are subject to administration (exclusive of real property, unless the will, if any, requires administration thereof) to be one hundred thousand dollars or less: Provided, that if a dispute arises as to a matter of law or fact, then the matter may be referred to a fiduciary commissioner for the sole purpose of taking evidence as to making a recommendation as to the disputed facts and applicable law in such dispute.

The county commission shall not refer any estate to a fiduciary commissioner:

(a) If the personal representative is also the sole beneficiary of the estate; nor

(b) If the surviving spouse is the sole beneficiary of the estate unless the spouse requests such reference; nor

(c) (1) If all the beneficiaries of the estate advise the fiduciary supervisor by verified writing that no dispute is likely
to arise with respect to the administration of the estate; and
(2) it appears to the county commission or to the fiduciary
supervisor thereof that there are ample assets in the estate to
satisfy all claims of creditors and others against the estate and
that proper distribution thereof will be made, including the
payment of all taxes due thereon; and (3) if the personal
representative agrees thereto; nor

(d) If the county commission or fiduciary supervisor, subject
to the approval of the county commission, finds that there are
ample assets in the estate to satisfy all claims of creditors and
others against the estate and that proper distribution thereof
will be made including, but not limited to, the payment of all
taxes due thereon and that no disputed question of law or fact
has arisen or is likely to arise.

The commission shall, before making any reference to a
fiduciary commissioner, find by its order that none of the
prohibitions contained in this section obtains: Provided, That
in any case in which a reference would otherwise be prohibited,
the commission may refer a matter for the sole purpose of
resolving a disputed question of law or fact or may, if the
matter can be resolved expeditiously, permit the fiduciary
supervisor to conduct the necessary proceedings and to prepare
a recommendation on such disputed question.

In the event reference is made because of the failure to meet
any of the conditions in the preceding paragraph which
preclude reference to a fiduciary commissioner, such reference
may be made generally or for the sole purpose of determining
those matters in dispute. In any event, such reference shall be
withdrawn at any time upon the settlement or determination
or resolution of the reason or reasons giving rise to such
reference or at any other time deemed appropriate by the
county commission or by the fiduciary supervisor, subject to
the approval of the county commission. If no such reference
is made and it is later found that a dispute or other condition
has arisen which makes reference to a fiduciary commissioner
necessary, then reference to a fiduciary commissioner may be
made, either generally or for the settlement, determination or
resolution of the dispute or condition and shall, in any event,
be later withdrawn at any time required by this section or
deemed appropriate by the fiduciary supervisor with the
approval of the county commission.
In counties where there are two or more such fiduciary commissioners, the estates of decedents shall be referred to such commissioners in rotation in order that, so far as possible, there may be an equal division of the work.

§44-3A-42. Fees to be charged by fiduciary supervisor or fiduciary commissioner; disposition of fees.

(a) When necessary solely for the purpose of financing the cost of settling estates, the county commission may authorize the fiduciary supervisor to charge and collect at the time of qualification of the fiduciary of a decedent's estate, a fee not to exceed: (A) Twenty-five dollars for all estates in which the probate assets do not exceed three thousand dollars; (B) seventy-five dollars for all estates in which the probate assets are more than three thousand dollars and do not exceed ten thousand dollars; and (C) one hundred twenty-five dollars for all estates in which the probate assets exceed ten thousand dollars. Of the sums collected by the fiduciary supervisor, five dollars shall be forwarded to the state tax commissioner. The moneys so forwarded to the state tax commissioner shall be deposited in the office of the treasurer of the state in the special fund, designated 'The Inheritance Tax Administration Fund,' to be used to defray, in whole or in part, the costs of administration of taxes imposed by article eleven, chapter eleven of this code in order to facilitate the prompt administration of the provisions imposed by said article. The remaining amounts shall be deposited in the county fiduciary fund as provided in section forty-three of this article. Such fee shall be paid to include all services of the fiduciary supervisor for the settlement of every such decedent's estate which is settled pursuant to the provisions of section nineteen, article three-a of this chapter. All such fees shall also include the cost of publication of the notice required by section four, article three-a of this chapter, and the notice required by section nineteen, article three-a of this chapter, but shall not include the cost of any mailings or of the cost of recording any documents required to be recorded in the office of the clerk of the county commission by the provisions of this chapter.

In the event the fiduciary supervisor is required to examine and prepare a statement of deficiencies, including reasons for disapproving any of the documents required to be filed by the personal representative of any decedent's estate, he shall charge
and collect from such personal representative a fee of ten dollars.

(b) In addition to the fees set forth in subsection (a) of this section, the fiduciary supervisor shall charge a fee to be fixed by the county commission in the manner provided in subsection (c) of this section for conducting hearings, granting continuances of hearings, considering evidence, for drafting recommendations with respect to such hearings and for appearing before the county commission with respect thereto and any other matters of an extraordinary nature not normally included within a summary settlement as contemplated by section nineteen, article three-a of this chapter. Such fee shall be used to defray the costs imposed by or incidental to any extraordinary demands by or conditions imposed by a fiduciary or imposed by the circumstances of the estate.

(c) The fiduciary supervisor or fiduciary commissioner shall prepare a voucher for the county commission, which voucher shall be itemized and shall set forth in detail all of the services performed and the amount charged for such service or services. Such voucher shall also indicate in each instance if the service was actually performed by the fiduciary supervisor or fiduciary commissioner or whether such service was performed by an employee or deputy of such supervisor or commissioner. All vouchers shall reflect the services rendered pursuant to the initial fee charged and collected as provided in subsection (a) of this section and, in addition thereto, shall indicate those services for which charges are to be made over and above that amount. In the case of any service for which a fee is not fixed by this section, or the fee fixed is based on time expended, the voucher shall show the actual time personally expended by the supervisor or commissioner, to the nearest tenth of an hour. All such vouchers shall be verified prior to submission to the county commission for approval. Upon approval of any such voucher, the same shall be charged against the estate to which the same applies. In reviewing any fee charged by either the fiduciary supervisor or a fiduciary commissioner the county commission shall consider the following:

1. The time and effort expended;
2. The difficulty of the questions raised;
3. The skill required to perform properly the services
rendered;

(4) The reasonableness of the fee;

(5) Any time limitations imposed by the personal representative, any beneficiary or claimant, or by the attendant circumstances; and

(6) Any unusual or extraordinary circumstances or demands or conditions imposed by the personal representative, any beneficiary or claimant or by the attendant circumstances. The county commission may approve any such voucher or may reduce the same, as it deems proper, after considering those matters set forth in this subsection. Any such approval shall be by order of the commission and be entered of record by the clerk of the county commission in the fiduciary record book and the general order books of the commission. In no event shall any fee for any service, whether performed by the fiduciary supervisor or the fiduciary commissioner, be fixed, charged or approved which is based upon or with reference to the monetary value of the estate or of the amount in controversy upon any disputed issue or fact of law.

(d) For every estate other than a decedent’s estate, there shall be charged by the fiduciary supervisor at the time of qualification, a fee of twenty-five dollars, which fee shall include all services performed by the fiduciary supervisor with respect to such estate from the time of qualification of the personal representative thereof until and including the filing of the first annual settlement. For each additional or subsequent annual or triennial settlement, the fiduciary supervisor shall charge and collect a fee of ten dollars.

(e) The county commission or other tribunal in lieu thereof, shall, by order, establish or fix a schedule of suggested fees or rates of compensation for the guidance of the fiduciary supervisor and any fiduciary commissioner in preparing their respective vouchers for fees other than those fees fixed by any provision of this section or of this chapter. A copy of these fees or rates shall be posted in a conspicuous place in the county courthouse.
AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to restrictions on the exercise of power for fiduciary's benefit.

Be it enacted by the Legislature of West Virginia:

That article five, chapter forty-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 thirteen, to read as follows:

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.


(a) A power conferred upon a person in his capacity as fiduciary to make discretionary distributions of principal or income to himself or to make discretionary allocations in his favor of receipts or expenses between income and principal cannot be exercised by him. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the circuit court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c), this section applies to all trusts now in existence and to all trusts which shall hereafter come into existence.

(b) Unless either (i) mandatory, (ii) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary or (iii) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.
(c) This section does not apply to trusts that come into existence or are amended after the effective date of this section which show a clear intent that this section not apply.

CHAPTER 83
(S. B. 284—By Mr. Tonkovich, Mr. President and Senator Tomblin)
[Passed April 11, 1985; 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 council of finance and administration; providing for membership composition, including authorized voting designees; providing for meetings; council duties to include oversight of federal funds; and specifying compensation and reimbursement for expenses of appointed, non-ex officio members.

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 or his designee, the attorney general or his designee, the state treasurer or his designee and the state auditor or his designee; such designees being authorized voting ones. 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 no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, 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 November and shall be a joint meeting with the joint committee on government and finance of the Legislature called 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, including the oversight of all federal funds, and shall have the following duties:

(1) To advise with the commissioner in respect to matters of budgetary intent and efficiency, including budget bill and budget document detail and format;
(2) To advise with the commissioner concerning such studies of government and administration concerning fiscal policy as it may consider appropriate;
(3) To advise with the commissioner in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and
(4) To advise with the commissioner in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.

The appointed, non-ex officio members of the council shall be entitled to receive such compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for such identical periods, as is authorized by the applicable sections of article two-a,
chapter four of the code in respect to performance of duties either within the state or, if deemed necessary, out-of-state. Such compensation and expenses shall be incurred and paid only after approval by the joint committee on government and finance.

CHAPTER 84
(Com. Sub. for S. B. 680—By Senator Boettner)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-eight, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article seven, chapter sixty-one of said code, all relating to allowing the operator of a gun repair shop to be exempt from the statutory prohibition, subject to rules and regulations prescribed by the director of the department of natural resources.

Be it enacted by the Legislature of West Virginia:

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

Chapter
20. Natural Resources.
61. Crimes and Their Punishment.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-58. Shooting across road or near building or crowd; penalty.

1 It shall be unlawful for any person to shoot or discharge any firearms across or in any public road in this state, at any time, or within four hundred feet of any school-house or church, or within five hundred feet of any
It shall be unlawful for any person to shoot or discharge any firearms across or in any public road in this state, at any time, or within four hundred feet of any schoolhouse or church, or within five hundred feet of any dwelling house, or on or near any park or other place where persons gather for purposes of pleasure, and any person violating this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars, or, be imprisoned in the county jail not more than one hundred days for each offense: Provided; That any person operating a gun repair shop, licensed to do business in the state of West Virginia and duly licensed under applicable federal statutes, may be exempted from the prohibition established by this section and section fifty-eight, article two, chapter twenty of this code for the purpose of test firing a firearm. The director of the department of natural resources shall prescribe such rules as may be necessary to carry out the purposes of the exemption under this section and section twelve, article seven, chapter sixty-one and shall ensure that any person residing in any dwelling home within five hundred feet of such gun repair shop be given an opportunity to protest the granting of such exemption.
20 section and section fifty-eight, article two, chapter
21 twenty, and shall ensure that any person residing in any
22 dwelling home within five hundred feet of such gun
23 repair shop be given an opportunity to protest the grant-
24 ing of such exemption.

CHAPTER 85
(Com. Sub. for S. B. 162—By Senators Kaufman and Holliday)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-b, article twenty-
four, chapter eight of the code of West Virginia, one
thousand nine hundred thirty-one, as amended; and to
amend and reenact section two, article seventeen, chapter
twenty-seven of said code, all relating to group residential
facilities; permitted use; restrictions; health director or
commissioner of department of human services to give
notice and hold hearings upon objection of request upon
application for operation of group residential facility in area
limited to single-family residences; board of health
regulations; reconsiderations.

Be it enacted by the Legislature of West Virginia:

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

Chapter
27. Mentally Ill Persons.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 24. PLANNING AND ZONING.
§8-24-50b. Permitted use for group residential facility.
1 (a) A group residential facility as defined in article
seventeen, chapter twenty-seven of this code, shall be a permitted residential use of property for the purposes of zoning and shall be a permitted use in all zones or districts. 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 or discriminate in regard to housing in any other regard:

Provided, That a county commission, governing board of a municipality or planning commission may require a group residential facility, its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance if the home is to be in a zone or district restricted to single-family residences and is to be occupied by more than six individuals who are developmentally disabled and three supervisors, or is to be occupied by the behaviorally disabled within a zoning district or zone restricted solely to single-family residences with no allowance for duplexes, apartments or other multi-family use of a single parcel of property.

(b) When an application to operate such a group residential facility in a district or zone limited to single-family residences is submitted to the department of health or the department of human services for the issuance of a license, as required by the provisions of said article seventeen, chapter twenty-seven, upon receipt of said application, the director of the department of health or the commissioner of the department of human services shall give written notice of such application to the county commission, governing board of a municipality or planning commission within whose jurisdiction the proposed facility lies. The county commission, governing board of a municipality or planning commission shall have thirty days in which to file objections or request a hearing with the department of health or the department of human services. Upon the filing of such objections or hearing request, the director of the department of health or the commissioner of the department of human services shall hold a hearing. The state board of health shall promulgate regulations governing the conduct of such hearings and applicable standards pursuant to chapter twenty-nine-a of this code:
Provided, That the owner or operator of such group residential facility shall, in all cases of such facilities located within zoning districts or zones, submit an application for any required zoning or occupancy permit allowed under provisions of this section to the appropriate zoning permit agency on or before the date of submission of the application to the department of health or the department of human services.

(c) The provisions of this section shall not exempt any such residence from the structural requirements of any bona fide historic preservation district.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-2. Permitted use of group residential facilities; restrictions.

(a) 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. 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: 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: Provided, however, That the owner or operator of such group residential facility shall, in all cases of such facilities located within zoning districts or zones, submit an application for any required zoning or occupancy permit allowed under provisions of this section to the appropriate zoning permit agency on or before the date of submission of the application to the department of health or the department of human services.

(b) Any resident of the contiguous area of a zoning district limited to single-family or duplex-family residences in which a group residential facility is located, may file a complaint with the director of the department of health or the commissioner of the department of human services, as applicable. If the complaint states specific
conduct on the part of an individual placed in that facility or other specific facts regarding such individual which adversely affect public health and safety, upon the receipt of such a complaint the director or commissioner shall cause to be made an investigation of the facts alleged. If the director or commissioner determines that the alleged facts may have a substantial basis, the director or commissioner shall cause a full reconsideration of the decision to place that individual in that group residential facility in light of those facts. The results of the reconsideration shall be given to the complainant in writing with an explanation of the reason for the decision: Provided, That this requirement shall not be deemed to authorize the disclosure of information that the director or commissioner would not otherwise disclose without written release by the individual unless a release for this purpose is obtained.

CHAPTER 86

(Com. Sub. for H. B. 1104—By Delegate Love and Delegate Flanigan)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
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-aa, to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

In addition to all other powers and duties now conferred by law upon county commissions, county commissions are hereby authorized and empowered to create a hazardous material accident response program. The program may include the establishment of a hazardous materials response team. Such a team shall be comprised of the members of the fire departments recognized and approved by the West Virginia fire commission in the county and designated by the county commission and those emergency medical services personnel certified pursuant to article four-c, chapter sixteen of this code who are acting in their official capacity providing ambulance or emergency medical services within the county as designated by the county. Such a team may also be comprised of members of the community who are recognized as having expertise with hazardous materials and/or hazardous materials incidents. The purpose of the team is to respond to hazardous material incidents. The affairs of the team shall be conducted at the will and pleasure of the county commission. The team shall operate in cooperation with the county office of emergency services and other approved fire departments. The commission is authorized to receive donated funds and to expend those funds and to expend its own funds for the acquisition of equipment and materials for the use of the team and for the provision of training for the members of the team. The county commission is hereby authorized to enter into agreements with other counties to combine or coordinate hazardous material response team training and the purchase or lease and use of equipment or materials.
CHAPTER 87

(Com. Sub. for H. B. 1282—By Delegate Hatfield and Delegate White)

[Passed March 29, 1985; 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 three-a, relating to requesting that certain information about hazardous materials be provided to the department of health, and that a list of hazardous materials be developed along with certain other information; providing for the enforcement of the provisions of said article; and providing penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, as amended, be amended by adding thereto a new article, designated article three-a, to read as follows:

ARTICLE 3A. REPOSITORY OF INFORMATION ON MEDICAL TREATMENT FOR CERTAIN HAZARDOUS MATERIALS; REQUEST FOR INFORMATION; PENALTIES; ENFORCEMENT.

§16-3A-1. Purpose and legislative findings.
§16-3A-2. Hazardous materials; duties of the director of the department of health; requests for information; penalties; enforcement.

§16-3A-1. Purpose and legislative findings.

1 (a) The purpose of this article is to provide a centralized repository of information on hazardous materials and to identify the chemical elements of such materials, the harmful effects of exposure to such materials and the proper recommended emergency medical treatment for exposure to such hazardous materials.

(b) The Legislature finds that there is a lack of adequate information concerning hazardous materials, present in West Virginia, the immediate effects of exposure to such hazardous materials on human beings and the appropriate emergency medical treatment for exposure to hazardous materials. This lack of information increases the medical health risks of persons or communities who are exposed to hazardous
The prompt availability of this information would afford increased protection to persons and communities exposed to hazardous materials.

§16-3A-2. Hazardous materials; duties of the director of the department of health; requests for information; penalties; enforcement.

(a) The director of the West Virginia department of health shall within one hundred eighty days of the passage of this article establish a list of hazardous materials, including their treatment and effect, which have been determined to be, or are suspected to be hazardous or toxic to human health. In developing and maintaining this list the director shall give consideration to: (1) The existing list prepared by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, (2) any list, publication, regulation, report, guideline or other compilation of the occupational health and safety administration of the United States department of labor, (3) any list, publication, regulation, report, guideline or other compilation of the national institute for occupational safety and health, (4) any list, publication, regulation, report, guideline or other compilation of the national fire protection association, (5) any list, publication, regulation, report, guideline or other compilation of the United States environmental protection agency, or (6) any other source considered by the director to be reliable. In determining what hazardous materials to place on the list, the director shall give consideration to: (1) The materials’ frequency of use in the state, (2) the frequency of exposure or overexposure of persons in the state to the materials, (3) the seriousness of the effects of such exposure, or (4) such other reason as the director may determine to be sufficient.

(b) The director of the department of health shall, within ninety days of the preparation of the list described above, determine the immediate health effects of exposure to and the recommended emergency medical treatment of exposure to such hazardous materials and publish such information in a usable form for medical and emergency personnel. The director shall also arrange that this information shall be immediately available to medical or emergency personnel at any time in the event of an accident. The director may do so by storing this information in the West Virginia poison control
center or in such other manner and form as he may determine. The distribution of this information in a medical or other emergency to persons other than the medical or emergency personnel shall be approved by the director of the department of health or his authorized agent who may release such information in his discretion notwithstanding the requirements of the freedom of information act, chapter twenty-nine-b of this code.

(c) The director may accept for any of the purposes of this article all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of these in accordance with other state laws.

(d) The lists referred to in subsections (a) and (b) of this section shall be updated annually.

(e) If the director determines that any information on the use, manufacture, transportation or storage of hazardous materials in West Virginia would be of assistance to him, he may request that such information be provided to him by any person, any industry or company, any medical group or person, or any academic institution or person. He may also request from any person information concerning the harmful effects of exposure to such hazardous materials or the best method of medical treatment of such exposures. The information requested of any person, firm or corporation shall be provided to the director within thirty days unless good cause be shown to the satisfaction of the director why such request is unreasonable because of the potential breach of a trade secret.

(f) Any person, or corporation, that violates the provisions of this section shall be subject to a civil penalty of not less than one hundred dollars nor more than one thousand dollars for each violation. When the director believes that a violation has occurred he may request the attorney general or the prosecuting attorney of the county where the violation occurred to file a civil action for civil penalties, or for injunctive or other relief, or both penalties and injunctive or other relief.
(g) The director shall develop by rule or regulation promulgated pursuant to the provisions of the administrative procedures act, chapter twenty-nine-a of this code, a program to assemble and update the hazardous materials list, the information on the immediate medical effects of exposure to such materials and the appropriate emergency medical treatment of persons exposed: Provided, That the list and other information shall not be required to be promulgated pursuant to the administrative procedures act, chapter twenty-nine-a of this code. The program shall also include the most effective method or methods of distributing this information to medical and emergency personnel. This program shall be developed using the budget provided by the Legislature for this program. The director shall implement this program immediately and it shall be later reviewed by the Legislature through the approval of rules and regulations as provided for in chapter twenty-nine-a of this code.

CHAPTER 88
(Com. Sub. for S. B. 338—By Senator Boettner and Mr. Tonkovich, Mr. President)

[Passed April 11, 1985; 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 thirty-one, relating to creating the “Community Right to Know Act”; providing short title; providing legislative findings and declarations; providing definitions; stating duties and responsibilities of the director; procedure for residents to request information on hazardous substances; stating information to be provided by employers; providing for notice of violation; civil penalties and injunctions; providing for the protection of proprietary information; criminal penalties for disclosure; providing for expiration of act upon passage of federal legislation; severability.

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
to a new article, designated article thirty-one, to
read as follows:

ARTICLE 31. COMMUNITY RIGHT TO KNOW.

§16-31-1. Short title.
§16-31-2. Legislative findings and declarations.
§16-31-3. Definitions.
§16-31-4. Duties and responsibilities of the director; procedure for residents to
request information on hazardous substances.
§16-31-5. Information to be provided by employers.
§16-31-6. Notice of violation; civil penalties.
§16-31-7 Protection of proprietary information; criminal penalties for
disclosure.

§16-31-1. Short title.

1 This article shall be known and may be cited as the
2 "Community Right to Know Act."

§16-31-2. Legislative findings and declarations.

1 The Legislature finds that the health and safety of
2 persons living in this state may be improved by providing
3 access to information regarding hazardous substances to
4 which they may be exposed in their daily lives; that
5 individuals have a basic right to the information provided
6 under this article, including the risks presented by
7 hazardous substances, thereby allowing them to make
8 reasoned decisions and to take informed actions with
9 regard to their living conditions; that the manufacturing
10 industry plays a significant role in the economy of this state
11 and the lives of its citizens and that the creation, use and
12 storage of hazardous substances, given the limits of current
13 technology, is inherent in the operations of this industry;
14 and that local fire officials require information about
15 hazardous substances stored in their localities in order to
16 adequately plan for, and respond to, emergencies.

17 The Legislature therefore declares that it is the intent and
18 purpose of this article to establish a program for the
disclosure of information about hazardous substances in
19 and near the community, and to provide a procedure
whereby residents of this state may obtain access to such information.

§16-31-3. Definitions.

(a) "Compressed gas" means:

(1) A gas or mixture of gases having, in a container, an absolute pressure exceeding 40 psi at 70°F (21.1°C); or

(2) A gas or mixture of gases having, in a container, an absolute pressure exceeding 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C); or

(3) A liquid having a vapor pressure exceeding 40 psi at 100°F (37.8°C) as determined by ASTM D-323-72.

(b) "Director" means the director of the state department of health as described in article one of this chapter.

(c) "Employer" means a person engaged in a business in this state having a standard industrial classification, as designated by the standard industrial classification manual prepared by the federal office of management and budget, within major group members twenty through thirty-nine inclusive.

(d) "Facility" means the building, structure, equipment and contiguous area used for the conduct of business.

(e) "Flammable" means a chemical that falls into one of the following categories:

(1) "Aerosol, flammable" means an aerosol that, when tested by the method described in 16 Code of Federal Regulations, Section 1500.45, yields a flame projection exceeding eighteen inches at full valve opening, or a flash-back (a flame extending back to the valve) at any degree of valve opening;

(2) "Gas, flammable" means:

(i) A gas that, at ambient temperature and pressure, forms a flammable mixture with air at a concentration of thirteen (13) percent by volume or less; or

(ii) A gas that, at ambient temperature and pressure, forms a range of flammable mixtures with air wider than twelve (12) percent by volume, regardless of the lower limit;

(3) "Liquid, flammable" means any liquid having a flash point below 100°F (37.8°C), except any mixture having components with flash points of 100°F (37.8°C) or higher,
the total of which make up ninety-nine percent or more of
the total volume of the mixture; and
(4) "Solid, flammable" means a solid, other than a
blasting agent or explosive as defined in 29 Code of Federal
Regulations, Section 1910.109(a), that is liable to cause fire
through friction, absorption of moisture, spontaneous
chemical change, or retained heat from manufacturing or
processing, or which can be ignited readily and when
ignited burns so vigorously and persistently as to create a
serious hazard. A chemical shall be considered to be a
flammable solid if, when tested by the method described in
16 Code of Federal Regulations, Section 1500.44, it ignites
and burns with a self-sustained flame at a rate greater than
one tenth of an inch per second along its major axis.
(f) "Flash point" means the minimum temperature at
which a liquid gives off a vapor in sufficient concentration
to ignite when tested as follows:
(1) Tagliabu Closed Tester (See American National
Standard Method of Test for Flash Point by Tag Closed
Tester, Z11.24-1979 (ASTM D 56-79)) for liquids with a
viscosity of less than forty-five Saybolt Universal Seconds
(SUS) at 100°F (37.8°C), that do not contain suspended
solids and do not have a tendency to form a surface film
under test; or
(2) Pensky-Martens Closed Tester (See American
National Standard Method of Test for Flash Point by
Pensky-Martens Closed Tester, Z11.7-1979 (ASTM
D93-79)) for liquids with a viscosity equal to or greater than
forty-five SUS at 100°F (37.8°C), or that contain suspended
solids, or that have a tendency to form a surface film under
test; or
(3) Setalasflash Closed Tester (See American National
Standard Method of Test for Flash Point by Setalasflash
Closed Tester (ASTM D 3278-78)): Provided, That organic
peroxides, which undergo autoaccelerating thermal
decomposition, are excluded from any of the flash point
determination methods specified above.
(g) "Hazardous substance" means any element,
chemical compound or mixture of elements and/or
compounds which is a physical hazard as defined in this
section or a health hazard as defined or listed in (1) the
Federal Occupational Safety and Health Administration in
29 Code of Federal Regulations Part 1910.1000 through 1910.1045, Subpart Z, as in effect January 1, 1985; (2) the American Conference of Governmental Industrial Hygienists (ACGIH) "Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment", as in effect January 1, 1985; and (3) the National Toxicology Program "Annual Report on Carcinogens" as in effect January 1, 1985.

(h) "Hazardous substances fact sheet" means any document containing the information described in subdivision (1) through (8), subsection (a), section five of this article.

(i) "Organic peroxide" means an organic compound that contains the bivalent -0-0-structure and which may be considered to be a structural derivative of hydrogen peroxide where one or both of the hydrogen atoms has been replaced by an organic radical.

(j) "Oxidizer" means a chemical other than a blasting agent or explosive as defined in 29 Code of Federal Regulations Part 1910.109(a), that initiates or promotes combustion in other materials, thereby causing fire either by itself or through the release of oxygen or other gases.

(k) "Person" means an individual, trust, firm, joint stock company, public, private or government corporation, partnership, association, state or federal agency, the United States government, the state of West Virginia or any other state, municipality, county commission or any other political subdivision of a state or any interstate body.

(l) "Physical hazard" means a chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water reactive.

(m) "Proprietary information" means any formula, pattern, device, or compilation of information which is used in an employer's business, and which gives said employer an opportunity to obtain an advantage over competitors who do not know or use it.

(n) "Pyrophoric" means a chemical that will ignite spontaneously in air at a temperature of 130°F (54.4°C) or below.

(o) "Storage" or "to store" means to hold a hazardous
122 substance for a temporary period, at the end of which the
123 hazardous substance is used on site, transported off site, or
124 treated, stored or disposed of elsewhere.
125 (p) "Unstable (reactive)" means a chemical which in the
126 pure state, or as produced or transported, will vigorously
127 polymerize, decompose, condense, or will become self-
128 reactive under conditions of shocks, pressure or
129 temperature.
130 (q) "Water-reactive" means a chemical that reacts with
131 water to release a gas that is either flammable or presents a
132 health hazard.

§16-31-4. Duties and responsibilities of the director; procedure
for residents to request information on hazardous
substances.

1 (a) Within thirty days of the passage of this article, the
2 director shall develop a list of hazardous substances as
3 defined in subsection (g), section three of this article. The
4 director shall provide this list and the definition of a
5 physical hazard to any employer who may request it.
6 (b) The director shall, by the first day of June, one
7 thousand nine hundred eighty-seven, and every two years
8 thereafter, review the most recent editions of the
9 publications referenced in subsection (g), section three of
10 this article to determine whether there have been any
11 additions to or deletions of hazardous substances listed in
12 those publications. Where such additions or deletions have
13 been made, and unless the director is presented with clear
14 and compelling reasons to the contrary, the list of
15 hazardous substances covered by subsection (g), section
16 three of this article shall be revised to reflect the changes
17 made in the referenced publications. Such revisions shall be
18 made in accordance with the administrative procedures act,
19 chapter twenty-nine-a of this code. The director shall make
20 available such revised list and the definition of a physical
21 hazard to any employer who may request it.
22 (c) Any resident of this state may request from the
23 director a copy of any hazardous substance fact sheet and
24 other information submitted by an employer for any
25 facility. The director, subject to the provisions of section six
26 of this article, shall transmit the requested information
27 within ten working days. The director may recover the
actual cost of copying the requested information from the person making the request.

§16-31-5. Information to be provided by employers.

(a) Any employer who normally stores any hazardous substance in quantities greater than fifty-five gallons or five hundred pounds shall provide to the director, the county sheriff of the county, and to the fire chief of the local fire department most proximate to the facility at which such substance is stored within four months of the effective date of this article and once every two years thereafter during the month of November, the following information:

(1) The chemical name or common name used on the material safety data sheet and/or container label;

(2) Physical and major chemical characteristics of the hazardous substance (such as vapor pressure, flash point, solubility);

(3) The physical hazards of the hazardous chemical, including the potential for fire, explosion and reactivity;

(4) The health hazards of a hazardous substance including signs and symptoms of exposure, and any medical conditions which are generally recognized as being activated by exposure to such substance;

(5) The primary route(s) of entry (inhalation, physical contact);

(6) Any generally applicable precautions for safe handling and use which are known to the employer;

(7) Emergency and first-aid procedures and the name and address of the manufacturer of the hazardous substance, if other than the employer, if said manufacturer can provide additional information on the hazardous substance and appropriate emergency procedures, if necessary;

(8) Whether the substance is listed in the National Toxicology Program "Annual Report of Carcinogens", referenced in subsection (g), section three of this article;

(9) An average quantity of each hazardous substance on inventory at the facility over the last year to be reported by indicating the applicable range from the following: Five hundred pounds to four thousand nine hundred ninety-nine pounds, five thousand pounds to forty-nine thousand nine hundred ninety-nine pounds, fifty thousand pounds to four hundred ninety-nine thousand nine hundred ninety-nine pounds.
pounds and five hundred thousand pounds and above:

Provided, That for purposes of this subsection, "average" shall mean the arithmetic mean; and

(10) The amount of such substance, if any: (i) Reported as having been managed in the most recent annual hazardous waste report filed with the department of natural resources pursuant to article five-e, chapter twenty of this code; (ii) reported as having been emitted in the most recent air emissions inventory filed with the air pollution control commission pursuant to article twenty, chapter sixteen of this code; and (iii) reported as having been discharged in the most recent discharge monitoring report filed with the department of natural resources pursuant to article five-a, chapter twenty of this code: Provided, That the information required in this subdivision is required to be reported to the director only: Provided, however, That if a discharge monitoring report is used to provide the information, an employer shall specify the inclusive time period of the report.

(b) Where an employer stores a hazardous substance that is manufactured by some person other than the employer and where the information required in subdivision (I) through (8), subsection (a) of this section has not been made available by the manufacturer, the employer shall certify to the director that this information is not available and shall thereafter have an additional sixty days within which to provide such information to the director.

§16-31-6. Notice of violation; civil penalties.

(a) An employer who fails to provide the information to the director under subsection (a), section five of this article within the time period provided shall be deemed in violation of this article. Employers not complying within fourteen days following written notification from the director of such violation shall be subject to civil penalties of not more than two thousand five hundred dollars per violation.

(b) An employer who fails to provide to the fire chief information as required in subsection (a), section five of this article within the time period provided shall be deemed in violation of this article. Employers not complying within fourteen days following written notification from the
director of such violation shall be subject to civil penalties not to exceed five thousand dollars per violation.

c. Any person who willfully, knowingly and deliberately makes any false material statement or representation in any document submitted pursuant to section five of this article shall be subject to a civil penalty of not less than one thousand dollars nor more than five thousand dollars per violation.

d. When the director believes that a violation of the provisions of this article has occurred he may request the attorney general to file an action for civil penalties, or injunctive relief as may be necessary to enforce the provisions of this article. Such action may be brought in the circuit court of Kanawha County or the county where the employer's facility or a major portion thereof is located.

§16-31-7. Protection of proprietary information; criminal penalties for disclosure.

(a) In submitting the information required under section five of this article, an employer may withhold the specific chemical identity, including the quantity, the chemical name and other specific identification of a hazardous substance, on the grounds that such information is proprietary information as long as:

1. Other information is submitted pursuant to the request which describes the properties and effects of the hazardous substance; and

2. The employer specifically indicates the type of information that is being withheld as proprietary information.

(b) The director may request any or all of the data substantiating the proprietary information claim to determine whether a claim made pursuant to this section is valid. The director shall protect from disclosure any or all information coming into his or her possession when such information is marked by the employer as confidential and shall return all information so marked to the employer at the conclusion of his or her determination.

(c) The employer shall have thirty days after notification by the director that a proprietary information claim is not valid to request an administrative hearing on
the determination. Any such hearing shall be held in a manner consistent with that provided for hearings in contested cases under article five, chapter twenty-nine-a of this code, with the right to appeal such ruling to the circuit court of Kanawha County. No information relating to the proprietary information claim shall be communicated outside the department of health while the director's ruling is being contested.

(d) An employer shall provide to a physician any information for which a proprietary information claim is pending or has been approved pursuant to this section when such information is needed for medical diagnosis or treatment. The employer may require that the physician sign an agreement protecting the confidentiality of information disclosed pursuant to this subsection as soon as circumstances permit.

(e) The subject of any proprietary information claim pending or approved shall be treated as confidential information.

(f) Any person who knowingly and willingly divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned for not more than six months, or both fined and imprisoned.


The Legislature recognizes that the United States Congress is considering the adoption of legislation relating to the dissemination of information to the public regarding hazardous substances stored in or near their communities. It is the intention of the Legislature that upon the passage of federal legislation which would assure access by citizens of this state to information substantially similar to that which they could obtain under this article, this article shall be subject to expiration, and therefore have no further effect. It shall be the responsibility of the director, upon the passage of such legislation by the United States Congress, to certify to the legislative rule-making review committee that such federal action has occurred. Such certification shall be subject to all of the procedures set out in chapter

Except where this act is declared to have no effect and be void pursuant to section eight of this article, if any section, part or provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other section, part or provision of this article or its application, and to this end the provisions of this article are declared severable.

CHAPTER 89
(Com. Sub. for S. B. 649—By Senator Whitacre)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authority and jurisdiction of the state board of health in establishing standards regarding hazardous waste; ownership of hazardous waste sites or facilities requiring permit; employee access to records regarding generation and transportation of hazardous waste; authority of chief of division of water resources to issue order requiring elimination of hazard, or risk of hazard, where potential hazard to human health or environment exists; criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections seven, eight, twelve, thirteen, fifteen and twenty-one, article five-e, 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 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-7. Authority and jurisdiction of other state agencies.
§20-5E-8. Permit process: undertaking activities without a permit.
§20-5E-7. Authority and jurisdiction of other state agencies.

(a) The commissioner of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations shall apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such waste within the boundaries of this state.

In lieu of those enforcement and inspection powers conferred upon the commissioner of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of highways has the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent, or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article. The limitations of this subsection shall not affect in any way the powers of the department of highways with respect to weight enforcement.

(b) The public service commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, rules and regulations governing the
transportation of hazardous wastes by railroad in this state. Such rules and regulations shall be consistent with applicable rules and regulations issued by the federal department of transportation and consistent with this article: Provided, That such rules and regulations apply to the interstate transportation of hazardous wastes as well as the intrastate transportation of such wastes within the boundaries of this state.

In lieu of those enforcement and inspection powers conferred upon the public service commission elsewhere by law with respect to the transportation of hazardous waste, the public service commission has the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(c) The rules and regulations required to be promulgated pursuant to subsections (a) and (b) of this section shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves or combinations thereof. Such rules and regulations shall establish such standards, applicable to this article, as may be necessary to protect public health, safety and the environment. Such standards shall include, but need not be limited to, requirements respecting (A) record keeping concerning such hazardous waste transported, and their source and delivery points, (B) transportation of such waste only if properly labeled, (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article, and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under: (1) This article or any rule and regulation required by this article to be promulgated; (2) Subtitle C of the federal Solid Waste Disposal Act, as amended; (3) the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the federal Solid Waste
Disposal Act, as amended; or (4) Title I of the federal Marine
Protection, Research and Sanctuaries Act.
(d) The state board of health of the state department of
health, in consultation with the director of the department
of natural resources, and avoiding inconsistencies with, and
avoiding duplication to the maximum extent practicable
with rules and regulations required to be promulgated
pursuant to this article by the director of the department of
natural resources or any other rule-making authority, shall
promulgate rules and regulations establishing standards
applicable to permitting, licensing and operation of
facilities that treat, store or dispose of hazardous wastes
with infectious characteristics. Such rules and regulations
shall specify the terms, conditions and procedures under
which the state director of health or his authorized
representative shall issue, modify, suspend, revoke or deny
such permits required pursuant to those regulations. Such
permits as the board of health regulations may require shall
be issued by the state director of health or his authorized
representative. All rules and regulations promulgated
under this subsection shall be promulgated in accordance
with the provisions of chapter twenty-nine-a of this code.
Nothing in this subsection shall be construed to diminish or
alter the authority of the air pollution control commission
or its director under this article or article twenty, chapter
sixteen of this code: Provided, That such permitting or
licensing required by this subsection shall be in addition to
those permits required by section eight of this article. Such
rules and regulations shall be consistent with this article
and shall be promulgated within six months of the effective
date of this article.
Any person aggrieved or adversely affected by an order of
the state director of health pursuant to this article, or the
denial or issuance of a permit, or the failure or refusal of
said director to act within a reasonable time on an
application for a permit or the terms or conditions of a
permit granted under the provisions of this article, may
appeal to a special hearing examiner appointed to hear
contested cases in accordance with the provisions of
chapter twenty-nine-a of this code. All procedures for
appeal and conduct of hearings shall comply with rules and
regulations promulgated by the state board of health.
Unless the board of health directs otherwise, the appeal hearing shall be held in the city of Charleston, Kanawha County.

In lieu of those enforcement and inspection powers conferred upon the state director of health elsewhere by law with respect to hazardous waste with infectious characteristics, the state director of health shall have the same enforcement and inspection powers as those granted to the chief, his authorized representative or agent or any authorized employee or agent of the department of natural resources, as the case may be, under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

(e) The director shall rely, to the maximum extent practicable, on the department of health for expertise on the adverse effects of toxic hazardous waste on human health.

(f) The air pollution control commission, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with rules and regulations required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of article twenty, chapter sixteen and chapter twenty-nine-a of this code, shall promulgate such rules and regulations establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article. Such permits shall be in addition to those permits required by section eight of this article. All rules and regulations promulgated pursuant to this subsection shall be consistent with this article.

With respect to this article, and any rules or regulations promulgated pursuant thereto, the director of the air pollution control commission has the same enforcement and inspection powers as those of the chief under sections eleven, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article: Provided, That no action for penalties may be initiated by the director of the air pollution control commission without the approval of that commission. Any person aggrieved or adversely affected by an order of the director of the air pollution control...
commission made and entered in accordance with the provisions of this article, or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of this article, may appeal to the air pollution control commission in accordance with the procedure set forth in section six, article twenty, chapter sixteen of this code, and orders made and entered by said commission shall be subject to judicial review in accordance with the procedures set forth in section seven, article twenty, chapter sixteen of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha County.

(g) The director of the department of natural resources has exclusive responsibility for carrying out any requirement of this article with respect to coal mining wastes or overburden for which a permit is issued under the surface coal mining and reclamation act of 1980, article six of this chapter.

(h) To the extent that this article relates to activities with respect to oil and gas wells, liquid injection wells and waste disposal wells now regulated by articles four, four-b and seven, chapter twenty-two of this code, the administrator of the office of oil and gas and the shallow gas-well review board has the jurisdiction with respect to the regulation of such activities and shall promulgate such rules and regulations as may be necessary to comply with the requirements of this article: Provided, That nothing in this subsection may be construed to diminish or alter the authority and responsibility of the chief or the water resources board under articles five and five-a, chapter twenty of this code.

In lieu of those enforcement and inspection powers conferred upon the administrator of the office of oil and gas and the shallow gas-well review board elsewhere by law, with respect to hazardous wastes, the administrator of the office of oil and gas and the shallow gas-well review board...
have the same enforcement and inspection powers as those
granted to the chief, his authorized representative or agent
or any authorized employee or agent of the department of
natural resources, as the case may be, under sections eleven,
twelve, thirteen, fourteen, fifteen, sixteen and seventeen of
this article.

(i) The water resources board, in consultation with the
director, and avoiding inconsistency with and avoiding
duplication to the maximum extent practicable with rules
and regulations required to be promulgated pursuant to
this article by the director or any other rule-making
authority, and in accordance with the provisions of chapter
twenty-nine-a of this code, shall, as necessary, promulgate
rules and regulations governing discharges into the waters
of this state of hazardous waste resulting from the
treatment, storage or disposal of hazardous waste as may be
required by this article. Such rules and regulations shall be
consistent with this article.

(j) All rules and regulations promulgated pursuant to
this section shall be consistent with rules and regulations
promulgated by the federal environmental protection
agency pursuant to the federal Solid Waste Disposal Act, as
amended.

(k) The director shall submit his written comments to
the legislative rule-making review committee regarding all
rules and regulations promulgated pursuant to this article.

§20-5E-8. Permit process; undertaking activities without a
permit.

(a) No person may own, construct, modify, operate or
close any facility or site for the treatment, storage or
disposal of hazardous waste identified or listed under this
article, nor shall any person store, treat or dispose of any
such hazardous waste without first obtaining a permit from
the chief for such facility, site or activity and all other
permits as required by law. Such permit shall be issued,
after public notice and opportunity for public hearing,
upon such reasonable terms and conditions as the chief may
direct if the application, together with all supporting
information and data and other evidence establishes that
the construction, modification, operation or closure, as the
case may be, of the hazardous waste facility, site or activity
will not violate any provisions of this article or any of the rules and regulations promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the chief shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of section seven of this article, and which need not be regulated in order for the chief to perform his duties under this article.

(b) The chief shall prescribe a form of application for all permits issued by the chief.

(c) The chief may require a plan for the closure of such facility or site to be submitted along with an application for a permit which plan for closure shall comply in all respects with the requirements of this article and any rules and regulations promulgated hereunder. Such plan of closure shall be subject to modification upon application by the permit holder to the chief and approval of such modification by the chief.

(d) An environmental analysis shall be submitted with the permit application for all hazardous waste treatment, storage or disposal facilities which are major facilities as that term may be defined by rules and regulations promulgated by the director: Provided, That facilities in existence on the nineteenth day of November, one thousand nine hundred eighty, need not comply with this subsection. Such environmental analysis shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(1) The portion of the applicant's environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(A) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(B) A description of the expected effect of such facilities; and
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56 (C) Recommendations for minimizing any adverse impact.
58 (2) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:
60 (A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the site and estimates of the cost and charges to be made for material accepted, if any;
66 (B) Provisions for managing the site following cessation of operation of the facility; and
68 (C) Qualifications of owner and operation, including a description of the applicant's prior experience in hazardous waste management operations.
71 (e) Any person undertaking, without a permit, any of the activities for which a permit is required under this section or under section seven of this article, or any person violating any term or condition under which a permit has been issued pursuant to this section or pursuant to section seven of this article, shall be subject to the enforcement procedures of this article.
78 (f) Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or section seven of this article, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the surface coal mining and reclamation act of 1980, article six of this chapter, shall be considered to have all necessary permits issued pursuant to this article with respect to the treatment, storage or disposal of such wastes or overburden. Rules and regulations promulgated under this article are not applicable to treatment, storage or disposal of coal mining wastes and overburden which are covered by such a permit.

§20-5E-12. Inspections; right of entry; sampling; reports and analyses; subpoenas.

1 (a) The chief or any authorized representative, employee or agent of the division, upon the presentation of proper credentials and at reasonable times, may enter any building, property, premises, place, vehicle or permitted facility where hazardous wastes are or have been generated,
treated, stored, transported or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this article or the rules and regulations promulgated by the director or permits issued by the chief hereunder.

(b) The chief or his authorized representative, employee or agent shall make periodic inspections at every permitted facility as necessary to effectively implement and enforce the requirements of this article or the rules and regulations promulgated by the director or permits issued by the chief hereunder. After an inspection is made, a report shall be prepared and filed with the chief and a copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. Such inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

(c) Whenever the chief has cause to believe that any person is in violation of any provision of this article, any condition of a permit issued by the chief, any order or any regulation promulgated by the director under this article, he shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) The chief or any authorized representative, employee or agent of the division may, upon presentation of proper credentials and at reasonable times, enter any establishment, building, property, premises, vehicle or other place maintained by any person where hazardous wastes are being or have been generated, transported, stored, treated or disposed of to inspect and take samples of wastes, soils, air, surface water and groundwater and samples of any containers or labelings for such wastes. In taking such samples, the division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the representative, employee or agent obtains any such samples, prior to leaving the premises, he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained.
The division shall promptly provide a copy of any analysis made to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the chief or any authorized representative, employee or agent of the division shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of hazardous waste in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the chief or an authorized representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies. If the chief, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.


(a) If the chief determines, upon receipt of any information, that (1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of, or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the chief deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the chief finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual
knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the chief within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The chief may, after providing such person with an opportunity to confer with the chief respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the chief deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the chief:

(1) If the chief determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the chief, if the chief deems any such action carried out by an owner or operator to be unsatisfactory or if the chief cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he may conduct monitoring, testing or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the chief or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the chief which confirms the results of the order issued under subsection (a) or (b) of this section.

(e) If the monitoring, testing, analysis and reporting conducted pursuant to this section indicates that a potential hazard to human health or the environment may or does exist, the chief may issue an appropriate order requiring that the hazard or risk of hazard be eliminated.

(f) The chief may commence a civil action against any person who fails or refuses to comply with any order issued...
under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed five thousand dollars for each day during which such failure or refusal occurs.


(a) If any person knowingly (1) transports any hazardous waste identified or listed under this article to a facility which does not have a permit required by this article, Section 3005 of the federal Solid Waste Disposal Act, as amended, the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the federal Solid Waste Disposal Act, as amended, or Title I of the federal Marine Protection, Research and Sanctuaries Act; (2) treats, stores or disposes of any such hazardous waste either (A) without having obtained a permit required by this article, or by Title I of the Federal Marine Protection, Research and Sanctuaries Act, or by Section 3005 or 3006 of the federal Solid Waste Disposal Act, as amended, or (B) in knowing violation of a material condition or requirement of such permit, he shall be guilty of a felony, and, upon conviction thereof, shall be fined not to exceed fifty thousand dollars for each day of violation or confined in the penitentiary not less than one nor more than two years, or both such fine and imprisonment or, in the discretion of the court, be confined in jail not more than one year in addition to the above fine.

(b) If any person knowingly (1) makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this article; or (2) generates, stores, treats, transports, disposes of or otherwise handles any hazardous waste identified or listed under this article (whether such activity took place before or takes place after the effective date of this article) and who knowingly destroys, alters or conceals any record required to be maintained under regulations promulgated by the director pursuant to this article, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed twenty-five thousand dollars, or sentenced to
imprisonment for a period not to exceed one year, or both
fined and sentenced to imprisonment for each violation.

(c) Any person convicted of a second or subsequent
violation of subsections (a) and (b) of this section, shall be
guilty of a felony, and, upon such conviction, shall be
confined in the penitentiary not less than one nor more than
three years, or fined not more than fifty thousand dollars for
each day of violation, or both such fine and imprisonment.

(d) Any person who knowingly transports, treats, stores
or disposes of any hazardous waste identified or listed
pursuant to this article in violation of subsection (a) of this
section, or having applied for a permit pursuant to sections
seven and eight of this article, and knowingly either (1) fails
to include in a permit application any material information
required pursuant to this article, or rules and regulations
promulgated hereunder, or (2) fails to comply with
applicable interim status requirements as provided in
section ten of this article and who thereby exhibits an
unjustified and inexcusable disregard for human life or the
safety of others and he thereby places another person in
imminent danger of death or serious bodily injury, shall be
guilty of a felony, and, upon conviction thereof, shall be
fined not more than two hundred fifty thousand dollars or
imprisoned not less than one year nor more than four years
or both such fine and imprisonment.

(e) As used in subsection (d) of this section, the term
"serious bodily injury" means:
(1) Bodily injury which involves a substantial risk of
death;
(2) Unconsciousness;
(3) Extreme physical pain;
(4) Protracted and obvious disfigurement; or
(5) Protracted loss or impairment of the function of a
bodily member, organ or mental faculty.

§20-5E-21. Appropriation of funds; hazardous waste
management fund created.

1 The net proceeds of all fines, penalties and forfeitures
collected under this article shall be appropriated as
directed by Article XII, Section 5 of the Constitution of
West Virginia. For the purposes of this section, the net
proceeds of such fines, penalties and forfeitures shall be
6 deemed the proceeds remaining after deducting therefrom
7 those sums appropriated by the Legislature for defraying
8 the cost of administering this article. All permit application
9 fees collected under this article shall be paid into the state
10 treasury into a special fund designated “The Hazardous
11 Waste Management Fund.” In making the appropriation for
12 defraying the cost of administering this article, the
13 Legislature shall first take into account the sums included
14 in such special fund prior to deducting such additional
15 sums as may be needed from the fines, penalties and
16 forfeitures collected pursuant to this article.

CHAPTER 90

(Com. Sub. for S. B. 279—By Senators Spears and Palumbo)

[Passed April 12, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-nine of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended, by adding thereto a new article, designated article
one-h, relating generally to approving, ratifying and
enacting into law the “Appalachian States Low-Level
Radioactive Waste Compact” and making the state of West
Virginia a party thereto; creating the “Appalachian States
Low-Level Radioactive Waste Commission”; providing for
the appointment of said commissioners for certain terms by
the governor; providing for all necessary and incidental
powers of the commission for carrying out the compact;
authorizing and directing all officers of this state to do what
is necessary or incidental to carry out the compact; giving
the director of health primary responsibility; powers to be
supplemental and not a limitation upon other powers;
authorizing and directing the state and it subdivisions to
cooperate with the director of health; authorizing the
director of health to promulgate rules and regulations;
authorizing the director of health, the attorney general and
certain county prosecutors to seek injunctions of violations
without bond, lack of remedy at law or exhaustion of
administrative remedies; authorizing the director of health
to remedy certain conditions arising from violations;
authorizing the director of health and the attorney general to
prosecute actions for judgments for the costs of remedial
actions; authorizing punitive fines and penalties; providing
for actions in circuit court as contested cases pursuant to the
administrative procedure act; subpoena power; providing
criminal felonies, misdemeanors; imprisonment and fines as
penalties for violations of the compact, this article or rules
and regulations promulgated pursuant to the compact or
this article; this article and the compact to prevail over
inconsistent laws of this state; appropriations; and when
article effective.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1H. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE
WASTE COMPACT.

§29-1H-1. Appalachian states low-level radioactive waste compact approved.
§29-1H-2. Appointment of members of commission.
§29-1H-3. Powers of commission, duties of state officers, departments, etc.
§29-1H-4. Powers granted herein supplemental to other powers vested in
commission.
§29-1H-5. Cooperation of state agencies, boards, departments, subdivisions,
etc.
§29-1H-6. Rules and regulations.
§29-1H-7. Enforcement.
§29-1H-8. Penalties.
§29-1H-10. Appropriations.
§29-1H-11. When article effective.

§29-1H-1. Appalachian states low-level radioactive waste
compact approved.

The following Appalachian States Low-Level
Radioactive Waste Compact, which has been negotiated by
representatives of the Commonwealth of Pennsylvania, and
the states of West Virginia, Delaware and Maryland, is
hereby approved, ratified, adopted, enacted into law, and
entered into by the state of West Virginia as a party state
thereto, namely:
Preamble

WHEREAS, The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. §§2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

WHEREAS, Under section 4 (a) (1) (A) of the Low-Level Radioactive Waste Policy Act (42 U.S.C.§2021 (a) (1) (A)), each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders;

WHEREAS, To promote the health, safety and welfare of residents within the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland, the aforementioned states wish to enter into a compact for the regional management of low-level radioactive waste;

Now, therefore, the Commonwealth of Pennsylvania and the states of West Virginia, Delaware and Maryland hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

Article 1

Definitions

As used in this compact, unless the context clearly indicates otherwise:

(a) “Carrier” means a person who transports low-level waste to a regional facility.

(b) “Commission” means the Appalachian States Low-Level Radioactive Waste Commission.

(c) “Disposal” means the isolation of low-level waste from the biosphere or other such activity for the disposition of low-level waste that meets applicable federal and state laws and regulations.

(d) “Facility” means any real or personal property, within the region, and improvements thereof or thereon, and any and all plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(e) “Generate” means to produce low-level waste requiring disposal.
(f) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(g) "Host state" means Pennsylvania or other party states so designated by the Commission in accordance with Article 3 of this compact.

(h) "Low-level waste" means radioactive waste that:

1. Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11 (e) (2) of the Atomic Energy Act of 1954 as amended; and

2. Is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573, or federal research and development activities.

(i) "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(j) "Operator" means a person who operates a regional facility.

(k) "Party state" means any state that has become a party in accordance with Article 5 of this compact.

(l) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(m) "Region" means the combined geographical area within the boundaries of the party states.

(n) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(o) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the federal government.

Article 2
The Commission

(A) Creation and Organization.

(1) There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from
92 the respective signatory party states. The Commission shall have central offices located in Pennsylvania.
93 (2) Commission Membership—The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state, and two additional voting members from each host state to be appointed according to the laws of each host state. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may act in the member’s absence.
94 (3) Compensation—Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.
95 (4) Voting Power—Each Commission member is entitled to one vote. The affirmative vote of a majority of all members is necessary for the Commission to take any action. Notwithstanding this provision and unless otherwise provided in this compact, affirmative votes by a majority of a host state’s members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.
96 (5) Organization and Procedure.
97 (a) The Commission shall provide for its own organization and procedures, and shall adopt bylaws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year and shall elect a chairman from among its members. In the absence of the chairman, the alternate shall serve.
98 (b) All meetings of the Commission shall be open to the public with reasonable advance notice. The Commission may, by a majority vote, including approval of a majority of each host state’s Commission members, hold an Executive Session closed to the public for the purpose of: Considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of, or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy
in connection with specific litigation. The reason for the Executive Session must be announced during the open meeting occurring immediately prior to the Executive Session or at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission shall be open to reasonable public inspection and may be copied upon request and payment of reasonable fees to be established by the Commission, except for information privileged against introduction in judicial proceedings, personnel records, proprietary information as determined by the Commission, and minutes of a properly convened Executive Session.

(d) The Commission shall select an appropriate staff, including an executive director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within sixty days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

(B) Powers and Duties.

(1) The Commission:

(a) Should encourage reduction of the amount of low-level waste generated and low-level waste requiring disposal within the region.

(b) Shall do whatever is reasonably necessary to ensure that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state
which generates twenty-five percent or more of Pennsylvania's volume of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. (d) Shall ensure that low-level waste packages brought into the regional facility for disposal conform to applicable state and federal regulations. Low-level waste handlers, shippers or generators who persistently violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4 (D). (e) May establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management of low-level waste. (f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state. (g) Shall prepare contingency plans for management of low-level waste in the event any regional facility should be closed. (h) May examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge, and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws. (i) Shall have the power to sue and be sued subject to Article 2 (A) (5) (e) and may seek to intervene in any administrative or judicial proceeding. (j) May accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source. The nature, amount and condition, if any, attendant upon any donations, grants or other resources accepted pursuant to this subsection, together with the identity of the donor or grantor, shall be detailed in the annual report of the Commission. Before the Commission may accept any donation, grant, equipment, supplies, materials or services, such gift shall be reviewed by Commission Counsel to study the legality and propriety of such gifts. If the Commission Counsel determines that the
receipt of such a gift would be contrary to applicable law or
would present a conflict of interest, the Commission shall
not accept such gift.

(k) Shall assemble and make available to the party
states and to the public, information concerning low-level
waste management needs, technologies and problems.

(l) Shall keep current and annual inventories of all
generators by name and quantity generated within the
region, based upon information provided by the party
states.

(m) Shall keep an inventory of all regional disposal
facilities, including, but not necessarily restricted to,
information on their size, capacity and location, as well as
specific wastes capable of being managed, and the
projected useful life of each regional facility.

(n) Shall make and publish an annual report to the
governors of the signatory party states and to the public
detailing its programs, operations and finances, including
copies of the annual budget and the independent audit
required by this compact.

(o) Notwithstanding any other provision of this
compact to the contrary, may, with the approval of a
majority of the Commission members of the host state(s),
enter into agreements with nonparty states or other
regional boards for the disposal of low-level waste at the
regional facility, if so authorized by law(s) of the host
state(s), or other disposal facilities located in states that are
not parties to this agreement.

(C) Budget and Operation.

(1) The Commission shall establish a fiscal year which
conforms to the fiscal year of the Commonwealth of
Pennsylvania.

(2) Upon legislative enactment of this compact by two
party states and each year until the regional facility
becomes available, the Commission shall adopt a current
expense budget for its fiscal year. The budget shall include
the Commission's estimated expenses for administration.
Such expenses shall be allocated to the party states
according to the following formula:

Each designated initial host state will be allocated costs
equal to twice the costs of the other party states, but such
costs will not exceed two hundred thousand dollars.
Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed one hundred thousand dollars.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year:

(3) For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2 (B) (1) (1).

(4) The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit.

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit; and, they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.
Article 3
Rights, Responsibilities and
Obligations of Party States

(A) There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management or disposal may be developed in any party state in accordance with the laws and regulations of such state and applicable federal laws and regulations.

(B) Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste: Provided, That the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three days of its action, and shall, within thirty working days, provide in writing the reasons for the closing.

(C) Pennsylvania and party states which generated twenty-five percent or more of the volume of low-level waste generated by Pennsylvania based on a comparison of averages over the three years one thousand nine hundred eighty-two through one thousand nine hundred eighty-four are designated as “initial host states” and are required to develop and host low-level waste sites as regional facilities.

(D) Party states which generated less than twenty-five percent of the volume of low-level waste generated by Pennsylvania based on a comparison of averages over the years one thousand nine hundred eighty-two through one thousand nine hundred eighty-four shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the twenty-five percent threshold over successive three-year periods. Once a state generates twenty-five percent or more of the volume generated by Pennsylvania over a successive three-year period, it shall be designated as a “host state” for a thirty-year period by the Commission. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With
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344 Commission approval, any party state may volunteer to host a low-level waste disposal facility.
346 (E) Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designated for at least a thirty-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the federal government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a three-year period twenty-five percent or more of the volume of low-level waste generated by Pennsylvania.
347 (F) Each host state shall:
348 (1) Cause a regional facility to be sited and developed on a timely basis.
349 (2) Ensure by law, consistent with applicable state and federal law, the protection and preservation of public health and safety in the siting, design, development, licensure, or other regulation, operation, closure, decommissioning and long-term care of the regional facility within the state.
350 (3) Ensure that charges for disposal of low-level waste at the regional facility are reasonably sufficient to ensure the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.
351 (4) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.
352 (5) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.
353 (G) Each party state:
354 (1) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2 (C) (2) and (3).
355 (2) To the extent authorized by federal law shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a
regional facility to conform to volume reduction, packaging and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include, but are not limited to:

(i) Periodic inspections of packaging and shipping practices;
(ii) Periodic inspections of low-level waste containers while in custody of carriers; and
(iii) Appropriate enforcement actions with respect to violations.

(3) To the extent authorized by federal law, shall after receiving notification from a host state that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action may include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected.

(4) Shall maintain a registry of all generators and quantities generated within the state.

(H) In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state’s share of the region’s low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability.

(I) A party state which fails to fulfill its obligations, including timely funding of the Commission may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal and equitable remedies available to the party states.
Article 4

Prohibited Acts and Penalties

(A) It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

(B) After establishment of the regional facility or facilities, it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this Compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

1. The impact on the health and safety of the citizens of the party states;
2. The impact of importing waste on the available capacity and projected life of the regional facility;
3. The economic impact on the regional facility; and
4. The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Following the establishment of a regional facility, any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Generators, shippers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct or relationships in accordance with all laws relating thereto. The party states may impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and may assess punitive fines or penalties if it is deemed necessary. In addition, the host state may bar any person who violates host state or federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state their ability and willingness to comply with the law.
Article 5

Eligibility, Entry into Effect, Congressional Consent, Withdrawal

(A) The states of Pennsylvania, West Virginia, Delaware and Maryland, are initially eligible to become parties to this Compact. Other states may be made eligible by unanimous consent of the party states in accordance with the laws of each party state: Provided, That such states be contiguous to Pennsylvania.

(B) An eligible state may become a party state by legislative enactment of this compact or by executive order of the governor adopting this compact: Provided, That a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its Legislature convened thereafter, unless the Legislature shall have enacted this Compact before such adjournment.

(C) This Compact shall take effect when it has been enacted by the Legislatures of Pennsylvania and one or more eligible states. However, subsections (B) and (C) of Article 4 shall not take effect until Congress has consented to this Compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) A party state may withdraw from the Compact by repealing the enactment of this Compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

Article 6

Construction and Severability

(A) The provisions of this Compact shall be broadly construed to carry out the purposes of the Compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

(B) If any part or application of this Compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.
§29-1H-2. Appointment of members of Commission.

In pursuance of Article 2 of the Compact, the governor of the state of West Virginia, by and with the advice and consent of the Senate, shall appoint two persons as members of the Appalachian States Low-Level Radioactive Waste Commission from the state of West Virginia, each of whom shall be a resident and citizen of the state. The term of the member of the Commission first appointed shall be two years and of the other shall be four years, and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of four years each. Each member of the Commission shall hold office until his successor has been appointed and qualified. Vacancies occurring in the office of any such member for any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term.

§29-1H-3. Powers of Commission, duties of state officers, departments, etc.

There is hereby granted to the Commission and members of the Commission all of the powers provided for in the Compact and all the powers necessary or incidental to the carrying out of the Compact in every particular. All officers of this state are hereby authorized and directed to do all things falling within their respective provinces and jurisdiction necessary to or incidental to the carrying out of the Compact in every particular, it being hereby declared to be the policy of this state to perform and carry out the Compact and to accomplish the purposes thereof. The director of health shall have the primary responsibility therefor.

§29-1H-4. Powers granted herein supplemental to other powers vested in Commission.

Any powers herein granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the Commission by other laws of this state, by the other party states, by Congress or the terms of the Compact.
§29-IH-5. Cooperation of state agencies, boards, departments, subdivisions, etc.

1. The departments, boards, agencies, commissions, officers and employees of the state and its subdivisions are authorized and directed to cooperate with the director of health in the furtherance of any of his activities pursuant to the Appalachian States Low-Level Radioactive Waste Compact and the provisions of this article.


1. The director of health is authorized to promulgate and adopt rules and regulations as are necessary and incidental to the carrying out of the Compact and this article. Such authorization shall include, without limitation, rules and regulations necessary and incidental to carrying out subsection two, section (g), article three of the Compact. Such rules and regulations shall be promulgated only in accordance with article three, chapter twenty-nine-a of this code.


1. (a) Following the establishment of a regional facility pursuant to the Appalachian States Low-Level Radioactive Waste Compact, the director of health, the attorney general or the prosecuting attorney of any county in which a violation occurs may seek in the name of the state an injunction against any person in violation of any of the provisions of said Compact, this article or the rules and regulations promulgated pursuant to said Compact or this article. In seeking such an injunction it is not necessary for the state to post bond nor to allege or prove at any stage of the proceeding that irreparable harm will occur if the injunction is not issued or that the remedy of the law is inadequate. An application for injunctive relief under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for have not been exhausted or invoked against the person or persons against whom such relief is sought.

(b) The director of health is hereby authorized to remedy or to contract to remedy any condition he deems a threat to public health and safety arising from a violation of
the Appalachian States Low-Level Radioactive Waste Compact, this article or the rules and regulations promulgated pursuant to the Compact or this article and to proceed pursuant to subsection (c) of this section to recover judgment for the costs thereof.

(c) Pursuant to section (d), Article 4 of the Appalachian States Low-Level Radioactive Waste Compact, the director of health and the attorney general are hereby authorized to prosecute actions for judgments pursuant to subsection (b) of this section. The director of health and the attorney general are further authorized to institute actions to assess punitive fines or penalties pursuant to section (d), Article 4 of the Compact for violations of the Compact, this article or rules or regulations promulgated pursuant to the Compact or this article. Such actions may be brought at the option of the state in the circuit court of any county in which a violation occurred or may be brought as a contested case pursuant to chapter twenty-nine-a of this code. In any action brought under the provisions of chapter twenty-nine-a of this code, the director of health or the attorney general shall have the power to issue subpoenas and subpoenas duces tecum on behalf of the state or any interested party. The punitive fines and penalties may not exceed the fines provided in section eight of this article and may only be sought in lieu thereof.

§29-1H-8. Penalties.

(a) Any person who after the establishment of a regional facility pursuant to the Appalachian States Low-Level Radioactive Waste Compact violates or causes to be violated the provisions of section (a) or section (b), Article 4 of the Compact or any of the provisions of or regulations regarding packaging and transportation promulgated pursuant to subsection two, section (g), Article 3 of the Compact 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 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 violation, or shall be imprisoned not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person who after the establishment of a regional facility pursuant to this Compact violates or causes to be violated the provisions of any rules and regulations regarding volume reduction promulgated pursuant to subsection two, section (g), Article 3 of the Compact is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than twenty-five hundred dollars for each day of such violation, or imprisoned in the county jail not less than one nor more than five months, 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 one thousand dollars nor more than twenty-five 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.


1 In the event the provisions of the Appalachian States Low-Level Radioactive Waste Compact, this article or any rules and regulations lawfully promulgated thereunder shall be or become inconsistent with any other provisions of this code, the provisions of the Appalachian States Low-Level Radioactive Waste Compact and this article and the rules and regulations lawfully promulgated thereunder shall prevail to the extent of such inconsistency and the conflicting provisions shall be null and void to the extent of such inconsistency.

§29-1H-10. Appropriations.

1 The Legislature may appropriate such funds as it considers necessary to carry out the provisions of this article.

§29-1H-11. When article effective.

1 This article shall take effect and become operative and the Compact be executed for and on behalf of this state only
from and after the approval, ratification and adoption, and entering into thereof by the Commonwealth of Pennsylvania.

CHAPTER 91
(S. B. 713—Originating in the Committee on Health and Human Resources.)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to state department of health reimbursement to state employees in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. STATE DEPARTMENT OF HEALTH.

§16-1-12. Expenditures of state department of health.

1 The state department of health shall have power to expend annually, for the purpose of performing the duties imposed on it, or authorized by law, such sum as may be appropriated by the Legislature for the department of health.

6 The department may provide reimbursement to employees of the department whose eyeglasses, contact lenses, dentures or other personal items are damaged during the course of employment as a result of aggressive behavior by a client in any facility under the management and control of the department: Provided, That such reimbursement shall be limited to a maximum amount of two hundred fifty dollars per claim.

14 The director of health shall audit all bills, which shall be made out in due form and verified by the members of the board of health, directors of divisions, employees or
agents rendering services or incurring traveling or other
expenses in the performance of the duties of their offices
or employments. Such bills, when approved by the audi-
tor, shall be paid out of the state treasury.

The director of the department of health is authorized
to make advance payments to public and nonprofit health
services providers when it has been determined by the
director of health to be necessary for the initiation or
continuation of health services. Such advance payments,
being in derogation of the principle of payment only after
receipt of goods or services, shall be authorized only after
serious consideration by the director of the necessity
therefor and shall be for a period no greater than ninety
days in advance of rendition of service or receipt of goods
and continuation of health services.

CHAPTER 92
(Com. Sub. for S. B. 616—By Senator Loehr)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five,
seven, nine and thirteen, article two-d, chapter sixteen of the
code of West Virginia, one thousand nine hundred thirty-
one, as amended; and to further amend article two-d of said chapter by adding thereto two new sections, designated sections fourteen and fifteen, all relating to certificate of
need; increasing the minimum levels for expenditures and
major medical equipment subject to review and for health
services exempted from review; providing for review of
community mental health and retardation facilities and
private office practice of licensed health professionals under
certain circumstances; authorizing ninety-day agency
imposed moratorium on applications involving new medical
technology in absence of criteria for review; providing for
imposition of conditions of operation for no longer than a
three-year period with the issuance of a certificate of need;
three-year statute of limitations for state agency to correct
violations; previously approved rules and regulations to
remain in force.
Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, seven, nine and thirteen, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-d be further amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

ARTICLE 2D. CERTIFICATE OF NEED.

§ 16-2D-2. Definitions.

§ 16-2D-3. Certificate of need.

§ 16-2D-4. Exemptions from certificate of need program.

§ 16-2D-5. Powers and duties of state health planning and development agency.

§ 16-2D-7. Procedure for certificate of need reviews.

§ 16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

§ 16-2D-13. Injunctive relief; civil penalty.


§ 16-2D-15. Previously approved rules and regulations.

§ 16-2D-2. Definitions.

As used in this article, unless otherwise indicated by the context:

(a) "Affected person" means:

(1) The applicant;

(2) An agency or organization representing consumers;

(3) Any individual residing within the geographic area served or to be served by the applicant;

(4) Any individual who regularly uses the health care facilities within that geographic area;

(5) The health care facilities located in the applicable health service area which provide services similar to the services of the facility under review;

(6) The health care facilities which, prior to receipt by the state agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future;

(7) Third party payers who reimburse any health care facilities for services in the applicable health service area;

(8) Any agency which establishes rates for the health care facilities located in the applicable health service area;

or

(9) Organizations representing health care providers.

(b) "Ambulatory health care facility" means a facility.
which is free-standing and not physically attached to a health care facility and which provides health care to noninstitutionalized and nonhomebound persons on an outpatient basis. This definition does not include the private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed.

(c) "Ambulatory surgical facility" means a facility which is free-standing and not physically attached to a health care facility and which provides surgical treatment to patients not requiring hospitalization. This definition does not include the private office practice of any one or more health professionals licensed to practice surgery in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed.

(d) "Annual implementation plan" means a plan established, annually reviewed and amended as necessary by a health systems agency in conformance with Section 1513(b)(3) of the Public Health Service Act, as amended, Title 42 United States Code Section 3001-2(b)(3), which describes objectives which will achieve the goals of the health systems plan, or, if those goals are amended by the statewide health coordinating council when included in the state health plan, as so amended, and priorities among the objectives.

(e) "Applicable health service area" means a health service area, as defined in this section, in which a new institutional health service is proposed to be located.

(f) "Applicant" means: (1) The governing body or the person proposing a new institutional health service who is, or will be, the health care facility licensee wherein the new institutional health service is proposed to be located, and (2) in the case of a proposed new institutional health service not to be located in a licensed health care facility, the
governing body or the person proposing to provide such
new institutional health service. Incorporators or
promoters who will not constitute the governing body or
persons responsible for the new institutional health service
may not be an applicant.

(g) "Bed capacity" means the number of beds for which
a license is issued to a health care facility, or, if a facility is
unlicensed, the number of adult and pediatric beds
permanently staffed and maintained for immediate use by
inpatients in patient rooms or wards.

(h) "Capital expenditure" means an expenditure:
(1) Made by or on behalf of a health care facility; and
(2) (A) Which (i) under generally accepted accounting
principles is not properly chargeable as an expense of
operation and maintenance, or (ii) is made to obtain either
by lease or comparable arrangement any facility or part
thereof or any equipment for a facility or part; and (B)
which (i) exceeds the expenditure minimum, or (ii) is a
substantial change to the bed capacity of the facility with
respect to which the expenditure is made, or (iii) is a
substantial change to the services of such facility. For
purposes of part (i), subparagraph (B), subdivision (2) of
this definition, the cost of any studies, surveys, designs,
plans, working drawings, specifications, and other
activities, including staff effort and consulting and other
services, essential to the acquisition, improvement,
expansion, or replacement of any plant or equipment with
respect to which an expenditure described in subparagraph
(B), subdivision (2) of this definition is made shall be
included in determining if such expenditure exceeds the
expenditure minimum. Donations of equipment or facilities
to a health care facility which if acquired directly by such
facility would be subject to review shall be considered
capital expenditures, and a transfer of equipment or
facilities for less than fair market value shall be considered
a capital expenditure for purposes of such subdivisions if a
transfer of the equipment or facilities at fair market value
would be subject to review. A series of expenditures, each
less than the expenditure minimum, which when taken
together are in excess of the expenditure minimum, may be
determined by the state agency to be a single capital
expenditure subject to review. In making its determination,
the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; whether the expenditures are to be made over a two-year period and are directed towards the accomplishment of a single goal within the health care facility's long-range plan; or, whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(i) "Expenditure minimum" means seven hundred fourteen thousand dollars for the twelve-month period beginning the first day of October, one thousand nine hundred eighty-five. For each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum to reflect the impact of inflation.

(j) "Health," used as a term, includes physical and mental health.

(k) "Health care facility" is defined as including hospitals, skilled nursing facilities, kidney disease treatment centers, including free-standing hemodialysis units, intermediate care facilities, ambulatory health care facilities, ambulatory surgical facilities, home health agencies, rehabilitation facilities, and health maintenance organizations, community mental health and mental retardation facilities; whether under public or private ownership, or as a profit or nonprofit organization and whether or not licensed or required to be licensed in whole or in part by the state. For purposes of this definition, "community mental health and mental retardation facility" means a private facility which provides such comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient and consultation and education for individuals with mental illness, mental retardation or drug or alcohol addiction.

(l) "Health care provider" means a person, partnership, corporation, facility or institution licensed or certified or authorized by law to provide professional health care service in this state to an individual during that individual's medical care, treatment or confinement.

(m) "Health maintenance organization" means a public
or private organization, organized under the laws of this
state, which:
(1) Is a qualified health maintenance organization
under Section 1310(d) of the Public Health Service Act, as
amended, Title 42 United States Code Section 300e-9(d); or
(2) (A) Provides or otherwise makes available to
enrolled participants health care services, including
substantially the following basic health care services:
usual physician services, hospitalization, laboratory, X-
ray, emergency and preventive services and out-of-area
coverage; and
(B) Is compensated except for copayments for the
provision of the basic health care services listed in
subparagraph (2)(A), subdivision (m) of this definition to
enrolled participants on a predetermined periodic rate
basis without regard to the date the health care services are
provided and which is fixed without regard to the
frequency, extent or kind of health service actually provided;
and
(C) Provides physicians' services primarily (i) directly
through physicians who are either employees or partners of
such organization, or (ii) through arrangements with
individual physicians or one or more groups of physicians
organized on a group practice or individual practice basis.
(n) "Health service area" means a geographic area
designated by the Federal Secretary of Health and Human
Services pursuant to Section 1511 of the Public Health
Service Act, as amended, Title 42 United States Code
Section 3001, with respect to which health systems agencies
shall be designated under Section 1515 of such act, as
amended, Title 42 United States Code Section 3001-4.
(o) "Health services" means clinically related
preventive, diagnostic, treatment or rehabilitative services,
including alcohol, drug abuse and mental health services.
(p) "Home health agency" is an organization primarily
engaged in providing directly or through contract
arrangements, professional nursing services, home health
aide services, and other therapeutic and related services
including, but not limited to, physical, speech and
occupational therapy and nutritional and medical social
services, to persons in their place of residence on a part-
time or intermittent basis.
"Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. This term also includes psychiatric and tuberculosis hospitals.

"Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health related care and services above the level of room and board.

"Long-range plan" means a document formally adopted by the legally constituted governing body of an existing health care facility or by a person proposing a new institutional health service. Each long-range plan shall consist of the information required by the state agency in regulations adopted pursuant to section eight of this article.

"Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and which costs in excess of four hundred thousand dollars, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven of Section 1861(s) of such act, Title 42 United States Code Sections 1395x (10) and (11). In determining whether medical equipment costs more than four hundred thousand dollars, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

"Medically underserved population" means the population of an urban or rural area designated by the state
agency as an area with a shortage of personal health services or a population having a shortage of such services, after taking into account unusual local conditions which are a barrier to accessibility or availability of such services. Such designation shall be in regulations adopted by the state agency pursuant to section eight of this article, and the population so designated may include the state's medically underserved population designated by the Federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 United States Code Section 254(b)(3).

(v) "New institutional health service" means such service as described in section three of this article.

(w) "Offer" when used in connection with health services, means that the health care facility or health maintenance organization holds itself out as capable of providing, or as having the means for the provision of, specified health services.

(x) "Person" means an individual, trust, estate, partnership, committee, corporation, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

(y) "Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state.

(z) "Proposed new institutional health service" means such service as described in section three of this article.

(aa) "Psychiatric hospital" means an institution which primarily provides to inpatients, by or under the supervision of a physician, specialized services for the diagnosis, treatment and rehabilitation of mentally ill and emotionally disturbed persons.

(bb) "Rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision.

(cc) "Review agency" means an agency of the state designated by the governor as the agency for the review of state agency decisions.
(dd) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(ee) "State agency" means that agency of state government selected by the governor and designated as the state health planning and development agency in an agreement entered into pursuant to Section 1521 of the Public Health Service Act, as amended, Title 42 United States Code Section 300m.

(ff) "State health plan" means the document approved by the governor after preparation by the statewide health coordinating council pursuant to Section 1524(c)(2) of the Public Health Service Act, as amended, Title 42 United States Code Section 300m-3(c)(2).

(gg) "Statewide health coordinating council" means the body established pursuant to Section 1524 of the Public Health Service Act, as amended, Title 42 United States Code Section 300m-3, to advise the state agency.

(hh) "Substantial change to the bed capacity" of a health care facility means a change, with which a capital expenditure is associated, in any two-year period of ten or more beds or more than ten percent, whichever is less, of the bed capacity of such facility that increases or decreases the bed capacity, redistributes beds among various categories, or relocates beds from one physical facility or site to another. A series of changes to the bed capacity of a health care facility in any two-year period, each less than ten beds or ten percent of the bed capacity of such facility, but which when taken together comprise ten or more beds or more than ten percent of the bed capacity of such facility, whichever is less, is a substantial change to the bed capacity.

(ii) "Substantial change to the health services" of a health care facility means the addition of a health service which is offered by or on behalf of the health care facility and which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is first offered, or the termination of a health service which was offered by or on behalf of the facility.
(jj) "To develop," when used in connection with health services, means to undertake those activities which, upon their completion, will result in the offer of a new institutional health service or the incurring of a financial obligation, in relation to the offering of such a service.

(kk) "Tuberculosis hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis.

§16-2D-3. Certificate of need.

Except as provided in section four of this article, any new institutional health service may not be acquired, offered or developed within this state except upon application for and receipt of a certificate of need as provided by this article. Whenever a new institutional health service for which a certificate of need is required by this article is proposed for a health care facility for which, pursuant to section four of this article, no certificate of need is or was required, a certificate of need shall be issued before the new institutional health service is offered or developed. No person may knowingly charge or bill for any health services associated with any new institutional health service that is knowingly acquired, offered or developed in violation of this article, and any bill made in violation of this sentence is legally unenforceable. For purposes of this article, a proposed "new institutional health service" includes:

(a) The construction, development, acquisition or other establishment of a new health care facility or health maintenance organization;

(b) The partial or total closure of a health care facility or health maintenance organization with which a capital expenditure is associated;

(c) Any obligation for a capital expenditure incurred by or on behalf of a health care facility, except as exempted in section four of this article, or health maintenance organization in excess of the expenditure minimum or any obligation for a capital expenditure incurred by any person to acquire a health care facility. An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(1) When a contract, enforceable under state law, is
entered into by or on behalf of the health care facility for the
construction, acquisition, lease or financing of a capital
asset;
(2) When the governing board of the health care facility
takes formal action to commit its own funds for a
construction project undertaken by the health care facility
as its own contractor; or
(3) In the case of donated property, on the date on which
the gift is completed under state law;
(d) A substantial change to the bed capacity of a health
care facility with which a capital expenditure is associated;
(e) The addition of health services which are offered by
or on behalf of a health care facility or health maintenance
organization and which were not offered on a regular basis
by or on behalf of such health care facility or health
maintenance organization within the twelve-month period
prior to the time such services would be offered;
(f) The deletion of one or more health services,
previously offered on a regular basis by or on behalf of a
health care facility or health maintenance organization
which deletion is associated with a capital expenditure;
(g) A substantial change to the bed capacity or health
services offered by or on behalf of a health care facility,
whether or not the change is associated with a proposed
capital expenditure, if the change is associated with a
previous capital expenditure for which a certificate of need
was issued and if the change will occur within two years
after the date the activity which was associated with the
previously approved capital expenditure was undertaken;
(h) The acquisition of major medical equipment; and
(i) A substantial change in an approved new
institutional health service for which a certificate of need is
in effect. For purposes of this subdivision “substantial
change” shall be defined by the state agency in regulations
adopted pursuant to section eight of this article.

§16-2D-4. Exemptions from certificate of need program.
(a) Except as provided in subdivision (h), section three
of this article, nothing in this article or the rules and
regulations adopted pursuant to the provisions of this
article may be construed to authorize the licensure,
supervision, regulation or control in any manner of: (1)
Private office practice of any one or more health professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code: Provided, That such exemption from review of private office practice shall not be construed to include such practices where major medical equipment otherwise subject to review under the provisions of this article is acquired, offered or developed; (2) dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees: Provided, however, That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours; (3) establishments, such as motels, hotels and boardinghouses, which provide medical, nursing personnel and health related services; and (4) the remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed of tenets of any recognized church or religious denomination.

(b) (1) A certificate of need is not required for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provisions of an inpatient institutional health service, if with respect to such offering, acquisition or obligation, the state agency has, upon application under subdivision (2), subsection (b) of this section, granted an exemption to:

(A) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;
(B) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination; or

(C) A health care facility, or portion thereof, if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and on the date the application is submitted under subdivision (2), subsection (b) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the new institutional health service will be individuals enrolled with such organization.

(2) (A) A health maintenance organization, combination of health maintenance organizations, or other health care facility is not exempt under subdivision (1), subsection (b) of this section, from obtaining a certificate of need unless:

(i) It has submitted, at such time and in such form and manner as the state agency shall prescribe, an application for such exemption to the state agency;

(ii) The application contains such information respecting the organization, combination or facility and the proposed offering, acquisition or obligation as the state agency may require to determine if the organization or combination meets the requirements of subdivision (1),
subsection (b) of this section, or the facility meets or will meet such requirements; and

(iii) The state agency approves such application.

(B) The state agency shall approve an application submitted under subparagraph (A), subdivision (2), subsection (b) of this section, if it determines that the applicable requirements of subdivision (1), subsection (b) of this section, are met or will be met on the date the proposed activity for which an exemption was requested will be undertaken.

(3) A health care facility, or any part thereof, or medical equipment with respect to which an exemption was granted under subdivision (1), subsection (b) of this section, may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C), subdivision (1), subsection (b) of this section, which was granted an exemption under subdivision (1), subsection (b) of this section, may not be used by any person other than the lessee described in subparagraph (C), subdivision (1), subsection (b) of this section, unless:

(A) The state agency issues a certificate of need approving the sale, lease, acquisition or use; or

(B) The state agency determines, upon application, that the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest in or to use the facility is:

(i) A health maintenance organization or a combination of health maintenance organizations which meets the enrollment requirements of part (i), subparagraph (A), subdivision (1), subsection (b) of this section, and with respect to such facility or equipment, the entity meets the accessibility and patient enrollment requirements of parts (ii) and (iii), subparagraph (A), subdivision (1), subsection (b) of this section; or

(ii) A health care facility which meets the inpatient, enrollment and accessibility requirements of parts (i), (ii) and (iii), subparagraph (B), subdivision (1), subsection (b) of this section, and with respect to its patients meets the enrollment requirements of part (iv), subparagraph (B), subdivision (1), subsection (b) of this section.

(4) In the case of a health maintenance organization or
an ambulatory care facility or health care facility which
ambulatory or health care facility is controlled, directly or
indirectly, by a health maintenance organization or a
combination of health maintenance organizations, the
certificate of need requirements apply only to the offering
of inpatient institutional health services, the acquisition of
major medical equipment, and the obligation of capital
expenditures for the offering of inpatient institutional
health services and then only to the extent that such
offering, acquisition or obligation is not exempt under
subdivision (1), subsection (b) of this section.

(5) The state agency shall establish the period within
which approval or disapproval by the state agency of
applications for exemptions under subdivision (1),
subsection (b) of this section, shall be made.

(c) (1) A health care facility is not required to obtain a
certificate of need for the acquisition of major medical
equipment to be used solely for research, the addition of
health services to be offered solely for research, or the
obligation of a capital expenditure to be made solely for
research if the health care facility provides the notice
required in subdivision (2), subsection (c) of this section, and the state agency does not find, within sixty days after it
receives such notice, that the acquisition, offering or
obligation will, or will have the effect to:

(A) Affect the charges of the facility for the provision of
medical or other patient care services other than the
services which are included in the research;

(B) Result in a substantial change to the bed capacity of
the facility; or

(C) Result in a substantial change to the health services
of the facility.

(2) Before a health care facility acquires major medical
equipment to be used solely for research, offers a health
service solely for research, or obligates a capital
expenditure solely for research, such health care facility
shall notify in writing the state agency of such facility's
intent and the use to be made of such medical equipment,
health service or capital expenditure.

(3) If major medical equipment is acquired, a health
service is offered, or a capital expenditure is obligated and a
certificate of need is not required for such acquisition,
offering or obligation as provided in subdivision (1), subsection (c) of this section, such equipment or service or equipment or facilities acquired through the obligation of such capital expenditure may not be used in such a manner as to have the effect or to make a change described in subparagraphs (A), (B) and (C), subdivision (1), subsection (c) of this section, unless the state agency issues a certificate of need approving such use.

(4) For purposes of this subsection, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program.

(d) (1) The state agency may adopt regulations pursuant to section eight of this article to specify the circumstances under which a certificate of need may not be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility: Provided, That a certificate of need shall be required for the obligation of a capital expenditure to acquire, either by purchase or under lease or comparable arrangement, an existing health care facility if:

(A) The notice required by subdivision (2), subsection (d) of this section, is not filed in accordance with that subdivision with respect to such acquisition; or (B) the state agency finds, within thirty days after the date it receives a notice in accordance with subdivision (2), subsection (d) of this section, with respect to such acquisition, that the services or bed capacity of the facility will be changed by reason of said acquisition.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility, such person shall notify the state agency of his or her intent to acquire the facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given. The notice shall contain all information the state agency requires in accordance with subsections (e) and (s), section seven of this article.

(e) The state agency shall adopt regulations, pursuant to section eight of this article, wherein criteria are established
to exempt from review the addition of certain health services, not associated with a capital expenditure, that are projected to entail annual operating costs of less than the expenditure minimum for annual operating costs. For purposes of this subsection, "expenditure minimum for annual operating costs" means two hundred ninety-seven thousand five hundred dollars for the twelve-month period beginning the first day of October, one thousand nine hundred eighty-five, and for each twelve-month period thereafter, the state agency may, by regulations adopted pursuant to section eight of this article, adjust the expenditure minimum for annual operating costs to reflect the impact of inflation.

§16-2D-5. Powers and duties of state health planning and development agency.

(a) The state agency is hereby empowered to administer the certificate of need program as provided by this article.

(b) The state agency shall cooperate with the statewide health coordinating council in developing rules and regulations for the certificate of need program to the extent appropriate for the achievement of efficiency in their reviews and consistency in criteria for such reviews.

(c) The state agency may seek advice and assistance of other persons, organizations, and other state agencies in the performance of the state agency's responsibilities under this article.

(d) For health services for which competition appropriately allocates supply consistent with the state health plan, the state agency shall, in the performance of its functions under this article, give priority, where appropriate, to advance the purposes of quality assurance, cost effectiveness, and access, to actions which would strengthen the effect of competition on the supply of such services.

(e) For health services for which competition does not or will not appropriately allocate supply consistent with the state health plan, the state agency shall, in the exercise of its functions under this article, take actions, where appropriate, to advance the purposes of quality assurance, cost effectiveness, and access and the other purposes of this article, to allocate the supply of such services.
(f) The state agency is hereby empowered to order a moratorium upon the processing of an application or applications for the acquisition of major medical equipment filed pursuant to section three of this article and considered by the agency to be new medical technology, when criteria and guidelines for evaluating the need for such new medical technology have not yet been adopted. Such moratoriums shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the new medical technology affected by the moratorium, or ninety days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and affected applications shall be processed pursuant to section six of this article.

§16-2D-7. Procedures for certificate of need reviews.

(a) Prior to submission of an application for a certificate of need, the state agency shall require the submission of long-range plans by health care facilities with respect to the development of proposals subject to review under this article. The plans shall be in such form and contain such information as the state agency shall require.

(b) An application for a certificate of need shall be submitted to the state agency prior to the offering or development of all new institutional services within this state. Persons proposing new institutional health services shall submit letters of intent not less than fifteen days prior to submitting an application. The letters of intent shall be of such detail as specified by the state agency.

(c) The state agency may adopt regulations pursuant to section eight of this article for:

(1) Provision for applications to be submitted in accordance with a timetable established by the state agency;

(2) Provision for such reviews to be undertaken in a timely fashion; and

(3) Except for proposed new institutional health services which meet the requirements for consideration under subsection (g), section nine of this article with regard to the elimination or prevention of certain imminent safety
hazards or to comply with certain licensure or accreditation standards, provision for all completed applications pertaining to similar types of services, facilities or equipment to be considered in relation to each other, at least twice a year.

(d) An application for a certificate of need shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure.

(e) The application shall be in such form and contain such information as the state agency shall establish by rule or regulation, but requests for information shall be limited to only that information which is necessary for the state agency to perform the review.

(f) Within fifteen days of receipt of application, the state agency shall determine if the application is complete. The state agency may request additional information from the applicant.

(g) The state agency shall provide timely written notice to the applicant and to all affected persons of the beginning of the review, and to any person who has asked the state agency to place the person's name on a mailing list maintained by the state agency. Notification shall include the proposed schedule for review, the period within which a public hearing during the course of the review may be requested by affected persons, which period may not be less than thirty days from the date of the written notification of the beginning of the review required by this section, and the manner in which notification will be provided of the time and place of any public hearing so requested. For the purposes of this subsection, the date of notification is the date on which the notice is sent or the date on which the notice appears in a newspaper of general circulation, whichever is later.

(h) Written notification to members of the public and third-party payers may be provided through newspapers of general circulation in the applicable health service area and public information channels; notification to all other affected persons shall be by mail which may be as part of a newsletter.

(i) If, after a review has begun, the state agency requires
the person subject to the review to submit additional information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information and the state agency shall, at the request of such person, extend the review period by fifteen days. This extension applies to all other applications which have been considered in relation to the application for which additional information is required.

(j) The state agency shall adopt schedules for reviews which provide that no review may, to the extent practicable, take longer than ninety days from the date that notification, as described under subsection (g) of this section, is sent to the applicant to the date of the final decision of the state agency, and in the case of expedited applications, may by regulations adopted pursuant to section eight of this article provide for a shortened review period.

(k) The state agency shall adopt criteria for determining when it would not be practicable to complete a review within ninety days.

(l) The state agency shall provide a public hearing in the course of agency review if requested by any affected person and the state agency may on its own initiate such a public hearing:

(1) The state agency shall, prior to such hearing, provide notice of such hearing and shall conduct such hearing in accordance with administrative hearing requirements in article five, chapter twenty-nine-a of this code, and its procedure adopted pursuant to this section.

(2) In a hearing any person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing. Any person affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter.

(3) The state agency shall maintain a verbatim record of the hearing.

(4) After the commencement of a hearing on the applicant's application and before a decision is made with respect to it, there may be no ex parte contacts between (a) the applicant for the certificate of need, any person acting
on behalf of the applicant or holder of a certificate of need, or any person opposed to the issuance of a certificate for the applicant and (b) any person in the state agency who exercises any responsibility respecting the application.

(5) The state agency may not impose fees for such a public hearing.

(m) If a public hearing is not conducted during the review of a new institutional health service, the state agency may, by regulations adopted pursuant to section eight of this article, provide for a file closing date during the review period after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need.

A detailed itemization of documents in the state agency file on a proposed new institutional health service shall, on request, be made available by the state agency at any time before the file closing date.

(n) The extent of additional information received by the state agency from the applicant for a certificate of need after a review has begun on the applicant's proposed new institutional health service, with respect to the impact on such new institutional health service and additional information which is received by the state agency from the applicant, may be cause for the state agency to determine the application to be a new proposal, subject to a new review cycle.

(o) The state agency shall in timely fashion notify, upon request, providers of health services and other persons subject to review under this article of the status of the state agency review of new institutional health services subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(p) The state agency shall prepare and publish, at least annually, reports of reviews completed and being conducted, with general statements about the status of each review still in progress and the findings and rationale for each completed review since the publication of the last report.

(q) The state agency shall provide for access by the general public to all applications reviewed by the state agency and to all other pertinent written materials essential to agency review.
(r) (1) Any person may request in writing a public hearing for purposes of reconsideration of a state agency decision. No fees may be imposed by the state agency for the hearing. For purposes of this section, a request for a public hearing for purposes of reconsideration shall be deemed to have shown good cause if, in a detailed statement, it:

(A) Presents significant, relevant information not previously considered by the state agency, and demonstrates that with reasonable diligence the information could not have been presented before the state agency made its decision;

(B) Demonstrates that there have been significant changes in factors or circumstances relied upon by the state agency in reaching its decision;

(C) Demonstrates that the state agency has materially failed to follow its adopted procedures in reaching its decision; or

(D) Provides such other bases for a public hearing as the state agency determines constitutes good cause.

(2) To be effective, a request for such a hearing shall be received within thirty days after the date upon which all parties received notice of the state agency decision, and the hearing shall commence within thirty days of receipt of the request.

(3) Notification of such public hearing shall be sent, prior to the date of the hearing, to the person requesting the hearing, the person proposing the new institutional health service, and shall be sent to others upon request.

(4) The state agency shall hold public reconsideration hearings in accordance with the provisions for administrative hearings contained in:

(A) Its adopted procedures;

(B) Ex parte contact provisions of subdivision (4), subsection (1) of this section; and

(C) The administrative procedures for contested cases contained in article five, chapter twenty-nine-a of this code.

(5) The state agency shall make written findings which state the basis for its decision within forty-five days after the conclusion of such hearing.

(6) A decision of the state agency following a reconsideration hearing shall be considered a decision of
the state agency for purposes of sections nine and ten of this article and for purposes of the notification of the status of review, findings and annual report provisions of subsections (o) and (p) of this section.

(s) The state agency may adopt regulations pursuant to section eight of this article for reviews and such regulations may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed.

(t) Notwithstanding other provisions of this article, the state agency shall adopt rules and regulations for determining when there is an application which warrants expedited review. If procedures adopted by the state agency to handle expedited applications do not conform to the provisions of this article, such procedures shall be approved by the federal secretary of health and human services and shall be adopted as regulations pursuant to section eight of this article.

§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

(a) Only the state agency, or the appropriate administrative or judicial review body, may issue, deny or withdraw certificates of need, grant exemptions from certificate of need reviews, or determine that certificate of need reviews are not required.

(b) Except as provided in subsection (f) of this section, a certificate of need may only be issued if the proposed new institutional health service is:

(1) Found to be needed; and

(2) Except in emergency circumstances that pose a threat to public health, consistent with the state health plan: Provided, That if a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need for a proposed new institutional health service, the state agency may not disapprove the application solely because such an institutional health service is not discussed in the state health plan or annual implementation plan.

(c) The state agency shall render a final decision on every application for a certificate of need or application for
exemption in the form of an approval, a denial, or an approval with conditions. Any decision of the state agency with respect to a certificate of need, or exemption, shall be based solely on:

(1) The review of the state agency conducted in accordance with procedures and criteria in this article and in regulations adopted pursuant to section eight of this article; and

(2) The record established in administrative proceedings held with respect to the certificate of need or exemption.

(d) Approval with conditions does not give the state agency authority to mandate new institutional health services not proposed by the health care facility or health maintenance organization. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article or in rules and regulations adopted pursuant to section eight of this article. Conditions may be imposed upon the operations of the health care facility or health maintenance organization for no longer than a three-year period. Compliance with such conditions may be enforced through the mechanisms detailed in section thirteen of this article.

(e) (1) For each proposed new institutional health service it approves, the state agency shall, in addition to the written findings required in subsection (e), section six of this article, make a written finding, which shall take into account the current accessibility of the facility as a whole, on the extent to which the new institutional health service will meet the criteria in subdivisions (4), (14) and (25), subsection (a), section six of this article, regarding the needs of medically underserved population, except in the following cases:

(A) Where the proposed new institutional health service is one described in subsection (g) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(B) Where the new institutional health service is a proposed capital expenditure not directly related to the provision of health services or to beds or major medical equipment; or

(C) Where the new institutional health service is
proposed by or on behalf of a health care facility which is controlled, directly or indirectly, by a health maintenance organization.

(2) If the state agency disapproves a proposed new institutional health service for failure to meet the needs of medically underserved populations, it shall so state in a written finding.

(f) (1) Notwithstanding review criteria in subdivision (12), subsection (a), section six of this article, if a health care facility which is controlled, directly or indirectly, by a health maintenance organization applies for a certificate of need, such application shall be approved by the state agency if the state agency finds, in accordance with criteria prescribed by the state agency by regulations adopted pursuant to section eight of this article, that:

(A) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(B) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

(2) Except as provided in subdivision (1), subsection (b), section four of this article, a health care facility, or any part thereof, or medical equipment with respect to which a certificate of need was issued under this subsection, may not be sold or leased, and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the state agency issues a certificate of need approving the sale, acquisition or lease.

(g) (1) Notwithstanding review criteria in section six of this article, an application for a certificate of need shall be approved, if the state agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of
such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:

(A) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations;

(B) To comply with state licensure standards; or

(C) To comply with accreditation or certification standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(2) An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in subparagraph (A), subdivision (1), subsection (g), or to comply with the standards described in either subparagraph (B) or (C), subdivision (1), subsection (g) of this section.

(h) (1) The state agency shall send its decision along with written findings to the person proposing the new institutional health service or exemption and shall make it available to others upon request.

(2) In the case of a new institutional health service proposed by a health maintenance organization, the state agency shall send the written findings to the appropriate regional office of the federal department of health and human services at the time they are sent to the applicant.

(3) In any decision where the state agency finds that a proposed new institutional health service does not satisfy the criteria in subdivisions (4), (14) and (25), subsection (a), section six of this article, regarding the needs of medically underserved population, it shall so notify in writing the applicant and the appropriate regional office of the federal department of health and human services.

(i) In the case of a final decision to approve or approve with conditions a proposal for a new institutional health service, the state agency shall issue a certificate of need to the person proposing the new institutional health service.

(j) The state agency shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The state agency shall prescribe the method used to determine capital expenditure
maximums and shall adopt regulations pursuant to section eight of this article for the review of approved new institutional health services for which the capital expenditure maximum is exceeded or is expected to be exceeded.

(k) If the state agency fails to make a decision within the time period specified for the review, the applicant may, within one year following the expiration of such period, bring an action, at the election of the applicant, in either the circuit court of Kanawha County, or with the judge thereof in vacation, or in the circuit court of the county in which the applicant or any one of the applicants resides or does business, or with the judge thereof in vacation to require the state agency to approve or disapprove the application. An application for a proposed new institutional health service or exemption may not be approved or denied by the circuit court solely because the state agency failed to reach a decision.

§16-2D-13. Injunctive relief; civil penalty.

(a) In addition to all other remedies, and aside from various penalties provided by law, if any person acquires, offers or develops any new institutional health service for which a certificate of need is required under this article without first having a certificate of need therefor as herein provided, or violates any other provision of this article or any lawful rule or regulation promulgated thereunder, affected persons, as defined in section two of this article, and the state agency shall request that the attorney general maintain a civil action in the circuit court of the county wherein such violation has occurred, or wherein such person may be found, to enjoin, restrain or prevent such violation. No injunction bond shall be required to be filed in any such proceeding.

(b) The state agency may assess a civil penalty for violation of this article. Upon the state agency determining that there is probable cause to believe that any person is knowingly offering, developing, or has acquired any new institutional health service subject to certificate of need review without having first obtained a certificate of need therefor or that any person is otherwise in violation of the provisions of this article, or any lawful rule or regulation
promulgated thereunder, the state agency shall provide such person with written notice which shall state the nature of the alleged violation and the time and place at which such person shall appear to show good cause why a civil penalty should not be imposed, at which time and place such person shall be afforded an opportunity to cross-examine the state agency's witnesses and afforded an opportunity to present testimony and other evidence in support of his position. The hearing shall be conducted in accordance with the administrative hearing provisions of section four, article five, chapter twenty-nine-a of this code. If, after reviewing the record of such hearing, the state agency director determines that such person is in violation of the certificate of need law, the state agency shall assess a civil penalty of not less than five hundred dollars nor more than twenty-five thousand dollars. In determining the amount of the penalty, the state agency shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage. Any person assessed shall be notified of the assessment in writing, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the state agency within thirty days, the attorney general may institute a civil action in the circuit court of the county wherein such violation has occurred, or wherein such person may be found to recover the amount of the assessment. In any such civil action, the scope of the court's review of the state agency's action, which shall include a review of the amount of the assessment, shall be as provided in section four, article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases.


1 The state agency shall have a period of three years in which to take actions as provided in this article to correct violations of the provisions of this article. The three-year period shall begin to run from the date the state agency knows or should have known of the violation. Each new act of a continuing violation shall provide a basis for restarting the calculation of the limitations period.

§16-2D-15. Previously approved rules and regulations.

1 All rules and regulations previously promulgated to
Implement this article shall continue in force following the amendments to this article; except that, where such previous rules and regulations differ from the requirements of the amendments to this article, then such part of those rules and regulations are hereby abrogated and shall have no further legal effect. The state agency shall commence a review of such rules and regulations and shall promulgate revised rules and regulations.

CHAPTER 93
(Com. Sub. for S. B. 522—By Senator Kaufman)

[Passed April 11, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend chapter sixteen of said code by adding thereto a new article, designated article three-b, all relating to compulsory immunizations and dissemination of information at birth; pertussis vaccine; definitions; information on adverse reactions to pertussis vaccine to be provided prior to vaccination; recordation of and reporting pertussis vaccination data; data collection; and public hearings.

Be it enacted by the Legislature of West Virginia:

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

Article.
3. Prevention and Control of Communicable and other Infectious Diseases.
3B. Pertussis.

ARTICLE 3. PREVENTION AND CONTROL OF COMMUNICABLE AND OTHER INFECTIONIOUS DISEASES.
§16-3-4. Compulsory immunization of school children; information disseminated; offenses; penalties.
1 Whenever a resident birth occurs, the state director of
health shall promptly provide parents of the newborn child with information on immunizations mandated by this state or required for admission to a public school in this state.

All children entering school for the first time in this state shall have been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough. Any person who cannot give satisfactory proof of having been immunized previously or a certificate from a reputable physician showing that an immunization for any or all diphtheria, polio, rubeola, rubella, tetanus and whooping cough is impossible or improper or sufficient reason why any or all immunizations should not be done, shall be immunized for diphtheria, polio, rubeola, rubella, tetanus and whooping cough prior to being admitted in any of the schools of the state. No child or person shall be admitted or received in any of the schools of the state until he or she has been immunized as hereinafter provided, or produces a certificate from a reputable physician showing that an immunization for diphtheria, polio, rubeola, rubella, tetanus and whooping cough has been done or is impossible or improper or other sufficient reason why such immunizations have not been done. Any teacher having information concerning any person who attempts to enter school for the first time without having been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough shall report the names of all such persons to the county health officer. It shall be the duty of the health officer in counties having a full-time health officer to see that such persons are immunized before entering school.

In counties where there is no full-time health officer or district health officer, the county commission or municipal council shall appoint competent physicians to do the immunizations and fix their compensation. County health departments shall furnish the biologicals for this immunization free of charge.

Health officers and physicians who shall do this immunization work shall give to all persons and children a certificate free of charge showing that they have been
immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, or he or she may give the certificate to any person or child whom he or she knows to have been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough. If any physician shall give any person a false certificate of immunization against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, he or she shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five nor more than one hundred dollars.

Any parent or guardian who refuses to permit his or her child to be immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough, who cannot give satisfactory proof that the child or person has been immunized against diphtheria, polio, rubeola, rubella, tetanus and whooping cough previously, or a certificate from a reputable physician showing that an immunization for any or all is impossible or improper, or sufficient reason why any or all immunizations should not be done, shall be guilty of a misdemeanor, and except as herein otherwise provided, shall, upon conviction, be punished by a fine of not less than ten nor more than fifty dollars for each offense.

ARTICLE 3B. PERTUSSIS.

§16-3B-1. Definitions.

§16-3B-2. Information supplied to individuals; parents prior to administration of pertussis vaccine.

§16-3B-3. Recordation of pertussis vaccine administration.

§16-3B-4. Data collection on pertussis vaccine administration.

§16-3B-5. Public hearings.

§16-3B-1. Definitions.

1 (a) “Health care provider” means any licensed health care professional, organization or institution, whether public or private, under whose authority pertussis vaccine is administered.

5 (b) “Major adverse reaction” means any serious illness, disability or impairment of mental, emotional, behavioral or physical functioning or development, the first manifestation of which appears within four weeks
after the date of administration of pertussis vaccine and
for which there is reasonable scientific or medical evi-
dence that pertussis vaccine causes, or significantly con-
tributed to, such effect.

(c) "Any other adverse reaction" means any reaction
which the department, after consultation with the medi-
cal and pharmacy faculties of West Virginia's teaching
hospitals, determines by guideline is a basis for not con-
tinuing with pertussis vaccine administration.

(d) "Pertussis vaccine" means any vaccine that con-
tains materials intended to prevent the occurrence of
pertussis, whether or not the materials are administered
separately or in conjunction with other materials intended
to prevent the occurrence of other diseases.

§16-3B-2. Information supplied to individuals' parents prior to
administration of pertussis vaccine.

(a) Prior to the administration of pertussis vaccine,
the health care provider shall provide to the individual's
parent or guardian written information satisfying the
requirements of this section, and by appropriate inquiries
attempt to elicit the information necessary to make the
determinations required by this section:

(1) The frequency, severity and potential long-term
effects of pertussis;

(2) Possible adverse reactions to pertussis vaccine
which, if they occur, should be brought to the immediate
attention of the health care provider;

(3) A form listing symptoms to be monitored and con-
taining places where information can be recorded to
assist in reporting to the health care provider, health
officer and the department;

(4) Measures parents should take to reduce the risk
of, or to respond to, any adverse reaction;

(5) Early warning signs or symptoms to which parents
should be alert as possible precursors to an adverse re-
action;

(6) When and to whom parents should report any
adverse reaction; and
§16-3B-3. Recordation of pertussis vaccine administration.

(a) At the time of administration of pertussis vaccine to an individual, the health care provider shall record in a permanent record to which the patient or the patient's parent or guardian shall have access on request:

1. The date of each vaccination;
2. The manufacturer and lot number of the vaccine used for each;
3. Any other identifying information on the vaccine used; and
4. The name and title of the health care provider.

(b) Within twenty-four hours after an adverse reaction is recognized by any health care provider who has administered pertussis vaccine to an individual and has reason to believe that the individual has had a major adverse reaction to the vaccine, such health care provider shall:

1. Record all relevant information in the individual's permanent medical record; and
2. Report the information including the manufacturer's name and lot number to the county health officer who shall immediately forward the information to the department. On receipt of the information, the department shall immediately notify the vaccine manufacturer, and the United States centers for disease control.

§16-3B-4. Data collection on pertussis vaccine administration.

(a) By guideline, the department shall establish a system, sufficient for the purposes of subsections (b) and (c) of this section, to collect data from the local health officers, from public and private health care providers and from parents on the incidence of pertussis and major adverse reactions to pertussis vaccine.

(b) On the basis of information collected under this subsection and of other information available, the de-
(c) (1) The department shall report to the United States centers for disease control all information collected under this section, including that received under section three of this article.

(2) The department shall report annually to the Legislature on the incidence of pertussis and of adverse reactions to pertussis vaccine.

§16-3B-5. Public hearings.

(a) The department shall adopt guidelines, after notice and public hearing in accordance with the administrative procedures act, chapter twenty-nine-a of this code, setting forth:

(1) The circumstances under which pertussis vaccine should not be administered;

(2) The circumstances under which administration of the vaccine should be delayed;

(3) Any categories of potential recipients who are significantly more vulnerable to major adverse reactions than is the general population; and

(4) Procedures to notify all health care providers of the content of the final guidelines and all updates issued thereafter.

(b) The administration of pertussis vaccine to an individual may not be required by any provision of law if, in the judgment of the health care provider:

(1) The circumstances specified under this section are present; or

(2) Taking into account the information specified under this section as well as all other relevant information, the risk to the potential recipient outweighs the benefits both to the potential recipient and to the public in administering the vaccine.

(c) Nothing in this section shall be construed to affect any emergency authority of the director of health under any other provision of law to protect the public health.
CHAPTER 94
(H. B. 1055—By Delegate Blatnik and Delegate Davis)

[Passed March 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fifteen, relating to the establishment of a central registry of traumatic spinal cord injuries; and requiring the current acute care facility to report spinal cord injuries.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10A. VOCATIONAL REHABILITATION.

1 (a) The director shall establish and maintain a central registry of persons who sustain spinal cord injury other than through disease, whether or not permanent disability results, in order to facilitate the provisions of appropriate rehabilitative services by the division or other state agencies to such persons.

(b) The current acute care facility shall report to the director by the most expeditious means within seven days after identification of any person sustaining such an injury. The report shall contain the name and residence of the person and the name of the current acute care facility.

CHAPTER 95
(H. B. 1408—By Delegate Moore)

[Passed March 20, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter two
of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to legal holidays; date of observing Martin Luther King's Birthday.

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 third Monday of January, commonly called "Martin Luther King's Birthday"; 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
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-1. Hotel occupancy tax.
§7-18-2. Rate of tax.
§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel.
§7-18-5. Occupancy billed to government agencies or employees.
§7-18-6. Collection of tax when sale on credit.
§7-18-7. Receivership bankruptcy; priority of tax.
§7-18-8. Failure to collect or remit tax; liability of hotel operator.
§7-18-9. Total amount collected to be remitted.
§7-18-10. Tax return and payment.
§7-18-12. Liability of officers.
§7-18-14. Proceeds of tax; application of proceeds.

§7-18-1. Hotel occupancy tax.

(a) Authority to impose. — On and after the first day of July, one thousand nine hundred eighty-five, any county or municipality may impose and collect a privilege tax upon the occupancy of hotel rooms located within its taxing jurisdiction. Such tax shall be imposed and collected as provided in this article.

(b) Municipal tax. — A municipal hotel tax shall be imposed by ordinance enacted by the governing body of the municipality, in accordance with the provisions of article eleven, chapter eight of this code. Such tax shall be imposed uniformly throughout the municipality; and the tax shall apply to all hotels located within the corporate limits of the municipality, including hotels owned by the state or by any political subdivision of this state.

(c) County tax. — A county hotel tax shall be imposed by order of the county commission duly entered of record. Such tax shall be imposed uniformly throughout the county: Provided, That no county commission may impose its tax on hotels located within the corporate limits of any municipality situated, in whole or in part, within the county: Provided, however, That the tax collected by a hotel owned by a municipality but located outside the corporate limits of such municipality pursuant to this article shall be remitted to the municipality owning such hotel for expenditure pursuant to the provisions of section fourteen of this article. The tax shall apply to all hotels located outside the corporate limits of a municipality, including hotels owned by the state or any political subdivision of this state.

(d) The tax shall be imposed on the consumer and shall be collected by the hotel operator as part of the consideration
paid for the occupancy of a hotel room: Provided, That the
tax shall not be imposed on any consumer occupying a hotel
room for thirty or more consecutive days.

§7-18-2. Rate of tax.

The rate of tax imposed shall be three percent of the
consideration paid for the use or occupancy of a hotel room.
Such consideration shall not include the amount of tax
imposed on the transaction under article fifteen, chapter eleven
of this code, or charges for meals, valet service, room service,
telephone service or other charges or consideration not paid
for use or occupancy of a hotel room.


For the purposes of this article:

(a) “Consideration paid” or “consideration” means the
amount received in money, credits, property or other
consideration for or in exchange for the right to occupy a hotel
room as herein defined.

(b) “Consumer” means a person who
pays the consideration
for the use or occupancy of a hotel room. The term
“consumer” shall not be construed to mean the government
of the United States of America, its agencies or instrumental-
ities, or the government of the state of West Virginia or
political subdivisions thereof.

(c) “Hotel” means any facility, building or buildings,
publicly or privately owned (including a facility located in a
state, county or municipal park), in which the public may, for
a consideration, obtain sleeping accommodations. The term
shall include, but not be limited to, boarding houses, hotels,
motels, inns, courts, lodges, cabins and tourist homes. The
term “hotel” shall include state, county and city parks offering
accommodations as herein set forth. The term “hotel” shall not
be construed to mean any hospital, sanitarium, extended care
facility, nursing home or university or college housing unit or
any facility providing fewer than three hotel rooms, nor any
tent, trailer or camper campsites: Provided, That where a
university or college housing unit provides sleeping accommo-
dations for the general nonstudent public for a consideration,
the term “hotel” shall, if otherwise applicable, apply to such
accommodations for the purposes of this tax.
(d) "Hotel operator" means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor or in any other capacity. Where the hotel operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed a hotel operator for the purposes of this article and shall have the same duties and liabilities as his principal. Compliance with the provisions of this article by either the principal or the managing agent shall, however, be considered to be compliance by both.

(e) "Hotel room" means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term "hotel room" shall not be construed to mean a banquet room, meeting room or any other room not primarily used for, or in conjunction with, sleeping accommodations.

(f) "Person" means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator or any other group or combination acting as a unit.

(g) "State park" means any state-owned facility which is part of this state's park and recreation system established pursuant to this code. For purposes of this article, any recreational facility otherwise qualifying as a "hotel" and situated within a state park shall be deemed to be solely within the county in which the building or buildings comprising said facility are physically situated, notwithstanding the fact that the state park within which said facility is located may lie within the jurisdiction of more than one county.

(h) "Tax," "taxes" or "this tax" means the hotel occupancy tax authorized by this article.

(i) "Taxing authority" means a municipality or county levying or imposing the tax authorized by this article.

(j) "Taxpayer" means any person liable for the tax authorized by this article.
§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by any municipality or county hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority shall, by ordinance, order, regulation or otherwise require in writing the hotel operator to segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of article fifteen, chapter eleven of this code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

(b) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.

§7-18-5. Occupancy billed to government agencies or employees.

(a) Hotel room occupancy billed directly to the federal government shall be exempt from this tax: Provided, That rooms paid for by a federal government employee for which reimbursement is made shall be subject to this tax.

(b) Hotel room occupancy billed directly to this state or its political subdivisions shall be exempt from this tax: Provided, That rooms paid for by an employee of this state for which reimbursement is made shall be subject to this tax.

§7-18-6. Collection of tax when sale on credit.

A hotel operator doing business wholly or partially on a
credit basis shall require the consumer to pay the full amount
of tax due upon a credit sale at the time such sale is made
or within thirty days thereafter.

§7-18-7. Receivership bankruptcy; priority of tax.

In the distribution, voluntary or compulsory, in receivership,
bankruptcy or otherwise, of the property or estate of any
person, all taxes due and unpaid authorized under this article
shall be paid from the first money available for distribution
in priority to all claims and liens except taxes and debts due
to the United States which under federal law are given priority
over the debts and liens created by municipal ordinance or
order of the county commission for this tax and taxes and
debts due to the state of West Virginia. Any person charged
with the administration or distribution of any such property
or estate who shall violate the provisions of this section shall
be personally liable for any taxes accrued and unpaid which
are chargeable against the person whose property or estate is
in administration or distribution.

§7-18-8. Failure to collect or remit tax; liability of hotel operator.

If any hotel operator fails to collect the tax authorized by
this article and levied pursuant to municipal ordinance or
order of the county commission or shall fail to properly remit
such tax to the taxing authority, he shall be personally liable
for such amount as he failed to collect or remit: Provided,
That such hotel operator shall not be held liable for failure
to collect such tax if the hotel operator can by good and
substantial evidence prove the refusal of the purchaser to pay
this tax despite the diligent effort in good faith of the hotel
operator to collect the tax.

§7-18-9. Total amount collected to be remitted.

No profit shall accrue to any person as a result of the
collection of the tax authorized under this article. Notwith-
standing that the total amount of such taxes collected by a
hotel operator may be in excess of the amount for which a
consumer would be liable by the application of the levy of
three percent for the occupancy of a hotel room or rooms,
the total amount of all taxes collected by any hotel operator
shall be remitted to the taxing authority as hereinafter
provided.
§7-18-10. Tax return and payment.

Unless otherwise provided by ordinance, order, rule or regulation of the taxing authority, the tax authorized by this article, if imposed or levied by any municipality or county, shall be due and payable in monthly installments on or before the fifteenth day of the calendar month next succeeding the month in which the tax accrued: Provided, That for credit sales in which the tax authorized by this article is not collected by the hotel operator at the time of such sales, such tax shall not, for purposes of this article, be regarded as having accrued until the date on which it is either received by the hotel operator or upon the expiration of the thirty day payment period set forth in section six of this article, whichever shall first occur. The hotel operator shall, on or before the fifteenth day of each month, prepare and deliver to the taxing authority a return for the preceding month, in the form prescribed by the taxing authority. Such form shall include all information necessary for the computation, collection and subsequent distribution of the tax as the taxing authority may require. A remittance for the amount of the tax due shall accompany each return. Each return shall be signed by the hotel operator or his duly authorized agent.


Each hotel operator shall keep complete and accurate records of taxable sales and of charges, together with a record of the tax collected thereon, and shall keep all invoices and other pertinent documents in such form as the taxing authority may require. Such records and other documents shall be preserved for a period of not less than three years, unless the taxing authority shall consent in writing to their destruction within that period or shall require that they be kept for a longer period.

§7-18-12. Liability of officers.

If the taxpayer is an association or corporation, the officers thereof actually participating in the management or operation of the association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation; and payment of tax, fines, additions to tax or penalties which may be imposed by state law, municipal ordinance, order of the county commission or
other authority may be enforced against such officers as against the association or corporation which they represent.


(a) The taxing authority shall promulgate, by ordinance, order, rule or regulation, administrative procedures for the assessment, collection and refund of the tax authorized by this article. In the case of a county, the sheriff of that county shall be the county’s agent for administration and collection of the tax and shall have the power to restrain property and to initiate civil suits for collection of this tax. The county commission may promulgate such regulations and return forms as may be necessary or desirable for the administration and collection of the tax.

(b) The county assessor shall have the power and the duty to issue tax returns and to receive tax returns for this tax.

(c) In any dispute arising among or between cities or counties or cities and counties as to jurisdiction to tax or apportionment of taxes collected, the tax commissioner may by ruling or regulation decide such disputes.

(d) Notwithstanding any other provisions of this section, taxing authorities may, in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreements among and between such taxing authorities for the collection or administration of this tax.

(e) Notwithstanding any other provisions of this section, taxing authorities may, in accordance with the provisions of article twenty-three, chapter eight of this code, enter into agreements with the tax commissioner for auditing services: Provided, That the taxing authorities shall pay to the tax commissioner the reasonable cost of such audits.

§7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission, and after appropriation thereof shall be expended only as provided in subsections (b) and (c) of this section.

(b) Required expenditures. — At least fifty percent of the
net revenue receivable during the fiscal year by a county, or a municipality, pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities. — If a convention and visitor’s bureau is located within the municipality, the governing body of such municipality shall appropriate the percentage required by this subsection (b) to that bureau. If a convention and visitor’s bureau is not located within the municipality, but such a bureau is located within the county in which the municipality is located, then the percentage appropriation required by this subsection (b) shall be appropriated to such convention and visitor’s bureau located within such county. If a convention and visitor’s bureau is not located within such county, then the percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such municipality may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) The balance of net revenue required to be expended by subsection (b) of this section shall be appropriated to the regional travel council serving the area in which the municipality is located.

(2) Counties. — If a convention and visitor’s bureau is located within a county, the county commission shall appropriate the percentage required by this subsection (b) to that convention and visitor’s bureau. If a convention and visitor’s bureau is not located within such county, then the
percentage appropriation required by this subsection (b) shall be appropriated as follows:

(i) Any hotel located within such county may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to subsection (b) of this section: Provided, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) The balance of net revenue required to be expended by subsection (b) of this section shall be appropriated to the regional travel council serving the area in which the county is located.

(3) Legislative finding. — The Legislature hereby finds that the support of convention and visitor's bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor's bureaus, hotels and regional travel councils receiving funds under this subsection (b) may expend such funds for the payment of administrative expenses, and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subdivisions one and two of this subsection (b).

(c) Permissible expenditures. — After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities including, but not limited
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88 to, arenas, auditoriums, civic centers and convention centers;
89 (2) The payment of principal or interest or both on revenue
90 bonds issued to finance such convention facilities;
91 (3) The promotion of conventions;
92 (4) The construction or maintenance of public parks, tourist
93 information centers and recreation facilities (including land
94 acquisition); or
95 (5) The promotion of the arts.
96 (d) Definitions. — For purposes of this section, the
97 following terms are defined:
98 (1) Convention and visitor's bureau and visitor's and
99 convention bureau. — "Convention and visitor's bureau" and
100 "visitor's and convention bureau" are interchangeable, and
101 either shall mean a nonstock, nonprofit corporation with a
102 full-time staff working exclusively to promote tourism and to
103 attract conventions, conferences and visitors to the municipal-
104 ity or county in which such convention and visitor's bureau
105 or visitor's and convention bureau is located.
106 (2) Convention center. — "Convention center" means a
107 convention facility owned by the state, a county, a municipal-
108 ity or other public entity or instrumentality and shall include
109 all facilities, including armories, commercial, office, commu-
110 nity service and parking facilities, and publicly owned facilities
111 constructed or used for the accommodation and entertainment
112 of tourist and visitors, constructed in conjunction with the
113 convention center and forming reasonable appurtenances
114 thereto.
115 (3) Fiscal year. — "Fiscal year" means the year beginning
116 July first and ending June thirtieth of the next calendar year.
117 (4) Net proceeds. — "Net proceeds" means the gross
118 amount of tax collections less the amount of tax lawfully
119 refunded.
120 (5) Promotion of the arts. — "Promotion of the arts" means
121 activity to promote public appreciation and interest in one or
122 more of the arts. It includes the promotion of music for all
123 types, the dramatic arts, dancing, painting and the creative arts
124 through shows, exhibits, festivals, concerts, musicals and plays.
(6) "Recreational facilities" means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) "Regional travel council" means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.


(a) It shall be unlawful for any person to willfully refuse to collect or to pay the tax or to willfully refuse to make the return required to be made by this article; or to willfully make any false or fraudulent return or false statement in any return with the intent to defraud any taxing authority, or to willfully evade the payment of the tax, or any part thereof; or for any person to willfully aid or abet another in any attempt to evade the payment of the tax, or any part thereof; or for any officer, partner or principal of any corporation or association to willfully make or willfully permit to be made for such corporation or association any false return, or any false statement in any return authorized by this article, with the intent to evade the payment of this tax.

(b) Any person willfully violating any of the provisions of this article shall for the first offense be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for a period of not more than thirty days, or both fined and imprisoned. For each offense after the first offense, such person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned in the penitentiary not less than one nor more than three years, or in the discretion of the court be confined in the county jail not more than one year, or both fined and imprisoned.

(c) Every prosecution for any offense arising under this article shall be commenced within three years after the offense was committed, notwithstanding any provision of this code to the contrary.
(d) Proceedings against any person under this section shall be initiated in the county of this state wherein such person resides if any element of the offense occurs in such county of residence, or if no element of the offense occurs in such county of residence, then in the county where the offense was committed.

(e) For purposes of this section, the term:

(1) "Willfully" means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this article, in respect of which the violation occurs: Provided, That the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant have had knowledge of or notice of a duty to perform such act, and that the defendant, with knowledge of or notice of such duty, intentionally failed to perform such act.

(2) "Evade" means to willfully and fraudulently commit any act with the intent of depriving the state of payment of any tax which there is a known legal duty to pay.

(3) "Fraud" means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intention that such representation or concealment be relied upon by the state.

CHAPTER 97

(H. B. 1697—By Mr. Speaker, Mr. Albright and Delegate Swann)

[Passed April 2, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, eighteen and twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article eighteen-b of said chapter, all relating to the West Virginia housing development fund; defining eligible persons and families by including persons or families of higher income; defining temporary housing to include temporary residential housing for shelters for homeless people, housing for victims of flood
and other disasters, shelters for abused or battered persons and their children, housing for families with hospitalized family members, housing for students and student families and housing for handicapped; authorizing the housing development fund to own real property and to make loans for temporary housing; providing tax exemption; authorizing a limit on borrowing; providing that the housing development fund may contract with private institutions to place and service loans and authorizing an increase in the interest rate for servicing of loans.

Be it enacted by the Legislature of West Virginia:

That sections three, six, eighteen and twenty, article eighteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article eighteen-b of said chapter be amended and reenacted, all to read as follows:

Article.
18. West Virginia Housing Development Fund.
18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.


§31-18-6. Corporate powers.


1 As used in this article, unless the context otherwise requires:

2 (1) “Annual sinking fund payment” means the amount of money specified in the resolution or resolutions authorizing term bonds as payable into a sinking fund during a particular calendar year for the retirement of term bonds at maturity after such calendar year, but shall not include any amount payable by reason only of the maturity of a bond;

8 (2) “Development costs” means the costs approved by the housing development fund as appropriate expenditures by the housing development fund, by sponsors of land development for residential housing, or by sponsors of residential housing, within this State, including, but not limited to:

13 (a) Payments for options to purchase properties on the
proposed residential housing site, deposits on contracts of
purchase, or, with prior approval of the housing development
fund, payments for the purchase of such properties;

(b) Legal and organization expenses, including payments of
attorneys' fees, project manager and clerical staff salaries,
office rent and other incidental expenses;

(c) Payment of fees for preliminary feasibility studies and
advances for planning, engineering and architectural work;

(d) Expenses for tenant surveys and market analyses; and

(e) Necessary application and other fees;

(3) "Eligible persons and families" means:

(a) Persons and families of low and moderate income; or

(b) Persons or families of higher income to the extent the
housing development fund shall find and determine, by
resolution, that construction of new or rehabilitated residential
housing for occupancy by them will cause to be vacated
existing sanitary, decent and safe residential housing available
at prices or rentals which persons and families of low and
moderate income can afford; or

(c) Persons or families of higher income to the extent the
housing development fund shall find and determine, by
resolution, that construction of new or rehabilitated multi-
family rental housing or new, rehabilitated or existing home
ownership housing in the state for occupancy by them will
further economic growth, increase the housing stock in the
state by eliminating substandard or deteriorating housing
conditions, or provide additional housing opportunities in the
state; or

(d) Persons who because of age or physical disability are
found and determined by the housing development fund, by
resolution, to require residential housing of a special location
or design in order to provide them with sanitary, decent and
safe residential housing; or

(e) Persons and families for whom, as found and determined
by the housing development fund by resolution, construction
of new or rehabilitated residential housing some designated
area or areas of the state is necessary for the purpose of
retaining in, or attracting to, such area or areas qualified manpower resources essential to modern mining, industrial and commercial operations and development in such area or areas;

(4) "Federally insured construction loan" means a construction loan for land development for residential housing or for residential housing which is either secured by a federally insured mortgage or a federal mortgage, or which is insured by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to insure such loan;

(5) "Federally insured mortgage" means a mortgage loan for land development for residential housing or for residential housing insured or guaranteed by the United States or an instrumentality thereof to insure such a mortgage;

(6) "Federal mortgage" means mortgage loan for land development for residential housing or for residential housing made by the United States or an instrumentality thereof, or a commitment by the United States or an instrumentality thereof to make such a mortgage loan;

(7) "Housing development fund" means the West Virginia housing development fund heretofore created and established by section four of this article;

(8) "Land development" means the process of acquiring land for residential housing construction and of making, installing or constructing nonresidential housing improvements, including waterlines and water supply installations, sewer lines and sewage disposal installations, steam, gas and electric lines and installations, roads, streets, curbs, gutters, sidewalks, whether on or off the site, which the housing development fund deems necessary or desirable to prepare such land for residential housing construction within this state;

(9) "Land development fund" means the land development fund which may be created and established by the housing development fund in accordance with section twenty-a of this article;

(10) "Minimum bond insurance requirement" means, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current...
or any future calendar year, of annual debt service of the
housing development fund on all outstanding mortgage finance
bonds, such annual debt service for any calendar year being
the amount of money equal to the aggregate of (a) all interest
payable during such calendar year on such mortgage finance
bonds on said date of computation, plus (b) the principal
amount of such mortgage finance bonds outstanding which
matures during such calendar year, other than mortgage
finance bonds for which annual sinking fund payments have
been or are to be made in accordance with the resolution
authorizing such bonds, plus (c) the amount of all annual
sinking fund payments payable during such calendar year with
respect to any such mortgage finance bonds, all calculated on
the assumption that bonds will after said date of computation
cease to be outstanding by reason, but only by reason, of the
payment of bonds when due, and the payment when due and
application in accordance with the resolution authorizing such
bonds of all such sinking fund payments payable at or after
said date of computation;

(11) "Mortgage finance bonds" means bonds issued or to be
issued by the housing development fund and secured by a
pledge of amounts payable from the mortgage finance bond
insurance fund in the manner and to the extent provided in
section twenty-b of this article;

(12) "Mortgage finance bond insurance fund" means the
special trust fund created and established in the state treasury
in accordance with section twenty-b of this article;

(13) "Operating loan fund" means the operating loan fund
which may be created and established by the housing
development fund in accordance with section nineteen of this
article;

(14) "Persons and families of low and moderate income"
means persons and families, irrespective of race, creed,
national origin or sex, determined by the housing development
fund to require such assistance as is made available by this
article on account of personal or family income not sufficient
to afford sanitary, decent and safe housing, and to be eligible
or potentially eligible to occupy residential housing con-
structed and financed, wholly or in part, with federally insured
construction loans, federally insured mortgages, federal
mortgages or with other public or private assistance, or with uninsured construction loans, or uninsured mortgage loans, and in making such determination the fund shall take into account the following: (a) The amount of the total income of such persons and families available for housing needs, (b) the size of the family, (c) the cost and condition of housing facilities available, (d) the eligibility of such persons and families for federal housing assistance of any type predicated upon low or moderate income basis, and (e) the ability of such persons and families to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing sanitary, decent and safe housing:

Provided, That to the extent found and determined by the housing development fund, by resolution, to be necessary or appropriate for the purposes of eliminating undesirable social conditions and permanently eliminating slum conditions, the income limitation requirements of this article may be waived as to any persons or families who are eligible to occupy residential housing constructed in whole, or in part, with federally insured construction loans, federally insured mortgages or federal mortgages under housing assistance or mortgage insurance programs of the United States, or an instrumentality thereof, predicated upon any low or moderate income basis;

(15) "Residential housing" means a specific work or improvement within this State undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, nursing homes and intermediate care facilities, and such other nonhousing facilities as may be incidental or appurtenant thereto;

(16) "Special bond insurance commitment fee" means a fee in the amount of one per centum of the total principal amount of each loan which is to be temporarily or permanently financed from the proceeds of mortgage finance bonds, other than a federally insured construction loan, a federally insured mortgage or a federal mortgage, or an amount equal to an equivalent discount on each loan purchased or invested in by the housing development fund from the proceeds of mortgage finance bonds, other than a federally insured construction
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171 loan, a federally insured mortgage or a federal mortgage, and
172 which may be payable from the proceeds of such bonds or
173 any other source available to the housing development fund
174 for such use: Provided, That if the period of time between the
175 first disbursement of proceeds of such loan and the date upon
176 which it is specified that the first repayment of principal of
177 such a loan shall be payable exceeds twelve months, an
178 additional amount computed on the basis of one twelfth of
179 one per centum per month on the total principal amount of
180 such loan over the number of months of such period of time
181 in excess of twelve months shall be included in such fee;

182 (17) "Special bond insurance premium" means (i) a fee at
183 the rate of one half of one percent per annum on the
184 outstanding principal balance which the housing development
185 fund shall charge the borrower of a mortgage loan, or of a
186 loan secured by a mortgage, financed from the proceeds of
187 mortgage finance bonds, other than a federally insured
188 construction loan, a federally insured mortgage or a federal
189 mortgage, which shall accrue from a date which is one month
190 prior to the date on which the first installment payment of
191 principal of such a loan is payable and which shall be payable
192 thereafter in monthly installments on the same day of each
193 successive month that installment payments of principal of
194 such a loan are payable, and (ii) with respect to any loan, other
195 than a federally insured construction loan, a federally insured
196 mortgage or a federal mortgage, purchased, or invested in with
197 such proceeds, an equivalent amount which the housing
198 development fund shall set aside from payments it receives on
199 such loan or from any other source available to the housing
200 development fund for such use;

201 (18) "State sinking fund commission" means the commis-
202 sion known as such and continued in existence pursuant to
203 article three, chapter thirteen of this code and any body,
204 board, person or commission which shall, by law, hereafter
205 succeed to the powers and duties of such commission;

206 (19) "Temporary housing" means a specific work or
207 improvement within this state undertaken primarily to provide
208 dwelling accommodations, including the acquisition, construc-
209 tion or rehabilitation of land, buildings and improvements
210 thereto, for temporary residential housing, including, but not
211 limited to, shelters for homeless people, housing for victims
of floods and other disasters, shelters for abused or battered persons and their children, housing for families with hospitalized family members, housing for students and student families, and housing for the handicapped and such other nonhousing facilities as may be incidental or appurtenant thereto;

(20) "Uninsured construction loans" means a construction loan for land development or for residential housing which is not secured by either a federally insured mortgage or a federal mortgage, and which is not insured by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance;

(21) "Uninsured mortgage" and "uninsured mortgage loan" means a mortgage loan for land development or for residential housing which is not insured or guaranteed by the United States or an instrumentality thereof, and as to which there is no commitment by the United States or an instrumentality thereof to provide insurance.

§31-18-6. Corporate powers.

The housing development fund is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose, including, but not limited to, the following:

(1) To make or participate in the making of federally insured construction loans to sponsors of land development for residential or temporary housing for occupancy by eligible persons and families or to sponsors of residential or temporary 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.
development for residential or temporary housing for occupancy by persons and families of low and moderate income or residential or temporary 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 or temporary housing for occupancy by eligible persons and families, or to eligible persons and families, who may purchase or construct such residential or temporary 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 obligation of the
United States of America;

(v) Direct obligations of or obligations guaranteed by the
State of West Virginia;

(vi) Direct and general obligations of any other state within
the territorial United States, to the payment of the principal
of and interest on which the full faith and credit of such state
is pledged: Provided, That at the time of their purchase, such
obligations are rated in either of the two highest rating
categories by a nationally recognized bond-rating agency; and

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

(12) To acquire, hold and dispose of real and 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 foreign 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 construction, 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 desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment or any installment of principal or interest, or any other terms, of mortgage loan, mortgage loan commitment, construction loan, rehabilitation 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
corporate 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
renewal 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, or rehabilitation or improve-
ment of residential and temporary housing for occupancy by
eligible persons and families or land development for
residential and temporary housing for occupancy by eligible
persons and families;

(23) To provide consultative project assistance services for
residential and temporary housing for occupancy by eligible
persons and families and for land development for residential
and temporary housing for occupancy by eligible persons and
families and for the residents thereof with respect to
management, training and social services;

(24) To promote research and development in scientific
methods of constructing low cost residential and temporary
housing of high durability;
175 (25) With the proceeds from the issuance of notes or bonds
176 of the housing development fund, including, but not limited
177 to, mortgage finance bonds, or with other funds available to
178 the housing development fund for such purpose, to participate
179 in the making of or to make loans to mortgagees approved
180 by the housing development fund and take such collateral
181 security therefor as is approved by the housing development
182 fund and to invest in, purchase, acquire, sell or participate in
183 the sale of, or take assignments of, notes and mortgages,
184 evidencing loans for the construction, rehabilitation, improve-
185 ment, purchase or refinancing of residential and temporary
186 housing in this state: Provided, That the housing development
187 fund shall obtain such written assurances as shall be
188 satisfactory to it that the proceeds of such loans, investments
189 or purchases will be used, as nearly as practicable, for the
190 making of or investment in long-term federally insured
191 mortgage loans or federally insured construction loans,
192 uninsured mortgage loans or uninsured construction loans, for
193 residential and temporary housing for occupancy by eligible
194 persons and families in this state or that other moneys in an
195 amount approximately equal to such proceeds shall be
196 committed and used for such purpose;

197 (26) To make or participate in the making of uninsured
198 construction loans to sponsors of land development for
199 residential or temporary housing for occupancy by eligible
200 persons and families or to sponsors of residential or temporary
201 housing for occupancy by eligible persons and families, or to
202 eligible persons and families who may construct such housing.
203 Such loans shall be made only upon determination by the
204 housing development fund that construction loans are not
205 otherwise available, wholly or in part, from private lenders
206 upon reasonably equivalent terms and conditions;

207 (27) To make or participate in the making of long-term
208 uninsured mortgage loans to sponsors of residential or
209 temporary housing for occupancy by eligible persons and
210 families, or to eligible persons and families who may purchase
211 or construct such residential housing. Such loans shall be made
212 only upon determination by the housing development fund
213 that long-term mortgage loans are not otherwise available,
214 wholly or in part, from private lenders upon reasonably
215 equivalent terms and conditions;
(28) To obtain options to acquire and to acquire real property, or any interest therein, in its own name, by purchase, or lease, or otherwise, which is found by the housing development fund to be suitable, or potentially suitable, as a site, or as part of a site, for the construction of residential or temporary housing; to hold such real property; to make loans to finance the performance 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 and temporary 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 or temporary housing, for such prices, upon such terms, conditions and limitations, and at such time or times as the housing development fund shall determine, to sponsors of residential or temporary housing: Provided, That if the housing development 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 or temporary housing, the housing development fund may sell, transfer and convey, lease or otherwise dispose of the same, to such purchasers or lessees, 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 determines reasonably necessary and practicable from the land development 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;

(31) To make or participate in the making of loans to eligible persons and families for the purpose of rehabilitating or improving existing residential and temporary housing, or
to owners of existing residential or temporary housing for occupancy by eligible persons and families for the purpose of rehabilitating or improving such residential or temporary 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 reasonably 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 (28) of this section, and upon being unable 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 (28) 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 agricultural 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 receiving an opinion in writing from both the governor and the commissioner of agriculture of this state that at the time the fund had first attempted to acquire such real estate or interest therein, such real estate or interest therein was not in fact being used or operated by the owner in the production of agricultural products.


The housing development fund shall not be required to pay any taxes and assessments to the state of West Virginia, or any county, municipality or other governmental subdivision of the state of West Virginia, upon any of its property or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues or other income held or received by the housing

The aggregate principal amount of bonds and notes issued by the housing development fund shall not exceed one billion, two hundred fifty million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the housing development fund or by exchange for any such refunding bonds or notes, shall be excluded.

ARTICLE 18B. MORTGAGE AND INDUSTRIAL DEVELOPMENT INVESTMENT POOL.

§31-18B-9. Housing development fund may contract with private institutions to place and service loans or may itself provide such servicing; increasing interest rate and payment of a portion of interest to cover cost of servicing.

(a) The housing development fund may contract with private mortgage companies, savings and loan associations or banks to provide for the placement, origination and servicing of the mortgages described in this article or the housing development fund may provide such servicing: Provided, That such institutions must be licensed to do business in West Virginia and, in the case of a savings and loan, or a bank, must be under the supervision of the department of banking of this state as provided in chapter thirty-one-a of this code or must be a national bank or a federally insured savings and loan. Such institutions shall follow the same restrictions as the housing development fund, and shall act only as the agent for such.

(b) Notwithstanding the maximum interest rate specified in section six of this article, the housing development fund is authorized to increase the interest rate, up to one half of one percent over the rate provided in section six to pay the cost
of placing and servicing the mortgages.

(c) If the housing development fund so determines, one of the points provided for in section six of this article may be paid to the private mortgage company, bank or savings and loan to cover the expense of origination of the loan.

CHAPTER 98
(S. B. 704—Originating in the Committee on Finance)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the human rights commission; compensation of members and reimbursement for expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-5. Composition; appointment, terms and oath of members; compensation and expenses.

1 The commission shall be composed of nine members, all residents and citizens of the state of West Virginia and broadly representative of the several racial, religious and ethnic groups residing within the state, to be appointed by the governor, by and with the advice and consent of the Senate. Not more than five members of the commission shall be members of the same political party and at least one member, but not more than three members, shall be from any one congressional district.

10 Members of the commission shall be appointed for terms of three years commencing on the first day of July of the year of their appointments, except that the nine members first appointed hereunder shall be appointed
for terms of from one to three years, respectively, so that the terms of three members of the commission will expire on the thirtieth day of June of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the commission, each commission member shall take and subscribe to the official oath prescribed by section 5, article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the secretary of state.

The members of the commission shall not receive a salary, but each appointed member shall be paid twenty-five dollars per diem for actual time spent in the performance of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

CHAPTER 99
(H. B. 1100—By Delegate Knight and Delegate McKinley)

[Passed March 15, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the department of human services.

Be it enacted by the Legislature of West Virginia:

That section one-a, article two, chapter nine 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 HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed department of human services; continuation.

The state department of welfare, created pursuant to the provisions of chapter nine of this code, is hereby continued as an official department of the state of West Virginia, but effective May twenty-nine, one thousand nine hundred eighty-three, its name shall be the department of human services. All references in the code to the department of welfare shall mean the department of human services, and all references to the commissioner of the department of welfare shall mean the commissioner of the department of human services and for all other legal purposes the department of welfare shall continue as the department of human services.

After having conducted a performance 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 department of human services should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the department of human services shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 100
(S. B. 606—By Senator Whitacre)

[Passed April 10, 1985; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-11. Sale of wildlife; transportation of same.
§20-2-12. Transportation of wildlife out of state; penalties.

§20-2-11. Sale of wildlife; transportation of same.

1 No person, except those legally licensed to operate private game preserves for the purpose of propagating game for commercial purposes, and those legally licensed to propagate or sell fish, amphibians and other forms of aquatic life, shall purchase or offer to purchase, sell or offer to sell, expose for sale, or have in his possession for the purpose of sale any wildlife, or part thereof, which has been designated as game animals, fur-bearing animals, game birds, game fish or amphibians, or any of the song or insectivorous birds of the state, or any other species of wildlife which the director may designate: Provided, That pelts of game or fur-bearing animals taken during the legal season may be sold: Provided, however, That hide, head, antlers and feet of a legally killed deer and the hide, head, skull, organs and feet of a legally killed black bear may be sold.

2 No person, including a common carrier, shall transport, carry or convey, or receive for such purposes any wildlife, the sale of which is prohibited, if such person knows or has reason to believe that such wildlife has been or is to be sold in violation of this section.

3 The selling or exposing for sale, having in possession for sale, transporting or carrying in violation of this section shall each constitute a separate misdemeanor offense.

4 Notwithstanding the provisions of this or any other section of this chapter, any game birds or game bird meats sold by licensed retailers may be served at any hotel, restaurant or other licensed eating place in this state.

5 The director shall have authority to promulgate rules
§20-2-12. Transportation of wildlife out of state; penalties.

No person shall at any time transport or have in his possession with the intention of transporting beyond the limits of the state, any species of wildlife or any part thereof killed, taken, captured or caught within this state: Provided, That a nonresident legally entitled to hunt and fish in this state may take with him personally, when leaving the state, any wildlife that he has lawfully taken or killed, not exceeding, during the open season, the number that any person may lawfully take or kill in any two days. This section shall not apply to persons legally entitled to propagate and sell wild animals, wild birds, fish, amphibians and other forms of aquatic life: Provided, however, That licensed resident hunters and trappers and resident and nonresident fur dealers may transport beyond the limits of the state pelts of game and fur-bearing animals taken during the legal season: Provided further, That hide, head, antlers and feet of a legally killed deer, and the hide, head, skull, organs and feet of a legally killed black bear may also be transported beyond the limits of the state. The director shall have authority to promulgate rules and regulations in accordance with chapter twenty-nine-a of this code, dealing with the transportation and tagging of wildlife and the skins thereof.

Notwithstanding any provision of this section, any person violating the provisions of this section by transporting or possessing with the intention of transporting beyond the limits of this state, deer or wild boar, shall be deemed to have committed a separate offense for each animal so transported or possessed. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty dollars nor more than three hundred dollars and be imprisoned in the county jail not less than ten nor more than sixty days.
AN ACT to amend and reenact section twenty-two-a, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) No person in any county of this state shall hunt, capture or kill any bear, or have in his possession any bear, or any part thereof, including fresh pelt, except during the hunting season for bear designated by rules and regulations to be promulgated by the department of natural resources and at no other time nor in any other way than as herein and therein provided. A person on killing a bear shall, within twenty-four hours after killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. The bear shall have affixed thereto an appropriate tag provided by the department before any part of the bear may be transported more than seventy-five miles from the point of kill. Any bear not properly tagged, or any part of such bear, shall be forfeited to the state for disposal to a charitable institution, or school, or as otherwise designated by the department of natural resources.

It shall be unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;
(2) To hunt a bear with (a) a shotgun using ammunition loaded with more than one solid ball, or (b) a rifle of less than twenty-five caliber using rimfire ammunition or (c) a crossbow;

(3) To kill or attempt to kill any bear through the use of poison, or explosives, or through the use of snares, steel traps or deadfalls other than as authorized herein;

(4) To shoot at or kill a cub bear weighing less than one hundred pounds or to kill any bear accompanied by such cub;

(5) To have in possession any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of department personnel;

(7) To hunt bear with dogs during seasons other than those designated for such purpose by the department of natural resources; after a bear is spotted and the chase has begun, to pursue the bear with other than the pack of dogs in use at the beginning of the hunt;

(8) To train bear hunting dogs on bear or to cause dogs to chase bear at times other than those designated by the department of natural resources for the hunting of bear;

(9) Notwithstanding the provisions of sections twenty-three and twenty-four of this article, for any person to organize for commercial purposes, or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt;

(10) For any person, who is not a resident of this state, to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state, except in legally authorized hunts.

(b) The following shall apply to bear destroying property:

(1) Any property owner including a lessee, who has suffered damage to real or personal property including loss occasioned by the death of livestock or the injury thereto or the unborn issue thereof, caused by an act of a bear may complain to any conservation officer of the department of natural resources, for
the protection against such bear. Upon receipt of the
complaint, such officer shall immediately proceed to investi-
gate the circumstances giving rise to such complaint, and if
such officer is unable to personally investigate the complaint,
he shall designate a wildlife biologist to investigate on his
behalf and if the complaint is found to be justified, such officer
or designated person, may, together with the owner and other
residents, proceed to hunt and destroy or capture the bear
which is determined to have caused the property damage:
Provided, That only the conservation officer or the wildlife
biologist shall determine whether the bear shall be destroyed
or captured. Notwithstanding any provision of this article, if
it is determined that the complaint is justified, the officer or
designated person may summon or use dogs from within or
without this state to effectuate the hunting and destruction or
capture of such bear. Provided, however, That in the event
dogs from without this state are used in such hunt, the owners
thereof shall be the only nonresidents permitted to participate
in hunting such bear.

(2) When a property owner has suffered damage as the
result of an act by a bear, such owner shall file a report with
the director of the department of natural resources, stating
whether or not such bear was hunted and destroyed and if so,
the sex, weight and estimated age of subject bear, and also
submit to the department an appraisal of the property damage
occasioned by subject bear duly signed by three competent
appraisers, fixing the value of the property lost. Such report
shall be ruled upon and the alleged damages examined by a
commission to which it shall be referred by the department.
The commission shall be composed of the complaining
property owner, an officer of the department and a person to
be selected by the officer of the department and the
complaining property owner. The department shall by rules
and regulations to be promulgated, establish the procedures
to be followed in presenting and deciding claims under this
section and all such claims shall be paid in the first instance
from the bear damage fund provided in section forty-four-b
of this article, and in the event such fund is insufficient to pay
all claims determined by the commission to be just and proper
the remainder due to owners of lost or destroyed property shall
be paid from the special revenue account of the department
of natural resources.
(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death, and in cases where livestock killed is pregnant, the total value shall be the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue, had it been born. In no event shall the fair market value of the livestock exceed twice the assessed value of the livestock for personal property taxes.

(c) Any person who kills a bear in violation of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than five hundred dollars, or imprisoned in the county jail not less than thirty nor more than one hundred days, or both fined and imprisoned.

CHAPTER 102
(Com. Sub. for S. B. 685—By Senator Tucker)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixty-two, relating to former prisoners of war being permitted to hunt and fish in season without licenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-62. Persons exempt from obtaining hunting and fishing licenses; qualification.

Any person who has been a prisoner of war, was hon-
orably discharged from the military forces and is a resident of this state may take, or catch by angling, fish of the kind lawfully permitted to be taken or caught and may hunt or trap wild birds or wild quadrupeds lawfully permitted to be hunted or trapped without procuring a fishing license, hunting license or trapping permit. The person, while taking or catching fish or hunting or trapping wild birds or wild quadrupeds for which he would otherwise be required to have a fishing license, hunting license or trapping permit, shall carry written evidence in the form of a record of separation, a letter from one of the military forces of the United States, or such other evidence as the director of the department of natural resources requires by rule that satisfies the eligibility criteria established by this section.

For purposes of this section, 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. Notwithstanding any provision in this section, a prisoner of war shall not include 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.

CHAPTER 103
(Com. Sub. for H. B. 1424—By Delegate Givens)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding
thereto a new article, designated article twenty-nine-c, relating to the establishment and funding of an indigent care fund; assessment of hospitals by health care cost review authority; rules and regulations; legislative task force on uncompensated health care and medicaid expenditures created; termination of article.

_Be it enacted by the Legislature of West Virginia:_

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

**ARTICLE 29C. INDIGENT CARE.**

§16-29C-1. Short title.

§16-29C-2. Legislative findings.

§16-29C-3. Indigent care fund.

§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

§16-29C-5. Effective date and termination date.

§16-29C-1. Short title.

This article shall be known and may be cited as the "Indigent Care Act."

§16-29C-2. Legislative findings.

The Legislature does hereby find as follows:

(a) That hospitals in this state presently are required to bear without compensation a substantial portion of the cost of the health care services rendered to indigent patients in this state;

(b) That, as a result of this burden, hospitals in this state presently are forced to shift the cost of these uncompensated services onto private pay patients and increase substantially their charges to private pay patients;

(c) That, as a further result of this burden, the financial status of hospitals in this state and the health and welfare of the citizens of this state are threatened;

(d) That, in order to alleviate this burden and the results thereof, special funds for the state's medicaid program must be established to assist hospitals in financing these uncompensated services;

(e) That, increasing numbers of citizens of this state are
experiencing difficulties having access to medical care due to the lack of resources to pay for medical services;

(f) That, no immediate relief is seen for such individuals by way of their obtaining medical insurance or having access to sufficient funds to pay for such medical services;

(g) That, the state medicaid program faces serious financial difficulties in terms of decreasing amounts of available federal and state dollars by which to fund the medicaid program and in paying debts presently owed hospitals;

(h) That the magnitude of the present problem may necessitate an assessment of hospitals for a period limited to one year as a means of raising additional revenue to address the problem;

(i) That, the provision of primary health services in the hospital setting is inefficient from both a cost containment and a medical practices viewpoint; and

(j) That, the health and well-being of all state citizens is of primary concern to state government.

§16-29C-3. Indigent care fund.

(a) There is hereby created in the state treasury a special fund to be known as the indigent care fund.

(b) Moneys from the following sources shall be paid into the indigent care fund:

(1) For the state’s fiscal year beginning in the year one thousand nine hundred eighty-five, the Legislature shall make an appropriation to the indigent care fund in an amount to be determined by it which shall be in addition to its general appropriation to the state’s medicaid program; and

(2) On the first day of July, one thousand nine hundred eighty-five, the West Virginia health care cost review authority may assess hospitals under the jurisdiction of the authority, with the exception of hospitals owned and operated by the state government, an aggregate amount which is either equal to the Legislature’s fiscal year one thousand nine hundred eighty-five-eighty-six appropriation to the indigent care fund or three million dollars, whichever is less: Provided, That if the authority makes such an assessment, the authority shall
certify that such assessment is for a one-year period and is necessary for the health and well-being of all the citizens of the state and provide the reasons therefor.

(c) Each hospital assessed pursuant to subdivision (2), subsection (b) of this section shall be assessed on a pro rata basis based upon a three year average of net revenues less expenditures and taxes for each hospital's one thousand nine hundred eighty-two, one thousand nine hundred eighty-three and one thousand nine hundred eighty-four fiscal years weighted by the hospital's ratio of West Virginia gross medicaid revenues to gross patient revenues for the same three-year period. Payment of this assessment shall be made in four equal quarterly payments and remittable no later than the end of the month succeeding the close of each quarter.

(d) All moneys paid into the indigent care fund shall be used to supplement the Legislature's general appropriation to the state's medicaid program in order that the state may receive corresponding matching funds from the federal government and the state's medicaid program shall be utilized to finance the amount of inpatient and outpatient acute care hospital services practicable.

(e) If it is determined by the United States department of health and human services that federal medicaid funds will not be forthcoming to match all or part of the funds assessed from hospitals, that portion of the hospital assessment for which no matching federal funds will be forthcoming will not be collected from hospitals and any such hospital assessment already collected will be returned to said hospitals.

(f) Any balance remaining in the indigent care fund at the end of the state's fiscal year shall not revert to the state treasury, but shall remain in the indigent care fund and be used consistent with subsection (d) of this section.

(g) The West Virginia health care cost review authority shall administer and promulgate rules and regulations to implement the provisions of this section: Provided, That in so doing the authority shall seek the advice of the department of human services: Provided, however, That nothing in this article shall be construed to give the West Virginia health care cost review authority any jurisdiction over the medicaid program or its operations.
§16-29C-4. Legislative study; appointment of members; expenses; reports; termination.

1. Not later than the first day of June, one thousand nine hundred eighty-five, the president of the Senate and speaker of the House of Delegates of the West Virginia Legislature shall appoint a legislative task force on uncompensated health care and medicaid expenditures which shall meet, study and make recommendations as herein provided.

2. The task force shall be composed of three members of the Senate appointed by the president from the membership of the Senate standing committee on health and human resources, three members of the House of Delegates appointed by the speaker from the membership of the House of Delegates standing committee on health and welfare, and a number of citizens appointed jointly by the president and speaker which, in their discretion, adequately provides for the appropriate representation of the interests of the providers of health care services, the providers of health care insurance, state departments involved in the administration of health care and health care related programs and the citizens of this state. Of the members of the Senate appointed by the president, not more than two shall be from the same political party. Of the members of the House of Delegates appointed by the speaker, not more than two shall be from the same political party.

3. Members originally appointed to the task force shall serve for terms beginning on the date of appointment and ending on the thirtieth day of June, one thousand nine hundred eighty-eight, unless sooner replaced by the president or the speaker as applicable, or, in the discretion of the president and the speaker, unless the work of the task force is completed or the need for the task force no longer exists prior to that date. The task force shall cease to exist on the thirtieth day of June, one thousand nine hundred eighty-eight.

4. The task force shall meet on such dates as may be approved by the joint committee on government and finance for the regular meetings of its subcommittees unless approval is first obtained from the joint committee on government and finance for additional meetings. The task force shall conduct studies on the amount of funds expended by hospitals and other health care providers of this state for services to persons who
are unable to pay for those services and for which they receive no other form of reimbursement, the extent to which persons in this state forego needed medical services because of insufficient income and assets to pay for those services, the extent to which the state is maximizing available federal programs and moneys in providing health care services to the citizens of this state, the operation of the programs and funds created by this article and the roles of the public, private and private nonprofit sectors in providing health care services to the citizens of this state. The task force shall also study the state medicaid program in order to determine if the state medicaid agency, as the payor of last resort, is expending maximum effort to identify alternate private insurance resources for medicaid beneficiaries and shall study the feasibility and financial impact upon the state of assuring increased access to medicaid beneficiaries to primary health care in the nonhospital setting by requiring enrollment in a primary care clinic program, if available, and of the establishment of different and lesser schedules of payment for primary health services delivered by a hospital emergency room as compared to the schedule of payments for emergency room services of a true medical emergency nature. The task force shall make such recommendations as it deems appropriate to address the needs identified in the studies.

The task force shall file an interim report with the joint committee on government and finance and the Legislature on the date of the last meeting of the joint committee on government and finance prior to commencement of the regular session of the Legislature in each year before the final report of the task force is filed with the joint committee on government and finance and the Legislature on or before the thirtieth day of June, one thousand nine hundred eighty-eight.

The members of the task force shall be entitled to compensation at the rate authorized for members of the Legislature participating in legislative interim meetings and to reimbursement for reasonable and necessary expenses actually incurred in attending meetings of the task force, except that any employee of the state appointed to the task force is not entitled to such compensation. Funds necessary for the work of the task force shall be paid from joint appropriations to the Senate and House of Delegates but no such funds shall
be spent or obligations incurred in the conduct of such work
without prior approval of the joint committee on government
and finance.

§16-29C-5. Effective date and termination date.

This article shall be effective from passage, and section three
of this article shall terminate on the thirtieth day of June, one
thousand nine hundred eighty-six. The other sections of this
article shall be subject to termination pursuant to the
provisions of article ten, chapter four of the code on the
thirtieth day of June, one thousand nine hundred eighty-eight,
unless extended by legislation enacted prior to this termination
date.

CHAPTER 104
(H. B. 1290—By Delegate Smirl)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

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-b, relating to allowing for the group purchase of vehicle
insurance for the states transit properties.

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-
b, to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5b. Transit insurance.

In accordance with the terms and provisions of this article
the state board of risk and insurance management shall
provide appropriate aid and assistance to the transit author-
ities in this state in their procurement of fleet liability
insurance for all vehicles operated by any such authorities and
any and all expense associated with the procurement of
purchase of said insurance coverage shall be borne by the transit authorities.

CHAPTER 105
(H. B. 1861—By Delegate Riffle)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen-a, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to waiver of charitable or governmental immunity in public liability insurance policies issued to charitable associations and governmental units.

Be it enacted by the Legislature of West Virginia:

That section fourteen-a, article six, 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 6. THE INSURANCE POLICY.

§33-6-14a. Public liability insurance policies issued to charitable associations and governmental units to contain provision for waiving of immunity defense.

Any policy or contract of public liability insurance providing coverage for public liability sold, issued or delivered in this state to any religious or charitable corporation or association, either directly or to the trustees of such associations, or sold, issued or delivered to any governmental unit, agency or subdivision, shall be read so as to contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense, on behalf of the policyholder or any beneficiary thereof, to any claim covered by the terms of such policy within the policy limits, the immunity from liability of the insured by reason of such insured's charitable or governmental status, unless such provision or endorsement is rejected in writing by the named insured.
CHAPTER 106
(H. B. 1763—By Delegate Riffe)

[Passed April 2, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article ten, 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 nineteen-a; and to amend and reenact sections five, eight and eighteen, article twenty-six of said chapter, all relating to the rehabilitation and liquidation of insurers.

Be it enacted by the Legislature of West Virginia:

That article ten, 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 nineteen-a; and that sections five, eight and eighteen, article twenty-six of said chapter be amended and reenacted, all to read as follows:

Article.
10. Rehabilitation and Liquidation.

ARTICLE 10 REHABILITATION AND LIQUIDATION.

§33-10-19a. Priority of distribution.

1 The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution shall be:

(a) Class I. The costs and expenses of administration, including, but not limited to, the following:

10 (1) The actual and necessary costs of preserving or recovering the assets of the insurer;

12 (2) Compensation for all services rendered in the
13 liquidation;
14 (3) Any necessary filing fees;
15 (4) The fees and mileage payable to witnesses;
16 (5) Reasonable attorney's fees; and
17 (6) The reasonable expenses of a guaranty association or
18 foreign guaranty association in handling claims.
19 (b) Class II. Debts due to employees for compensation
20 under the provisions of section twenty-seven of this article.
21 (c) Class III. All claims under the provisions of subsection
22 (a), section thirty-six of this article.
23 (d) Class IV. Claims under nonassessable policies for
24 unearned premium or other premium refunds and claims of
25 general creditors.
26 (e) Class V. Claims of the federal or any state or local
27 government. Claims, including those of any governmental
28 body for a penalty or forfeiture, shall be allowed in this class
29 only to the extent of the pecuniary loss sustained from the act,
30 transaction or proceeding out of which the penalty or
31 forfeiture arose, with reasonable and actual costs occasioned
32 thereby. The remainder of such claims shall be postponed to
33 the class of claims under subdivision (h) of this section.
34 (f) Class VI. Claims filed late or any other claims other than
35 claims under subdivisions (g) and (h) of this section.
36 (g) Class VII. Surplus or contribution notes, or similar
37 obligations and premium refunds on assessable policies.
38 Payments to members of domestic mutual insurance compan-
39 ies shall be limited in accordance with law.
40 (h) Class VIII. The claims of shareholders or other owners.

ARTICLE 26. WEST VIRGINIA INSURANCE GUARANTY ASSOCIA-
TION ACT.
§33-26-5. Definitions.

§33-26-5. Definitions.
1 As used in this article:
(1) "Account" means any one of the two accounts created by section six of this article.

(2) "Association" means the West Virginia insurance guaranty association created under section six of this article.

(3) "Commissioner" means the insurance commissioner of West Virginia.

(4) "Covered claim" means an unpaid claim, including one for unearned premiums other than retrospective premiums or other premiums subject to adjustment after the date of liquidation, which arises out of and is within the coverage of an insurance policy to which this article applies and which policy is in force at the time of the occurrence giving rise to such unpaid claims if (a) the insurer issuing the policy becomes an insolvent insurer after the effective date of this article and (b) the claimant or insured is a resident of this state at the time of the insured occurrence, or the property from which the claim arises is permanently located in this state. "Covered claim" shall not include (i) any amount in excess of the applicable limits of coverage provided by an insurance policy to which this article applies; nor (ii) any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise from an insolvent insurer or the insured of an insolvent insurer to the extent of coverage under the insured’s policy.

(5) "Insolvent insurer" means an insurer (a) licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred and (b) against whom an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer’s state of domicile or of this state.

(6) "Member insurer" means any person who (a) writes any kind of insurance to which this article applies under section three of this article, including farmers’ mutual fire insurance companies and the exchange of reciprocal or interinsurance contracts, and (b) is licensed to transact insurance in this state.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this article applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net
direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Person" includes an individual, company, insurer, association, organization, society, reciprocal, partnership, syndicate, business trust, corporation or any other legal entity.

(9) "Receiver" means receiver, liquidator, rehabilitator or conservator as the context may require.


(1) The association shall:

(a) Be obligated to the extent of the covered claims existing prior to the determination of insolvency, and for such claims arising within thirty days after the determination of insolvency, but such obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the obligations of the insolvent insurer under the policy from which the claim arises. Notwithstanding any other provision of this article, a covered claim shall not include any claim filed with the guaranty fund after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, nor shall any default judgment or stipulated judgment against the insolvent insurer, or against the insured of an insolvent insurer, be binding against the association.

(b) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, defenses and obligations of the insolvent insurer as if the insurer had not become insolvent.

(c) Allocate claims paid and expenses incurred among the two accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under subdivision (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under section thirteen of this article and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar
year on the kinds of insurance in the account bears to the net
direct written premiums of all member insurers for the
preceding calendar year on the kinds of insurance in the
account. Each member insurer shall be notified of the
assessment not later than thirty days before it is due. No
member insurer may be assessed in any one year on any
account an amount greater than two percent of that member
insurer's net direct written premiums for the preceding
calendar year on the kinds of insurance in the account. If the
maximum assessment, together with the other assets of the
association in any account, does not provide in any one year
in any account an amount sufficient to make all necessary
payments from that account, the funds available shall be
prorated and the unpaid portion shall be paid as soon
thereafter as funds become available. The association may
exempt or defer, in whole or in part, the assessment of any
member insurer, if the assessment would cause the member
insurer's financial statement to reflect the amounts of capital
or surplus less than the minimum amounts required for a
certificate of authority by any jurisdiction in which the
member insurer is authorized to transact insurance. Each
member insurer may set off against any assessment, authorized
payments made on covered claims and expenses incurred in
the payment of such claims by the member insurer if they are
chargeable to the account for which the assessment is made.

(d) Investigate claims brought against the association and
adjust, compromise, settle and pay covered claims to the extent
of the association's obligation and deny all other claims and
may review settlements, releases and judgments to which the
insolvent insurer or its insureds were parties to determine the
extent to which such settlements, releases and judgments may
be properly contested.

(e) Notify such persons as the commissioner directs under
subsection (2), section ten of this article.

(f) Handle claims through its employees or through one or
more insurers or other persons designated as servicing
facilities. Designation of a servicing facility is subject to the
approval of the commissioner, but such designation may be
declined by a member insurer.

(g) Reimburse each servicing facility for obligations of the
association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this article.

(2) The association may:

(a) Employ or retain such persons as are necessary to handle claims and perform other duties of the association.

(b) Borrow funds necessary to effect the purposes of this article in accord with the plan of operation.

(c) Sue or be sued.

(d) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this article.

(e) Perform such other acts as are necessary or proper to effectuate the purpose of this article.

(f) Refund to the member insurers in proportion to the contribution of each member insurer to an account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year.


All proceedings in which the insolvent insurer is a party or obligated to defend a party in any court in this state shall be stayed for six months from the date the proof of claims provided for in section eighteen, article ten of this chapter is filed with the receiver to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any order, decision, verdict or finding based on the default of the insolvent insurer or its wrongful failure to defend an insured, the association either on its own behalf or on behalf of such insured may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.
CHAPTER 107

(H. B. 1851—By Delegate Yanni and Delegate Mastrantoni)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the payment of insurance benefits; when benefits must be paid; exceptions; penalties.

Be it enacted by the Legislature of West Virginia:

That section four, article eleven, 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 11. UNFAIR TRADE PRACTICES.

§33-11-4. Unfair methods of competition and unfair or deceptive acts or practices defined.

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(1) Misrepresentation and false advertising of insurance policies. — No person shall make, issue, circulate, or cause to be made, issued or circulated, any estimate, circular, statement, sales presentation, omission or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy; or

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy; or

(c) Make any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy; or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates; or

(e) Uses any name or title of any insurance policy or class
(f) Is a misrepresentation for the purpose of inducing or
tending to induce the lapse, forfeiture, exchange, conversion
or surrender of any insurance policy; or

(g) Is a misrepresentation for the purpose of effecting a
pledge or assignment of or effecting a loan against any
insurance policy; or

(h) Misrepresents any insurance policy as being shares of
stock.

(2) False information and advertising generally. — No
person shall make, publish, disseminate, circulate or placed
before the public, or cause, directly or indirectly, to be made,
published, disseminated, circulated or place before the public,
in a newspaper, magazine or other publication, or in the form
of a notice, circular, pamphlet, letter or poster or over any
radio or television station, or in any other way, an advertise­
ment, announcement or statement containing any assertion,
representation or statement with respect to the business of
insurance or with respect to any person in the conduct of his
insurance business, which is untrue, deceptive or misleading.

(3) Defamation. — No person shall make, publish, dissem­
inate or circulate, directly or indirectly, or aid, abet or
encourage the making, publishing, disseminating or circulating
of any oral or written statement or any pamphlet, circular,
article or literature which is false, or maliciously critical of or
derogatory to the financial condition of any person and which
is calculated to injure such person.

(4) Boycott, coercion and intimidation. — No person shall
enter into any agreement to commit, or by any concerted
action commit, any act of boycott, coercion or intimidation
resulting in or tending to result in unreasonable restraint of,
or monopoly in, the business of insurance.

(5) False statements and entries. — (a) No person shall
knowingly file with any supervisory or other public official,
or knowingly make, publish, disseminate, circulate or deliver
to any person, or place before the public, or knowingly cause
directly or indirectly, to be made, published, disseminated,
circulated, delivered to any person or placed before the public,
any false material statement of fact as to the financial
condition of a person.

(b) No person shall knowingly make any false entry of a
material fact in any book, report or statement of any person
or knowingly omit to make a true entry of any material fact
pertaining to the business of such person in any book, report
or statement of such person.

(6) Stock operations and advisory board contracts. — No
person shall issue or deliver or permit agents, officers or
employees to issue or deliver, agency company stock or other
capital stock, or benefit certificates or shares in any common-
law corporation, or securities or any special or advisory board
contracts or other contracts of any kind promising returns and
profits as an inducement to insurance.

(7) Unfair discrimination. — (a) No person shall make or
permit any unfair discrimination between individuals of the
same class and equal expectation of life in the rates charged
for any contract of life insurance or of life annuity or in the
dividends or other benefits payable thereon, or in any other
of the terms and conditions of such contract.

(b) No person shall make or permit any unfair discrimina-
tion between individuals of the same class and of essentially
the same hazard in the amount of premium policy fees, or rates
charged for any policy or contract of accident and sickness
insurance or in the benefits payable thereunder, or in any of
the terms or conditions of such contract, or in any other
manner whatever.

(c) As to kinds of insurance other than life and accident and
sickness, no person shall make or permit any unfair discrim-
ination in favor of particular persons, or between insureds or
subjects of insurance having substantially like insuring, risk
and exposure factors or expense elements, in the terms or
conditions of any insurance contract, or in the rate or amount
of premium charge therefor. This paragraph shall not apply
as to any premium or premium rate in effect pursuant to
article twenty of this chapter.

(8) Rebates. — (a) Except as otherwise expressly provided
by law, no person shall knowingly permit or offer to make
or make any contract of life insurance, life annuity, or accident
and sickness insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or pay or allow or give or offer to pay, allow or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or give or sell, or purchase or offer to give, sell or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in subdivision seven or paragraph (a) of subdivision eight of this section shall be construed as including within the definition of unfair discrimination or rebates any of the following practices:

(i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance: Provided, That any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses;

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(iv) Issuing life or accident and sickness policies on a salary savings or payroll deduction plan at a reduced rate commensurate with the savings made by the use of such plan.

(c) With respect to insurance other than life, accident and
sickness, ocean marine or marine protection and indemnity insurance, no person shall knowingly charge, demand or receive a premium for such insurance except in accordance with an applicable filing on file with the commissioner. No such person shall pay, allow or give, directly or indirectly, either as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance, except to the extent provided for in an applicable filing. No insured named in a policy of insurance, nor any relative, representative or employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents and brokers, nor as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As used in this section the word “insurance” includes suretyship and the word “policy” includes bond.

(9) Unfair claim settlement practices. — No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
(f) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds, when such insureds have made claims for amounts reasonably similar to the amounts ultimately recovered;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made;

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) Delaying the investigation or payment of claims by requiring an insured, claimant or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement;
(o) Failing to notify the first party claimant and the provider(s) of services covered under accident and sickness insurance and hospital and medical service corporation insurance policies whether the claim has been accepted or denied and if denied, the reasons therefore within fifteen calendar days from the filing of the proof of loss: Provided, That should benefits due the claimant be assigned, notice to the claimant shall not be required: Provided, however, That should the benefits be payable directly to the claimant, notice to the health care provider shall not be required. If the insurer needs more time to investigate the claim, it shall so notify the first party claimant in writing within fifteen calendar days from the date of the initial notification and every thirty calendar days, thereafter; but in no instance shall a claim remain unsettled and unpaid for more than ninety calendar days from the first party claimant's filing of the proof of loss unless there is, as determined by the insurance commissioner, (1) a legitimate dispute as to coverage, liability or damages; or (2) if the claimant has fraudulently caused or contributed to the loss. In the event that the insurer fails to pay the claim in full within ninety calendar days from the claimant's filing of the proof of loss, except for exemptions provided above, there shall be assessed against the insurer and paid to the insured a penalty which will be in addition to the amount of the claim and assessed as interest on such at the then current prime rate plus one percent. Any penalty paid by an insurer pursuant to this section shall not be a consideration in any rate filing made by such insurer.

(10) Failure to maintain complaint handling procedures. — No insurer shall fail to maintain a complete record of all the complaints which it has received since the date of its last examination under section nine, article two of this chapter. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints and the time it took to process each complaint. For purposes of this subsection, “complaint” shall mean any written communication primarily expressing a grievance.

(11) Misrepresentation in insurance applications. — No person shall make false or fraudulent statements or representations on or relative to an application for an insurance policy,
for the purpose of obtaining a fee, commission, money or other benefit from any insurer, agent, broker or individual.

CHAPTER 108
(Com. Sub. for S. B. 118—By Senator Tucker)

[Passed March 21, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article fourteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale of debtor groups credit life insurance and removal of certain statutory policy amount limitations.

Be it enacted by the Legislature of West Virginia:

That section three, article fourteen, 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 14. GROUP LIFE INSURANCE.
§33-14-3. Debtor groups.

1. The lives of a group of individuals may be insured under a policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall be all of the debtors of the creditor whose indebtedness is repayable either (i) in installments, or (ii) in one sum at the end of a period not in excess of eighteen months from the initial date of debt, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term "debtors" shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships
is under common control through stock ownership, contract or otherwise. No debtor shall be eligible unless the contract of indebtedness constitutes an obligation to repay which is binding upon him during his lifetime, at and from the date the insurance becomes effective upon his life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured. The policy may exclude from the classes eligible for insurance classes of debtors determined by age.

(d) The amount of insurance on the life of any debtor shall at no time exceed the amount owed by him which is repayable in installments to the creditor. Where the indebtedness is repayable in one sum to the creditor, the insurance on the life of any debtor shall in no instance be in effect for a period in excess of eighteen months except that such insurance may be continued for an additional period not exceeding six months in the case of default, extension or recasting of the loan.
(e) The insurance shall be payable to the policyholder.

Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment.

CHAPTER 109

(Com. Sub. for H. B. 1334—By Delegate Springston and Delegate Leary)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, four, six, seven, eight, ten, twelve and thirteen of said article, all generally relating to mine subsidence insurance; definition; mine subsidence; waivers; insurance fund; mine subsidence coverage; providing for waiver in certain counties; a waiting period; limited right of insurers to refuse to provide subsidence coverage; refusing coverage where damage is in progress; reinsurance agreements; adjustment of losses and administration of the fund; payment of losses; right of recourse; subrogation.

Be it enacted by the Legislature of West Virginia:

That section eleven, article thirty, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, four, six, seven, eight, ten, twelve and thirteen of said article be amended and reenacted to read as follows:

ARTICLE 30. MINE SUBSIDENCE INSURANCE.

§33-30-3. Definitions.

§33-30-4. Mine subsidence insurance fund.

§33-30-6. Mine subsidence coverage; waivers.

§33-30-7. Limited right of insurers to refuse to provide subsidence coverage.


§33-30-10. Payment of losses.

§33-30-12. Right of recourse.


§33-30-3. Definitions.

As used in this article:
(1) "Board" means the state board of risk and insurance management;

(2) "Mine subsidence" means loss to the structure caused by lateral or vertical movement, including collapse which results therefrom, of structures from collapse of man-made underground coal mines. It does not include loss caused by earthquake, landslide, volcanic eruption or collapse of storm and sewer drains and rapid transit tunnels;

(3) "Mine subsidence insurance fund" or "fund" means the fund established by this article within the office of the state board of risk and insurance management;

(4) "Policy" means a contract of insurance providing mine subsidence insurance;

(5) "Premium" means the gross rate charged policyholders for insurance provided by this article; and

(6) "Structure" means any dwelling, building or fixture permanently affixed to realty located in West Virginia, including basements, footings, foundations, septic systems and underground pipes directly servicing the dwelling or building. "Structure" shall not include driveways, sidewalks, parking lots, land, trees, plants, crops or agricultural field drainage tile.

§33-30-4. Mine subsidence insurance fund.

(a) There is hereby established within the office of the state board of risk and insurance management a fund to be known as the "mine subsidence insurance fund." The board shall operate the fund pursuant to this article.

(b) The fund shall make available insurance coverage against losses arising out of or due to mine subsidence within this state as to any structure within this state.

(c) The moneys in the fund shall be derived from premiums for subsidence insurance collected on behalf of the board pursuant to this article. The board shall be empowered to invest the fund and first use the interest therefrom for claim payments and administration expenses.

(d) Premiums for subsidence insurance shall be established by the board, who shall periodically review the premium level
and the experience data applicable to operation of the fund
and make changes as required.

(e) Premiums shall be established at a rate or within a
schedule of rates sufficient to satisfy all foreseeable claims
upon the fund during the period of coverage, giving due
consideration to relevant loss or claim experience or trends,
to cover normal costs of operation of the fund by the board
and provide a reasonable reserve fund for unexpected
contingencies. Deviation from the premium set by the board
shall not be allowed.

§33-30-6. Mine subsidence coverage; waivers.

Beginning the first day of October, one thousand nine
hundred eighty-two, every insurance policy issued or renewed
insuring on a direct basis a structure located in this state shall
include, at a separately stated premium, insurance for loss
occurring on or after October first, one thousand nine hundred
eighty-two, caused by mine subsidence unless waived by the
insured: Provided, That no waiver shall be required and such
coverage shall only be provided if requested by the insured in
the following counties: Berkeley, Cabell, Calhoun, Hampshire,
Hardy, Jackson, Jefferson, Monroe, Morgan, Pendleton,
Pleasants, Ritchie, Roane, Wirt, Wood: Provided, however,
That the effective date of a new policy or endorsement
containing mine subsidence insurance coverage shall be on the
thirtieth calendar day after the application date. The premium
charged for coverage shall be set by the board. The loss
coverage shall be the loss in excess of two percent of the
policy's total insured value, but at no time shall the deductible
be less than two hundred fifty dollars nor more than five
hundred dollars; and total insured value reinsured by the
board shall not exceed seventy-five thousand dollars: Provided
further, That in no event shall the amount of mine subsidence
reinsurance exceed the amount of the fire insurance on the
structure.

§33-30-7. Limited right of insurers to refuse to provide subsidence
coverage.

An insurer may refuse to provide subsidence coverage (1)
on a structure evidencing unrepaired subsidence damage, until
necessary repairs are made; or (2) where the insurer has
declined, nonrenewed or canceled all coverage under a policy
for underwriting reasons unrelated to mine subsidence:

Provided, That an insurer shall refuse to provide subsidence coverage on a structure which evidences a loss or damage in progress.

Any dispute arising under this section shall be subject to the hearing and appeal provisions of article two of this chapter.


All companies authorized to write fire insurance in this state shall enter into a reinsurance agreement with the board in which each insurer agrees to cede to the board one hundred percent, up to seventy-five thousand dollars, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agree to absorb all expenses of the insurer necessary for sale of policies and any administration duties of the mine subsidence insurance program imposed upon it pursuant to the terms of the reinsurance agreement. The board is authorized to undertake adjustment of losses and administer the fund, or it may provide in a reinsurance agreement that the insurer do so. The board shall agree to reimburse the insurer from the fund for all amounts paid policyholders for claims resulting from mine subsidence and shall pay from the fund all costs of administration incurred by the board but an insurer is not required to pay any claim for any loss insured under this article except to the extent that the amount available in the mine subsidence insurance fund, as maintained pursuant to sections four and five of this article, is sufficient to reimburse the insurer for such claim under this section, and without moral obligation.

§33-30-10. Payment of losses.

(a) Pursuant to the reinsurance agreements, authorized by this article, the board shall, within ninety days after receiving the loss report, pay the insurer all amounts due out of the fund.

(b) No claim of an insured shall be paid by an insurer in respect of a loss covered by mine subsidence insurance prior to February fifteenth, one thousand nine hundred eighty-three. On and after February fifteenth, one thousand nine hundred eighty-three, all claims of insureds shall be paid within one hundred twenty days after proof of loss is presented to an
11 insurer unless otherwise agreed by the insurer and claimant.
12 Upon payment of the claim of an insured from the fund, the
13 insured shall be deemed to have waived any cause of action
14 for damages caused by subsidence to the extent of the payment
15 from the fund.

§33-30-12. Right of recourse.

1 Except in the case of fraud by an insurer, the board does
2 not have any right of recourse against the insurer and the
3 insurer may settle losses in the customary manner consistent
4 with this article.

5 The board may require an insurer to attempt recovery from
6 a policyholder for the amounts paid to such policyholder if,
7 in the judgment of the board, the policyholder was not entitled
8 to the amounts paid because of fraud or violation of the policy
9 conditions. The costs of such recovery attempt shall be borne
10 by the board. Any dispute under this section shall be subject
11 to the hearing and appeal provisions of article two of this
12 chapter.


1 Each insurer issuing mine subsidence insurance policies in
2 this state has the right of subrogation.

3 The board may exercise the right of subrogation.

CHAPTER 110
(Com. Sub. for H. B. 1232—By Delegate Wooton)

[Passed March 14, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to grand juries; and providing not less than six nor more than twelve alternate grand jurors to be selected for a term of court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.


The clerk of any court requiring a grand jury shall, at least thirty days before the term of court, summon the jury commissioners to attend at his office at a day specified, which shall not be less than twenty days before such term, and select persons for the grand jury, but the court or judge thereof may require such jury commissioners to appear forthwith, or at any specified time, and select grand jurors for either a regular, special or adjourned term of court. On the day appointed, the jury commissioners shall appear and draw the names of sixteen persons from the grand jury box, and the persons so drawn shall constitute the grand jury, and at the same time the jury commissioners shall draw the names of not less than six nor more than twelve additional persons from the grand jury box, as the judge of the court or if more than one judge the chief judge of the court shall by prior order direct, and the persons so drawn shall constitute alternate jurors for the grand jury, and the judge may replace any absent members of the grand jury from among the alternate grand jurors. If when drawing the ballots it appears to the commissioners that any person so drawn is dead or for any reason disqualified or unable to serve, they shall destroy the ballot and cancel the name on the list and draw another in that person's stead. They shall enter the names of all persons so drawn in a book kept for that purpose and deliver a list thereof to the clerk, who shall issue a summons for the persons drawn, directed to the sheriff of the county requiring him to summon them to appear on the day required and serve as grand jurors. The provisions of article one of this chapter relating to the drawing and summoning of petit jurors and drawing ballots and cancellation and marking thereof, so far as applicable and not inconsistent with the provisions of this article, shall be observed and govern the selection of a grand jury, except in that the ballots shall be drawn from the several envelopes in proportion as near as may be to the numbers endorsed thereon, but so that at least one ballot shall be drawn from each envelope.
CHAPTER 111
(Com. Sub. for S. B. 78—By Senator Rogers)

[Passed April 2, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections eleven, twelve-a and thirteen, article six, chapter fifty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to reducing from twelve to six the size of juries in civil trials; specifying that juries in criminal trials in circuit court shall consist of twelve members; jury in cases of eminent domain to consist of twelve freeholders; waiver of right to jury trial in criminal cases; alternate jurors, qualifications and challenges, number of alternate jurors; special juries, number of special jurors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. TRIAL.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain and criminal trials.

§56-6-12a. Alternate jurors for protracted civil cases; qualifications and challenges.

§56-6-13. Special jury in civil cases.

§56-6-11. Execution of order of inquiry and trial of case by court; six member jury in civil trials; twelve member jury in eminent domain and criminal trials.

1 The court, in an action at law, if neither party requires a jury, or if the defendant has failed to appear and the plaintiff does not require a jury, shall ascertain the amount the plaintiff is entitled to recover in the action, if any, and render judgment accordingly. In any case in which a trial by jury would be otherwise proper, the parties or their counsel,
by consent entered of record, may waive the right to have a
jury, and thereupon the whole matter of law and fact shall
be heard and determined, and judgment given by the court.
Absent such waiver, in any civil trial a jury shall consist of
six members and in any criminal trial a jury shall consist of
twelve members.
The provisions of this section shall not apply to any
proceeding had pursuant to article two, chapter fifty-four
of this code, the provisions of which shall apply in all cases
involving the taking of property for a public use.

§56-6-12a. Alternate jurors for protracted civil cases; qualifica-
tions and challenges.

In any civil case, whenever in the opinion of the court the
trial is likely to be a protracted one, the court may direct
that not more than four jurors, in addition to the regular
jury, be called and impaneled to sit as alternate jurors. Said
alternate jurors shall be chosen from a separate panel of six
after the regular jury of six or twelve, as the case may be, has
been selected. Alternate jurors in the order in which they
are called shall replace jurors who, prior to the time the jury
retires to consider its verdict, become unable or disqualified
to perform their duties. Alternate jurors shall be drawn in
the same manner, shall have the same qualifications, shall
be subject to the same examination and challenges, shall
take the same oath and shall have the same functions,
powers, facilities and privileges as the regular jurors. An
alternate juror who does not replace a regular juror shall be
discharged after the juryretires to consider its verdict. Each
side is entitled to one peremptory challenge in addition to
those otherwise allowed by law if one or two alternate
jurors are to be impaneled, and two peremptory challenges
if three or four alternate jurors are to be impaneled. The
additional peremptory challenges may be used against an
alternate juror only, and the other peremptory challenges
allowed by this section may not be used against an alternate
juror.

§56-6-13. Special jury in civil cases.

(a) Except as provided in subsection (b) of this section,
any court may allow a special jury in any civil case, to be
formed in the following manner: The court shall direct a
panel of ten jurors to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number eight shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to six, which number shall complete the jury for the trial of the case. The court may also allow a special jury in any civil case when the panel of drawn jurors is exhausted, upon the motion of either of the parties, to be summoned by the sheriff so far as may be required from the body of the county; but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

(b) In any case held pursuant to article two, chapter fifty-four of this code, for the taking of property for a public use, any court may allow a special jury to be formed in the following manner: The court shall direct a panel of twenty jurors, who are qualified freeholders of the county wherein the property to be taken is situate, to be drawn by the clerk, in the presence of the court, from the box mentioned in section seven, article one, chapter fifty-two of this code, who shall be summoned by the sheriff to attend on the day named in the order, from which number sixteen shall be chosen by lot; and the parties thereupon, the plaintiff's attorney beginning, shall alternately strike off one until the number be reduced to twelve, which number shall complete the jury for the trial of the case, but no such special jury shall be allowed in any case unless the court certifies of record that the interest of the parties so asking such jury will be promoted by the allowance of such special jury.

CHAPTER 112
(S. B. 283—By Mr. Tonkovich, Mr. President and Senator Tomblin)

[Passed March 29, 1985; in effect ninety days from passage. Vetoed by the Governor. Passed 4/13/85 notwithstanding objections of Governor.]
AN ACT to amend and reenact section five, article eleven, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article two, chapter five-a of said code, all relating to legislative appropriation authority in respect of federal funds; providing authorization for the governor to approve and permit expenditure of certain unanticipated federal funds received when Legislature not in session, with limitations thereon, including governor seeking recommendation of council of finance and administration, during interim periods, in certain instances; and providing for commissioner of finance and administration to be primary approval official for, and repository agency of, information and activity in respect of federal funds by state agencies at times of application for, and change, receipt and expenditure of, federal funds.

Be it enacted by the Legislature of West Virginia:

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

Chapter.
4. The Legislature.
5A. Department of Finance and Administration.

CHAPTER 4. THE LEGISLATURE.
ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-5. Legislative appropriation authority.

(a) No spending unit may make expenditures of any federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.

(b) To the extent not precluded by the terms and conditions under which federal funds are made available to the spending unit by the United States government, the spending unit shall use federal funds in accordance with any purposes, policies or priorities the Legislature may
have established for the activity being assisted or for the use of state, federal and other fiscal resources in a particular fiscal year.

(c) If the federal funds received by a spending unit for a specific purpose are greater than the amount of such funds contained in the appropriation by the Legislature for such purpose, the total appropriation of federal funds and any state matching funds for such purpose shall remain at the level appropriated, except as hereinafter provided.

(d) If federal funds become available to the spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of article two, chapter five-a of the code, which permits expenditure of amounts in excess of the appropriation upon the filing of a proper expenditure schedule: Provided, That the governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. For purposes of this article, a mere new source of funding of federal moneys for a program which has been prior approved by legislative appropriation will not be deemed to be a "new program" or a "significant alteration of an existing program" and the governor may authorize the expenditure of such funds as herein provided. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the governor shall seek the recommendation of the council of finance and administration, as created and existing pursuant to the provisions of section three, article one, chapter five-a of the code. Upon application to the federal government for such funds and upon receipt of such funds, the governor shall
submit to the legislative auditor two copies of a statement:

(1) Describing the proposed expenditure of such funds in the same manner as it would be described in the state budget; and

(2) Explaining why the availability of such federal funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget for that particular fiscal year.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMINISTRATION.

ARTICLE 2. BUDGET DIVISION.

§5A-2-26. Approval of commissioner of requests for, changes, receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished commissioner and legislative auditor; and consolidated report of federal funds.

Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have such request or budget approved in writing by the commissioner before submitting it to the proper federal authority. At the time such agency submits such a request or budget to the commissioner for his approval, it shall send a copy thereof to the legislative auditor. When such federal authority has approved the request or budget, the agency of the state government shall resubmit it to the commissioner for recording before any allotment or encumbrance of the federal funds can be made and the commissioner shall send a copy of the federally approved request or budget to the legislative auditor. Whenever any agency of the state government shall receive from any agency of the federal government a grant or allocation of funds which do not require state matching, the state agency shall report to the commissioner and the
legislative auditor for their information the amount of
the federal funds so granted or allocated.

Unless contrary to federal law, any agency of state
government, when making requests or preparing budgets
to be submitted to the federal government for funds for
personal services, shall include in such request or budget
the amount of funds necessary to pay for the costs of any
fringe benefits related to such personal service. For the
purposes of this section "fringe benefits" means any
employment benefit granted by the state which involves
state funds, including, but not limited to, contributions to
insurance, retirement and social security, and which does
not affect the basic rate of pay of an employee.

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

The commissioner is authorized and empowered to ob-
tain from the spending units any and all information
necessary to prepare such report.

Notwithstanding the other provisions of this section
and in supplementation thereof, the Legislature hereby
determines that the department of finance and administration and its commissioner need to be the single and central agency for receipt of information and documents in respect of applications for, and changes, receipt and expenditure of, federal funds by state agencies. Every agency of state government, when making application for federal funds in the nature of a grant, allocation or otherwise; when amending such applications or requests; when in receipt of such federal funds; or when undertaking any expenditure of federal funds; in all such respective instances, provide to the commissioner of finance and administration document copies or sufficient summary information in respect thereof as to enable the commissioner to provide approval in writing for such activity in respect to the federal funds, and such state agencies shall, at the same time, provide such a document copy or sufficient summary information report to the legislative auditor's office; in order to permit continuing meaningful cooperative overview of federal funds and their use budgetarily and in establishing state fiscal policies.

CHAPTER 113

(Com. Sub. for S. B. 555—By Mr. Tonkovich, Mr. President)

[Passed April 12, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public libraries; willful retention of library property; providing criminal penalties; and liability of parents.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

Any person who willfully retains a book, newspaper, plate, picture, photograph, engraving, painting, drawing, map, magazine, document, letter, public record, microfilm, sound recording, audio visual materials in any format, magnetic or other tapes, artifacts or other documentary (written or printed) materials, or all materials of any kind whatsoever belonging to any public library for thirty days after the mailing date of a written notice demanding the return of said material and giving notice of said violation, forwarded to that person's last known address, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two hundred dollars:

Provided, That a date or dates designating a grace period for the return of library materials to public libraries shall be established, said dates to be established by the state library commission pursuant to rules and regulations promulgated thereto.

A conviction or payment of any fine shall not be construed to constitute payment for library material, nor shall a person convicted under this section be thereby relieved of any obligation to return to the library such material. Further, a conviction or payment of any fine shall not be construed as a waiver of any nominal daily fine which may be imposed by library rules, regulations or policies.

The parent or guardian of a minor who willfully commits any act prohibited by this section shall be liable for all damages so caused by the minor up to the amount of two thousand five hundred dollars, after the parent or guardian is served with proper written notice as aforementioned.

CHAPTER 114

(Com. Sub. for S. B. 26—By Senator Holliday, et al)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections twenty-four, twenty-five and twenty-six, all relating to creation of the West Virginia litter control program; definitions; additional duties of the director of the department of natural resources in the administration of the West Virginia litter control program; matching grants to localities for litter control programs and regulations relating thereto; lawful disposal of litter and criminal penalties therefor; costs for cleanup, investigation and prosecution to be assessed against violators and transmitted to litter control fund account in state treasury; notice of penalties for unlawful disposal of litter; mandatory placement and maintenance of litter receptacles; penalties for failure to place and maintain litter receptacles upon two warnings; construction of section; and duty of law-enforcement officers to enforce against violations.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated sections twenty-four, twenty-five and twenty-six, all to read as follows:

ARTICLE 7. LAW ENFORCEMENT, PROCEDURES AND PENALTIES; MOTORBOATING; WEST VIRGINIA LITTER CONTROL PROGRAM.

PART III. WEST VIRGINIA LITTER CONTROL PROGRAM.

§20-7-24. Definitions.

§20-7-25. West Virginia litter control programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

§20-7-26. Unlawful disposal of litter; penalties; evidence; notice of violations; litter receptacle placement; penalties; duty to enforce violations.

§20-7-24. Definitions.

1 As used in sections twenty-five and twenty-six of this article, unless the context requires a different meaning:

2 “Litter” means all waste material including, but not limited to, any garbage, refuse, trash, disposable package,
container, can, bottle, paper, ashes, cigarette or cigar butt, carcass of any dead animal or any part thereof, or any other offensive or unsightly matter, but not including the wastes of primary processes of mining, logging, sawmilling, farming or manufacturing.

"Litter receptacle" means those containers suitable for the depositing of litter at each respective public area designated by the director's regulations promulgated pursuant to subdivision eight, subsection (a), section twenty-five of this article.

"Public area" means an area outside of a municipality, including public road and highway rights-of-way, parks and recreation areas owned or controlled by this state or any county thereof, or an area held open for unrestricted access by the general public.

§20-7-25. West Virginia litter control programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.

(a) In addition to all other powers, duties and responsibilities granted and assigned to the director of the department of natural resources in this chapter and elsewhere by law, the director is hereby authorized and empowered, in the administration of the West Virginia litter control program created by this section, to:

(1) Coordinate all industry and business organizations seeking to aid in the litter control effort;

(2) Cooperate with all local governments to accomplish coordination of local litter control efforts;

(3) Encourage, organize and coordinate all voluntary litter control campaigns, including citizen litter watch programs, seeking to focus the attention of the public on the litter control programs of the state and local governments;

(4) Recommend to local governing bodies that they adopt ordinances similar to the provisions of section twenty-six of this article;

(5) Investigate the methods and success of techniques of litter control, removal and disposal utilized in other
states, and develop, encourage, organize and coordinate local litter control programs funded by grants awarded pursuant to subsection (b) of this section utilizing such successful techniques;

(6) Investigate the availability of, and apply for, funds available from any and all private or public sources to be used in the litter control program created by this section;

(7) Promulgate regulations pursuant to article three, chapter twenty-nine-a of this code establishing criteria for the awarding of direct and/or matching grants for the study of available research and development in the fields of litter control, removal and disposal, methods for the implementation of such research and development, and the development of public educational programs concerning litter control;

(8) Promulgate regulations pursuant to article three, chapter twenty-nine-a of this code designating public areas where litter receptacles shall be placed in accordance with subsection (d), section twenty-six of this article. The director is further authorized to specify within such regulations the minimum number of litter receptacles required to be placed at each designated public area; and

(9) Expend for the purposes set forth in this section any and all moneys credited to the special revenue fund known as the “litter control fund” by the state treasurer pursuant to subsection (b), section twenty-six of this article.

(b) Commencing on the first day of July, one thousand nine hundred eighty-six, the director shall expend annually at least fifty percent of the moneys credited to the “litter control fund” in the previous fiscal year for matching grants to counties and municipalities for the initiation and administration of local litter control programs. The director may promulgate regulations pursuant to article three, chapter twenty-nine-a of this code establishing criteria for the awarding of matching grants.

(c) The director of the department of natural resources in cooperation with the commissioner of highways, the
department of public safety, the United States forestry
department, the United States forestry
service, and other local, state and federal law-enforce-
ment agencies, shall be responsible for the administration
and enforcement of all laws and regulations relating to
the maintenance of cleanliness and improvement of ap-
pearances on and along highways, roads, streets, alleys
and other public areas of the state and shall make recom-
mendations to the director from time to time concerning
means and methods of accomplishing litter control con-
sistent with the provisions of this chapter.

§20-7-26. Unlawful disposal of litter; penalties; evidence; no-
tice of violations; litter receptacle placement;
penalties; duty to enforce violations.

(a) Any person who places, deposits, dumps or throws or
causes to be placed, deposited, dumped or thrown any litter
as defined in section twenty-four, article seven of this
chapter, in or upon any public or private highway, road,
street or alley, or upon any private property without the
consent of the owner, or in or upon any public park or other
public property other than in such place as may be set aside
for such purpose by the governing body having charge
thereof, is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not less than fifty dollars nor more
than one thousand dollars, or imprisoned in the county jail
not more than sixty days, or sentenced to remove litter from
any public highway, road, street, alley or any other public
park or property as designated by the court for a total of
not less than thirty hours under the supervisor of the county
supervisor of the department of highways, or his designated
agent.

If any litter be thrown or cast from a motor vehicle,
such action is prima facie evidence that the driver of such
motor vehicle intended to violate the provisions of this
section. If any litter be dumped or discharged from a
motor vehicle, such action is prima facie evidence that
the owner and driver of such motor vehicle intended to
violate the provisions of this section.

(b) Every person who is convicted of or pleads guilty
to disposing of litter in violation of subsection (a) of this
section shall pay the sum of fifty dollars as costs for clean-up, investigation and prosecution in such case, in addition to any other court costs that the court is otherwise required by law to impose upon such convicted person. The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this subsection to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the "litter control fund" which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the "litter control fund" in the manner prescribed by section two, article two, chapter twelve of this code, shall be kept and maintained for expenditure by the director for the specific purposes of section twenty-five of this article, and shall not be treated by the state auditor and treasurer as part of the general revenue of the state. At the end of each fiscal year, any unexpended balance of the "litter control fund" shall not be transferred to the general revenue fund, but shall remain in the "litter control fund."

(c) The commissioner of motor vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a copy of subsection (a) of this section.

The commissioner of highways may cause appropriate signs to be placed at the state boundary on each primary and secondary road, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(d) Any person who owns, operates or otherwise controls any public area as may be designated by the director by regulation promulgated pursuant to subdivision eight, subsection (a), section twenty-five of this article, shall procure and place litter receptacles at his own expense upon his premises and shall remove and dispose of litter collected in such litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the said regula-
tions of the director, any person who fails to place and
maintain such litter receptacles upon his premises in viol-
ation of this subsection or the regulations of the director
shall be fined fifteen dollars per day of such violation.
(e) No portion of this section shall be construed to
restrict a private owner in the use of his own private
property or to prohibit the disposal of litter in any man-
er otherwise authorized by law.
(f) Any law-enforcement officer who shall observe a
person violating the provisions of this section shall have a
mandatory duty to arrest or otherwise prosecute the vi-
olator to the limits provided herein. The West Virginia
department of highways shall investigate and cause to be
prosecuted violations of this section occurring upon the
highways of the state as the term “highways” is defined in
chapter seventeen of this code.

CHAPTER 115
(Com. Sub. for H. B. 1929—By Delegate Rollins and Delegate Love)
[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, and
section twelve, article twenty-one, chapter eleven of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended; and to amend chapter twenty-nine of said code by
adding thereto a new article, designated article twenty-two,
relating to taxation; consumers sales tax, exemption of lottery
sales therefrom; personal income tax, exemption of lottery
prizes therefrom; relating to the state lottery act; short title;
legislative findings and intent; definitions; state lottery
commission created; composition; qualifications; appointment;
terms of office; removal; vacancies; chairperson; meetings;
quorum; compensation and expenses; oath and bond; powers
and duties; cooperation of other agencies; designation of
enforcement agents; lottery director; appointment; qualifica-
tions; oath and bond; salary; divisions of the state lottery
office; lottery director; powers and duties; appointment of
deputy directors; hiring of staff; civil service coverage;
submission of proposed appropriations; initiation and operation of lottery; restrictions; prohibited themes, games, machines or devices; distinguishing numbers; winner selection; public drawings; witnessing results; testing and inspection of equipment; price of tickets; claim for and payment of prizes; invalid, counterfeit tickets; estimated prizes and odds of winning; participant bound by lottery rules and validation procedures; security procedures; additional games; electronic and computer systems; licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; bond; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond; prohibited acts; crimes; selling without license; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts; crimes; forgery, counterfeiting of lottery tickets; criminal penalties; prohibited acts; conflicts of interest; prohibited gifts, gratuities; administrative violations of article; hearings; administrative penalties; payment of prizes to minors; disposition of unclaimed prize money; lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability; state lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes; net profit and expenses; surplus; appropriation of net profits; post audit of accounts and transactions of office; monthly and annual reports; official's name not to appear on lottery materials or advertising; official not to appear at any lottery drawing, exceptions; exemption of lottery prizes from state and local taxation; procurement; disclosures by vendors and related persons and entities; authorizing background investigations; unenforceability of contracts in contravention of section; disclosures by vendors and related persons and entities of political contributions; preemption of state laws or local regulation; termination of state lottery commission; penalties for criminal violations; and severability.

Be it enacted by the Legislature of West Virginia:

That section nine, article fifteen, and 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; and that chapter twenty-nine of said code be amended by adding thereto a new article, designated article twenty-two, all to read as follows:

Chapter.
11. Taxation.
29. Miscellaneous Boards and Officers.

CHAPTER 11. TAXATION.

Article
15. Consumers Sales Tax.

ARTICLE 15. CONSUMERS SALES TAX.

1 The following sales and services shall be exempt:
2 (1) Sales of gas, steam and water delivered to consumers through mains or pipes, and sales of electricity;
3 (2) Sales of textbooks required to be used in any of the schools of this state;
4 (3) Sales of property or services to the state, its institutions or subdivisions, and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
5 (4) Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of the code;
6 (5) Sales of property or services to churches and bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption herein granted shall apply only to services, equipment, supplies and materials directly used or consumed by these organizations, and shall not apply to purchases of gasoline or special fuel;
7 (6) Sales of property or services to corporations or organizations qualified under section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or under section 501(c)(4) of the Internal Revenue Code of 1954, as amended, who make
casual and occasional sales not conducted in a repeated
manner or in the ordinary course of repetitive and successive
transactions of like character: *Provided,* That the exemption
herein granted shall apply only to services, equipment, supplies
and materials directly used or consumed by these organizations
and shall not apply to purchases of gasoline or special fuel;

(7) Sales of property or services to persons engaged in this
state in the business of contracting, manufacturing, transpor-
tation, transmission, communication or in the production of
natural resources: *Provided,* That the exemption herein
granted shall apply only to services, machinery, supplies and
materials directly used or consumed in the businesses or
organizations named above, and shall not apply to purchases
of gasoline or special fuel;

(8) An isolated transaction in which any tangible personal
property is sold, transferred, offered for sale, or delivered by
the owner thereof or by his representative for the owner's
account, such sale, transfer, offer for sale or delivery not being
made in the ordinary course of repeated and successive
transactions of like character by such owner or on his account
by such representative;

(9) Sales of tangible personal property and services rendered
for use or consumption in connection with the conduct of the
business of selling tangible personal property to consumers or
dispensing a service subject to tax under this article or which
would be subject to tax under this article but for the
exemption for food provided in section eleven of this article
and sales of tangible personal property and services rendered
for use or consumption in connection with the commercial
production of an agricultural product the ultimate sale of
which will be subject to the tax imposed by this article or
which would have been subject to tax under this article but
for the exemption for food provided in section eleven of this
article: *Provided,* That sales of tangible personal property and
services to be used or consumed in the construction of or
permanent improvement to real property and sales of gasoline
and special fuel shall not be exempt;

(10) Sales of tangible personal property for the purpose of
resale in the form of tangible personal property: *Provided,*
That sales of gasoline and special fuel by distributors and
importers shall be taxable except when the sale is to another
distributor for resale;

(11) Sales of property or services to nationally chartered
fraternal or social organizations for the sole purpose of free
distribution in public welfare or relief work: Provided, That
sales of gasoline and special fuel shall be taxable;

(12) Sales and services, fire fighting, or station house
equipment, including construction and automotive, made to
any volunteer fire department organized and incorporated
under the laws of the state of West Virginia: Provided, That
sales of gasoline and special fuel shall be taxable;

(13) Sales of newspapers when delivered to consumers by
route carriers;

(14) Sales of drugs dispensed upon prescription and sales
of insulin to consumers for medical purposes;

(15) Sales of radio and television broadcasting time,
newspaper and outdoor advertising space for the advertisement
of goods or services;

(16) Sales and services performed by day care centers;

(17) Casual and occasional sales of property or services not
conducted in a repeated manner or in the ordinary course of
repetitive and successive transactions of like character by
corporations or organizations qualified under section 501(c)(3)
of the Internal Revenue Code of 1954, as amended, or under
section 501(c)(4) of the Internal Revenue Code of 1954, as
amended;

(18) Bank safety deposit boxes;

(19) Sales of property or services to a school which has
approval from the West Virginia board of regents to award
degrees, which has its principal campus in this state, and which
is exempt from federal and state income taxes under section
501(c)(3) of the Internal Revenue Code of 1954, as amended:
Provided, That sales of gasoline and special fuel shall be
taxable;

(20) Sales of mobile homes to be utilized by purchasers as
their principal year-round residence and dwelling: Provided,
That these mobile homes shall be subject to tax at the three
percent rate; and
Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General.—The West Virginia adjusted gross income of a resident individual means his federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income.—There shall be added to federal adjusted gross income the following items, except that modifications (5), (6) and (7) shall be required only with respect to tax periods ending on or after the first day of January, one thousand nine hundred eighty-two:

(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;

(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;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under section 128 of the Internal Revenue Code, for the federal taxable year;
(6) The amount allowed as a deduction from federal gross income under section 221 of the Internal Revenue Code by married couples who file a joint federal return for the federal taxable year; and

(7) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal adjusted gross income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: Three-year property—no modification; five-year property—ten percent; ten-year property—fifteen percent; fifteen-year public utility property—twenty-five percent; and fifteen-year real property—thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method.

(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 forty percent 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 if a person has a medical certification from a prior year and he is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, 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;

(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;

(10) Gross income to the extent included in federal adjusted gross income under section 86 of the Internal Revenue Code for federal income tax purposes; and

(11) The amount of any lottery prize awarded by the West Virginia state lottery commission, to the extent properly included in gross income for federal income tax purposes.

(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.

(f) Husband and wife.—If husband and wife determine their
federal income tax on a joint return but determine their West
Virginia income taxes separately, they shall determine their
West Virginia adjusted gross incomes separately as if their
federal adjusted gross incomes had been determined separately.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-1. Short title.
§29-22-2. Legislative findings and intent.
§29-22-4. State lottery commission created; composition; qualifications;
appointment; terms of office; removal; vacancies; compensation
and expenses; quorum; oath and bond.
§29-22-5. State lottery commission; powers and duties; cooperation of other
agencies.
§29-22-6. Lottery director; appointment; qualifications; oath and bond; salary.
§29-22-7. Divisions of the state lottery office.
§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff;
civil service coverage; submission of proposed appropriations.
§29-22-9. Initiation and operation of lottery; restrictions; prohibited themes,
games machines or devices; distinguishing numbers, winner
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payments of prizes; invalid, counterfeit tickets; estimated prizes and
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§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee;
factors; application; bond; age; nonassignable license; organiza-
tions qualified; commissions; display of license; geographic
distribution; monopoly prohibited; lottery retailers; preprinted
instant type lottery tickets; fee; certificate of authority; security;
bond.
§29-22-11. Prohibited acts; restrictions on sales agents and retailers;
unauthorized sales; sales to minors; gifts to minors; prizes to
commission officers and staff prohibited; criminal penalties for
prohibited acts.
§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.
§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.
§29-22-14. Administrative violations of article; hearing; administrative penalties.

§29-22-15. Payment of prizes to minors.


§29-22-17. Lottery proceeds; accounting therefor; deposit into account of state treasurer; reports; funds to be held in trust; failure to collect, account or deposit; personal liability.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; appropriation of net profits.


§29-22-22. Exemption of lottery prizes from state and local taxation.

§29-22-23. Procurement; disclosures by vendors and related persons and entities; authorizing background investigation; unenforceability of contracts in contravention of section.

§29-22-24. Disclosures by vendors and related persons and entities of political contributions.

§29-22-25. Preemption of state laws or local regulation.


§29-22-1. Short title.

1 This article shall be known and may be cited as the “State Lottery Act.”

§29-22-2. Legislative findings and intent.

1 The Legislature finds and declares that the purpose of this article is to establish and implement a state-operated lottery under the supervision of the state lottery commission and the director of the state lottery office who shall be appointed by the governor and hold broad authority to administer the system in a manner which will provide the state with a highly efficient operation.


1 (a) “State lottery commission” or “commission” means the state lottery commission created by this article.
(b) "Director" means the individual appointed by the governor to provide management and administration necessary to direct the state lottery office.

(c) "Lottery" means the public gaming systems or games established and operated by the state lottery office.

(d) "Lottery tickets" or "tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

§29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; chairman; removal; vacancies; compensation and expenses; quorum; oath and bond.

(a) There is hereby created a state lottery commission which shall consist of seven members, all residents and citizens of the state, one who shall be a lawyer, one who shall be a certified public accountant, one who shall be a computer expert, one who shall have not less than five years experience in law enforcement and one who shall be qualified by experience and training in the field of marketing. The two remaining members shall be representative of the public at large. The commission shall carry on a continuous study and investigation of the lottery throughout the state and advise and assist the director of the state lottery. The commission members shall be appointed by the governor, by and with the advice and consent of the Senate, no later than the first day of July, one thousand nine hundred eighty-five. At least one member shall be appointed from each congressional district existing as of the twenty-eighth day of January, one thousand nine hundred eighty-two. The terms of members first appointed expire as designated by the governor at the time of appointment: One at the end of one year; two at the end of two years; one at the end of three years; two at the end of four years; and one at the end of five years. No more than four members of such commission shall belong to the same political party. Members serve overlapping terms of five years and are eligible for successive appointments to the commission. On the first day of July of each year, the commission shall select a chairman from its membership. The governor may
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27 remove any commission member for cause, notwithstanding
28 the provisions of section four, article six, chapter six of this
29 code. Vacancies shall be filled in the same manner as the
30 original appointment but only for the remainder of the term.
31 No person convicted of a felony or crime involving moral
32 turpitude shall be eligible for appointment nor appointed as
33 a commissioner.

34 (b) The members of the lottery commission receive one
35 hundred dollars for each day or portion thereof spent in the
36 discharge of their official duties. Members are reimbursed for
37 reasonable and necessary expenses incurred in the discharge
38 of their official duties. All such payments shall be made from
39 the state lottery fund.

40 (c) At least one meeting per month shall be held by the
41 commission. Additional meetings may be held at the call of
42 the chairman, director or majority of the commission
43 members.

44 (d) A majority of the members constitutes a quorum for the
45 transaction of business, and all actions require a majority vote
46 of the members present.

47 (e) Before entering upon the discharge of the duties as
48 commissioner, each commissioner shall take and subscribe to
49 the oath of office prescribed in section 5, article IV of the
50 Constitution of West Virginia and shall enter into a bond in
51 the penal sum of one hundred thousand dollars with a
52 corporate surety authorized to engage in business in this state,
53 conditioned upon the faithful discharge and performance of
54 the duties of the office. The executed oath and bond shall be
55 filed in the office of the secretary of state.

§29-22-5. State lottery commission; powers and duties; cooperation
of other agencies.

1 (a) The commission shall have the authority to:

2 (I) Promulgate rules in accordance with chapter twenty-
3 nine-a of this code: Provided, That those rules promulgated
4 by the commission that are necessary to begin the lottery
5 games selected shall be exempted from the provisions of
chapter twenty-nine-a of this code in order that the selected
games may commence as soon as possible;

(2) Establish rules for conducting lottery games, a manner
of selecting the winning tickets and manner of payment of
prizes to the holders of winning tickets;

(3) Select the type and number of public gaming systems
or games, to be played in accordance with the provisions of
this article;

(4) Contract, if deemed desirable, with the educational
broadcasting authority to provide services through its
microwave interconnection system to make available to public
broadcasting stations servicing this state, and, at no charge,
for rebroadcast to commercial broadcasting stations within
this state, any public gaming system or games drawing;

(5) Enter into interstate lottery agreements with other states;

(6) Adopt an official seal;

(7) Maintain a principal office and, if necessary, regional
suboffices at locations properly designated or provided;

(8) Prescribe a schedule of fees and charges;

(9) Sue and be sued;

(10) Lease, rent, acquire, purchase, own, hold, construct,
equip, maintain, operate, sell, encumber and assign rights of
any property, real or personal, consistent with the objectives
of the commission as set forth in this article;

(11) Designate one of the deputy directors to serve as acting
director during the absence of the director;

(12) Hold hearings on any matter of concern to the
commission relating to the lottery, subpoena witnesses,
administer oaths, take testimony, require the production of
evidence and documentary evidence and designate hearing
examiners and employees to so act; and
(13) To make and enter into all agreements and do all acts necessary or incidental to the performance of its duties and the exercise of its powers under this article.

(b) Departments, boards, commissions or other agencies of this state shall provide assistance to the state lottery office upon the request of the director.

(c) Upon the request of the deputy director for the security and licensing division in conjunction with the director, the attorney general, department of public safety and all other law-enforcement agencies shall furnish to the director and the deputy director such information as may tend to assure the security, honesty, fairness and integrity in the operation and administration of the lottery as they may have in their possession, including, but not limited to, manual or computerized information and data. The director is to designate such employees of the security and licensing division as may be necessary to act as enforcement agents. Such agents are authorized to investigate complaints made to the commission or the state lottery office concerning possible violation of the provisions of this article and determine whether to recommend criminal prosecution. If it is determined that action is necessary, an agent, after approval of the director, is to make such recommendation to the prosecuting attorney in the county wherein the violation occurred or to any appropriate law-enforcement agency.

§29-22-6. Lottery director; appointment; qualifications; oath and bond; salary.

(a) There is hereby created the position of the lottery director whose duties include the management and administration of the state lottery office. The director shall be qualified by training and experience to direct the operations of the lottery, and shall be appointed, within ninety days of the effective date of this article, by the governor and shall serve at the will and pleasure of the governor. No person shall be appointed as lottery director who has been convicted of a felony or crime involving moral turpitude.

(b) The director serves on a full-time basis and may not be engaged in any other profession or occupation.

(c) The director:
(1) Shall have a good reputation, particularly as a person of honesty and integrity, and shall favorably pass a thorough background investigation prior to appointment;

(2) The director shall not hold political office in the government of the state either by election or appointment while serving as director;

(3) The director shall be a citizen of the United States and must become a resident of the state within ninety days of appointment;

(4) The director shall receive an annual salary as provided for by the governor; and

(5) The director and his or her executive secretary are ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code.

(d) Before entering upon the discharge of the duties as director, the director shall take and subscribe to the oath of office prescribed in section 5, article IV of the Constitution of West Virginia and shall enter into a bond in the penal sum of one hundred thousand dollars with a corporate surety authorized to engage in business in this state, conditioned upon the faithful discharge and performance of the duties of the office. The executed oath and bond shall be filed in the office of the secretary of state.

§29-22-7. Divisions of the state lottery office.

There shall be established within the state lottery office a security and licensing division; a personnel, data processing, accounting and administration division; and a marketing, education and information division. Each division shall be under the supervision of a deputy director who shall administer and coordinate the operation of authorized activities in the respective division. Each deputy director shall have had three years management experience in areas pertinent to his prospective responsibilities and an additional three years of experience in the same field.

§29-22-8. Lottery director; powers and duties; deputy directors; hiring of staff; civil service coverage; submission of proposed appropriations.

(a) The director shall have the authority to:
(1) Appoint, with the approval of the commission, a deputy
director for each of the divisions established in this article. The
deputy directors appointed shall serve at the will and pleasure
of the director at an annual salary established by the
commission. Deputy directors shall not be eligible for civil
service coverage as provided in section four, article six, chapter
twenty-nine of this code;

(2) The director shall hire, pursuant to the approval of the
commission, such professional, clerical, technical and adminis-
trative personnel as may be necessary to carry out the
provisions of this article. No person shall be employed by the
lottery who has been convicted of a felony or other crime
involving moral turpitude. Each person employed by the
commission shall execute an authorization to allow an
investigation of that person's background;

(3) Designate the number and types of locations at which
tickets may be sold.

(b) Effective the first day of July, one thousand nine
hundred eighty-six, all employees of the commission, except
as otherwise provided herein, shall be in the classified service
under the provisions of article six, chapter twenty-nine of this
code.

(c) The director shall, pursuant to the approval of the
commission, prepare and submit the annual proposed
appropriations for the commission to the governor.

§29-22-9. Initiation and operation of lottery; restrictions; prohibited
themes, games, machines or devices; distinguishing
numbers; winner selection; public drawings; witnessing
of results; testing and inspection of equipment; price
of tickets; claim for and payment of prizes; invalid,
counterfeit tickets; estimated prizes and odds of
winning; participant bound by lottery rules and
validation procedures; security procedures; additional
games; electronic and computer systems.

(a) The commission shall initiate operation of the state
lottery on a continuous basis at the earliest feasible and
practical time, first initiating operation of the preprinted
instant winner type lottery. The lottery shall be initiated and
shall continue to be operated so as to produce the maximum
amount of net revenues to benefit the public purpose described in this article consonant with the public good. Other state government departments, boards, commissions, agencies and their officers shall cooperate with the lottery commission so as to aid the lottery commission in fulfilling these objectives.

(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery: Provided, That:

(1) No lottery may use the theme of bingo, roulette, dice or similar game, or similar games commonly associated with casino gaming.

(2) No lottery may use the results of any amateur or professional sporting event, dog race or horse race to determine the winner.

(3) Electronic video lottery systems must include a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry.

(4) In a lottery utilizing a ticket, each ticket shall bear a unique number distinguishing it from each other ticket.

(5) No lottery utilizing a machine may use machines which dispense coins or currency.

(6) Selection of the winner must be predicated totally on chance.

(7) Any drawings or winner selections shall be held in public and witnessed by an independent accountant designated by the director for such purposes.

(8) All lottery equipment and materials shall be regularly inspected and tested, before and after any drawings or winner selections, by independent qualified technicians.

(9) The director shall establish the price for each lottery and determine the method of selecting winners and the manner of payment of prizes, including providing for payment by the purchase of annuities for prizes payable in installments.

(10) All claims for prizes shall be examined and no prize shall be paid as a result of altered, stolen or counterfeit tickets or materials, or which fail to meet validation rules or regulations established for a lottery. No prize shall be paid
more than once, and, in the event of a binding determination by the commission that more than one person is entitled to a particular prize, the sole remedy of the claimants shall be the award to each of them of an equal share in the single prize.

(11) A detailed tabulation of the estimated number of prizes of each particular prize denomination that are expected to be awarded in each lottery, or the estimated odds of winning such prizes shall be printed on any lottery ticket, where feasible, or in descriptive materials, and shall be available at the offices of the commission.

(12) No prizes shall be paid which are invalid and not contemplated by the prize structure of the lottery involved.

(13) By purchasing a ticket or participation in a lottery, a participant agrees to abide by, and be bound by, the lottery rules which apply to the lottery or game play involved. An abbreviated form of such rules may appear on tickets and shall appear on descriptive materials and shall be available at the offices of the commission. A participant in a lottery agrees that the determination of whether the participant is a valid winner is subject to the lottery or game play rules and the winner validation tests established by the commission. The determination of the winner by the commission shall be final and binding upon all participants in a lottery and shall not be subject to review or appeal.

(14) The commission shall institute such security procedures as it deems necessary to ensure the honesty and integrity of the winner selection process for each lottery. All such security and validation procedures and techniques shall be, and remain, confidential, and shall not be subject to any discovery procedure in any civil judicial, administrative or other proceeding, nor subject to the provisions of article one, chapter twenty-nine-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(c) The commission shall proceed with operation of such additional lottery games, including the implementation of games utilizing a variety of existing or future technological advances at the earliest feasible date. The commission may operate lottery games utilizing electronic computers and electronic computer terminal devices and systems, which systems must include a central site system of monitoring the
lottery terminals utilizing direct communication systems, or other technological advances and procedures, ensuring honesty and integrity in the operation of the lottery.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

(a) The commission shall promulgate rules and regulations for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following:

(1) The commission shall issue its annual license to such lottery sales agents for each lottery outlet and for such fee as is established by the commission to cover its costs thereof, but not to exceed one thousand dollars. Application for licensing as a lottery sales agent shall be on forms to be prescribed and furnished by the director.

(2) No licensee may engage in business exclusively as a lottery sales agent.

(3) The commission shall ensure geographic distribution of lottery sales agents throughout the state.

(4) Before issuance of a license to an applicant, the commission shall consider factors such as the financial responsibility, security, background, accessibility of the place of business or activity to the public, public convenience and the volume of expected sales.

(5) No person under the age of twenty-one may be licensed as an agent. No licensed agent shall employ any person under the age of eighteen for sales or dispensing of lottery tickets or materials or operation of a lottery terminal.

(6) A license is valid only for the premises stated thereon.

(7) The director may issue a temporary license when deemed necessary.
(8) A license is not assignable or transferable.

(9) Before a license is issued, an agent shall be bonded for an amount and in the form and manner to be determined by the director.

(10) The commission may issue licenses to any legitimate business, organization, person or entity, including, but not limited to, civic or fraternal organizations, parks and recreation commissions or similar authorities, senior citizen centers, state owned stores, persons lawfully engaged in nongovernmental business on state property, persons lawfully engaged in the sale of alcoholic beverages, political subdivisions or their agencies or departments, state agencies, commission operated agencies, persons licensed under the provisions of article twenty-three, chapter nineteen of this code, religious, charitable or seasonal businesses.

(11) Licensed lottery sales agents shall receive five percent of gross sales as commission for the performance of their duties. In addition, the commission may promulgate a bonus-incentive plan as additional compensation not to exceed one percent of annual gross sales. The method and time of payment shall be determined by the commission.

(12) Licensed lottery sales agents shall prominently display the license on the premises where lottery sales are made.

(13) No person or entity or subsidiary, agent or subcontractor thereof shall receive or hold more than twenty-five percent of the licenses to act as licensed lottery sales agent in any one county or municipality nor more than five percent of the licenses issued throughout this state: Provided, That the limitations of twenty-five percent and five percent in this subdivision shall not apply if it is determined by the commission that there are not a sufficient number of qualified applicants for licenses to comply with these requirements.

(b) The commission shall promulgate rules and regulations specifying the terms and conditions for contracting with lottery retailers for sale of preprinted instant type lottery tickets and may provide for the dispensing of such tickets through machines and devices. Tickets may be sold or dispensed in any public or private store, operation or organization, without limitation. The commission may establish an annual fee not
to exceed fifty dollars for such persons, per location or site, and shall issue a certificate of authority to act as a lottery retailer to such persons. The commission shall establish procedures to ensure the security, honesty and integrity of the lottery and distribution system. The commission shall establish the method of payment, commission structure, methods of payment of winners, including payment in merchandise and tickets, and may require prepayment by lottery retailers, require bond or security for payment and require deposit of receipts in accounts established therefor. Retailers shall prominently display the certificate of authority issued by the commission on the premises where lottery sales are made.

§29-22-11. Prohibited acts; restrictions on sales agents and retailers; unauthorized sales; sales to minors; gifts to minors; prizes to commission officers and staff prohibited; criminal penalties for prohibited acts.

(a) No person may sell lottery tickets or materials unless authorized by the commission to so act. No person may perform the functions of a licensed lottery sales agent unless licensed by the commission. No person may perform the functions of a lottery retailer unless authorized therefor by the commission. No person may sell a lottery ticket or material at a price greater than that established by the commission; except, that nothing in this section may be construed to prevent any person from giving a lottery ticket or material to another as a gift or bonus. No person other than a licensed lottery sales agent or an employee thereof, while acting within the scope of such employment, shall sell lottery tickets, and then only on the premises stated on the license.

(b) No ticket shall be sold to any person under the age of eighteen years. This section does not prohibit the purchase of a ticket by a person eighteen years of age or older for the purpose of making the ticket a gift to a person less than that age.

(c) No ticket may be purchased by and no prizes received by or awarded to any officers or employees of the commission or any member of their immediate household.

(d) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred
§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.

Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes or counterfeits a lottery ticket is guilty of a felony, and, upon conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the penitentiary for not less than one year or both fined and imprisoned.

§29-22-13. Prohibited acts; conflict of interest; prohibited gifts and gratuities.

(1) The commissioner, the deputy directors and the employees of the lottery may not directly or indirectly, individually, or as a member of a partnership or as a shareholder of a corporation have an interest in dealing in a lottery.

(2) A member of the commission, an employee of the lottery or a member of their immediate families may not ask for, offer to accept or receive any gift, gratuity or other thing of value from any person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery or from an applicant for a license to sell tickets in the lottery or from a licensee.

(3) A person, corporation, association or firm contracting or seeking to contract with the state to supply gaming equipment or materials for use in the operation of a lottery, an applicant for a license to sell tickets in the lottery or a licensee may not offer a member of the commission, an employee of the lottery, or a member of their immediate families any gift, gratuity or other thing of value.

§29-22-14. Administrative violations of article; hearing; administrative penalties.

(a) In addition to any criminal penalty imposed under the provisions of this article or any other chapter of this code:

(1) No person shall be appointed, employed or continue to serve in any position or employment with the commission who
has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall remove or discharge any person so convicted.

(2) No person shall be licensed as a lottery sales agent nor authorized to act as a lottery retailer who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude. The commission shall revoke the license or the authority of any person so convicted.

(3) No person shall be permitted to act as vendor to the commission who has been convicted of any violation of this article, or of any felony or any crime related to theft, bribery or gambling or involving moral turpitude. The commission shall deny the privilege of acting as a vendor to the commission for any person so convicted.

(b) Any person aggrieved by any action of the commission under the provisions of this article may in writing to the commission request a hearing which shall be held before the commission or its duly authorized representative. Upon receipt of the request for a hearing, the commission shall set a hearing date within thirty days of the receipt of the request and shall notify the aggrieved party in writing at least seven days in advance of the hearing date of the time, date and place of the hearing. The commission shall issue an order within thirty days after the hearing date, either affirming or reversing the action of the director. The provisions of chapter twenty-nine-a of this code shall apply to such hearings.

(c) After hearing and determination that any provision of this article or rule or regulation of the commission has been violated, the commission may impose a penalty not to exceed one hundred dollars per violation.

§29-22-15. Payment of prizes to minors.

If the person entitled to a prize or any winning ticket is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor’s family or a legal guardian of the minor of a check or draft payable to the order of the minor. If the person entitled to a prize
or any winning ticket is under the age of eighteen years, and
the prize is five thousand dollars or more, the director may
direct payment to the minor by depositing the amount of the
prize in any bank to the credit of an adult member of the
minor's family or a legal guardian of the minor as guardian
for the minor. The person so named as guardian shall have
qualified under and shall have the same duties and powers as
a person designated as a guardian in the manner as provided
in article ten, chapter forty-four of this code. The commission
and director shall be discharged of all further liability upon
payment of a prize pursuant to this section.


Unclaimed prize money for the prize on a winning ticket
shall be retained by the director for the person entitled thereto
for one hundred eighty days after the drawing in which the
prize was won or for one hundred eighty days after the
announced end of a game. If no claim is made for said money
within one hundred eighty days, the prize money reverts to
the state lottery fund for the purpose of awarding additional
prizes. The commission shall promulgate rules for the
awarding of additional prizes.

§29-22-17. Lottery proceeds; accounting therefor; deposit into
account of state treasurer; reports; funds to be held
in trust; failure to collect, account or deposit;
personal liability.

(a) The commission shall establish rules and regulations for
accounting for sales of lottery tickets and materials and
accounting for all funds from sales and dispensing of lottery
tickets, materials and games. Such regulations shall require all
licensed lottery sales agents and lottery retailers to deposit in
the bank account of the state treasurer in banks regularly used
by said agents or retailers and approved by the director all
moneys received by such agents and retailers from the sale of
lottery tickets, materials and games, within twenty-four hours
of the receipt thereof, and in accordance with the provisions
of section two, article two, chapter twelve of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
unless the director specifies a different time within which the
deposit must be made. The state treasurer shall credit all funds
so deposited to the credit of the state lottery fund. The director
shall require such reports of lottery receipts and transactions in the sale of lottery tickets and materials in such form and containing such information as the director deems necessary.

(b) All funds from the sale of lottery tickets, materials and games are the funds of the state and until deposited in the accounts and in the manner specified by the director are held in trust by the person or entity receiving them for deposit. If a person or entity fails to collect, account for or deposit such funds to the accounts and in the manner specified by the director, such person and entity shall be personally liable for the full amount of such funds. If the person so failing is an association, corporation or other entity, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association, corporation or entity, and payment may be enforced against them as against the association, corporation or entity.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; appropriation of net profits.

(a) There is hereby created a special fund in the state treasury which shall be designated and known as the “state lottery fund.” The fund shall consist of all appropriations to the fund and all interest earned from investment of the fund, and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the “state lottery fund.” The revenue shall be disbursed in the manner herein provided for the purposes stated herein and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds shall be made to the commission or lottery fund after the initial appropriation. The initial appropriation shall be used solely for the establishment and operation of the commission and lottery operations during the period until the lottery becomes a revenue-producing agency but no longer than eighteen months. After such period, but in no event longer
than eighteen months from the effective date of this article, the commission shall commence repayment to the state general revenue fund of the amount of the initial appropriation from the general revenue fund to be repaid in equal installments over the ensuing twelve months from the funds provided in subsection (e) below.

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) A minimum annual average of forty percent of the gross amount received from each lottery shall be allocated as net profit. The director is authorized to expend the necessary percentage of the amount allocated as net profit, not to exceed fifteen percent thereof, for the purposes of entering into contractual arrangements for the acquisition, financing, lease and lease-purchase, and other financing transactions, of lottery goods and services, including tickets, equipment, machinery, electronic computer systems and terminals, and supplies and maintenance therefor, for the first thirty-six months of operation, and may apportion the costs, expenses and expenditures related thereto among the commission, vendor or vendors and licensed lottery sales agents.

(e) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That in the initial year of operation not more than twenty percent may be so allocated and disbursed. In the event that the percentage allotted for operations and administration generates a surplus, the surplus will be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit.

(f) Annually, the Legislature shall appropriate the amounts allocated as net profit above for such purposes as it deems beneficial to the citizens of this state.


The legislative auditor shall conduct a yearly post audit of
all accounts and transactions of the state lottery office. The cost of the audit shall be paid out of the state lottery fund moneys designated for payment of operating expenses. The commission shall have an annual audit performed by an independent certified public accountant.

(a) The director shall, upon the tenth day of each month provide the joint committee on government and finance of the Legislature with a report reviewing the lottery operations, including, but not limited to, the amount of gross sales, the amount of net profit, the types of games being played, the number of licensed sales agents, the names and amounts of winners and any other information requested by the Legislature or by the joint committee on government and finance.
(b) The director shall, no later than the tenth day of each regular session of the Legislature, provide to the Legislature, legislative auditor, governor and state treasurer an annual report focused upon subjects of interest concerning lottery operations, including, but not limited to, an annual financial analysis of the lottery operations, a discussion of the types of games played and revenues generated, a statement of expenditures for the last fiscal year, a summary of the benefit programs and recommendations to the Legislature.

§29-22-21. Official’s name not to appear on lottery materials or at drawing.
No elected or appointed official’s name shall appear on any lottery ticket or material or in connection with any advertisement, nor shall any elected or appointed official, other than the members of the lottery commission, the director or deputy directors, preside or appear at any lottery drawing.

§29-22-22. Exemption of lottery prizes from state and local taxation.
No state or local taxes of any type whatsoever shall be imposed upon any prize awarded by the state lottery.

§29-22-23. Procurement; disclosures by vendors and related persons and entities; authorizing background investigation; unenforceability of contracts in contravention of section.
(a) The commission shall utilize the provisions of article
three, chapter five-a of this code in the procurement of all commodities, printing, services and goods, materials, lottery tickets and other items necessary for the commission and lottery, subject to the provisions of subsection (b) of this section.

(b) For the printing of tickets used in any lottery game, any goods or services involving the receiving or recording of number selection of any lottery game, or any goods or services involving the determination of winners on any lottery game, which are hereby referred to as major procurements, the commission shall evaluate the competence, integrity, character, reputation and background of the vendor. To allow for this evaluation, potential vendors shall supply the following information prior to the submission of an initial bid or proposal and on or before the first day of July of each year thereafter;

(1) If the vendor is a corporation, the officers, directors and each stockholder in such corporation; except that, in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent or more of such securities need be disclosed; and

(2) If the vendor is a partnership or joint venture, all of the general and limited partners or joint venturers; if such general and limited partners or joint venturers are themselves a partnership, joint venture, trust, association, corporation, subsidiary or intermediary corporation, the same information required by this section shall be supplied for such entities also;

(3) If the vendor is a trust, the name of the trustee;

(4) If the vendor is an association, the members, officers and directors; and

(5) If the vendor intends to or does subcontract to another person or entity any integral or substantial portion of the work to be performed in supplying such materials or equipment, then the vendor shall supply the above-mentioned information for all such persons or entities.

(6) The following information shall also be submitted:
(A) Other jurisdictions in which the vendor has contracts to supply gaming materials or equipment and the types of gaming materials or equipment involved therewith;

(B) The details of any felony conviction of a criminal offense, state or federal, of the vendor or any person whose name and address are required by this section;

(C) The details of any disciplinary action of a judicial nature relating to gaming taken by any state or person against the vendor or any person whose name and address are required by this section;

(D) The number of years the vendor has been in the business of supplying gaming materials or equipment;

(E) A disclosure of each state and jurisdiction in which the vendor has been denied, or has had revoked a gaming license of any kind, and the disposition of such in each such state or jurisdiction. If any gaming license has been revoked or has not been renewed or any gaming license application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying such failure to receive such license must be disclosed;

(F) A disclosure of the details of any bankruptcy, insolvency, reorganization or any pending litigation relating to gaming of each vendor;

(G) A signed authorization by each vendor and officer thereof allowing the deputy director for security to conduct a background investigation of such person; and

(H) Such other information, accompanied by such documents, as the commission, by rule or contract procurement documents, may require as being necessary or appropriate in the public interest to accomplish the purposes of this section.

(c) No contract for the supply of gaming materials or equipment for use in the operation of the state lottery is enforceable against the state if the provisions of this section are not complied with.

§29-22-24. Disclosures by vendors and related persons and entities of political contributions.

(a) For purposes of this section:
"Vendor" means any person required to make any disclosure under the provisions of section twenty-three of this article.

"Major procurement" has the same meaning as set out in section twenty-three of this article.

(b) Prior to the submission of the initial bid or proposal, and on or before the first day of July of each year thereafter, a vendor who is submitting an initial bid or proposal to, or who has submitted such within the preceding twelve months to, or who has a current contract with, the state lottery commission or any state agency, board or commission or political subdivision, for any major procurement, shall file with the secretary of state a detailed itemized disclosure statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth each contribution to any local, state or federal political candidate or political committee in this state, made in the preceding three years, or a statement that no such contributions have been made.

§29-22-25. Preemption of state laws or local regulation.

(a) No state or local law or regulation providing any penalty, disability, restriction, regulation or prohibition for the manufacture, transportation, storage, distribution, advertising, possession or sale of any lottery tickets or materials or for the operation of any lottery shall apply to authorized operations by or for the state lottery or commission.

(b) The provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict herewith: Provided, That nothing herein shall invalidate any zoning law, or Sunday closing law under article ten, chapter sixty-one of this code.

(c) Nothing in this article shall be deemed to permit the operation of any lottery otherwise prohibited by the laws of this state, not owned and operated by this state and permitted by this article.


The state lottery commission shall be terminated pursuant to the provisions of article ten, chapter four of this code on the first day of July, one thousand nine hundred ninety-one,
unless sooner terminated or unless continued or reestablished
pursuant to such article and chapter.


(a) Any person violating any of the provisions of this article,
except sections eleven and twelve of this article, is guilty of
a misdemeanor, and, upon conviction thereof, for the first
offense, shall be fined not less than one hundred nor more than
five hundred dollars, or imprisoned in the county jail not more
than one year, or both fined and imprisoned.

(b) Any person violating any of the provisions of this
article, except sections eleven and twelve of this article, shall,
for the second offense, be guilty of a felony, and, upon
conviction thereof, shall be fined not more than one thousand
dollars, or be imprisoned in the penitentiary for not less than
one year, or both fined and imprisoned.


If any provision of this article or the application thereof to
any person or circumstance is held invalid, such invalidity shall
not affect other provisions or applications of this article, and
to this end the provisions of this article are declared to be
severable.

CHAPTER 116
(S. B. 15—By Senator Tucker)

[Passed March 6, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter
fifty of the code of West Virginia, one thousand nine hundred
thirty-one, as amended, relating to the jurisdiction of
magistrate courts in civil matters.

Be it enacted by the Legislature of West Virginia:

That section one, article two, 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 2. JURISDICTION AND AUTHORITY.

§50-2-1. Civil jurisdiction.

1 Except as limited herein and in addition to jurisdiction
2 granted elsewhere to magistrate courts or justices of the
3 peace, magistrate courts shall have jurisdiction of all civil
4 actions wherein the value or amount in controversy or the
5 value of property sought, exclusive of interest and cost, is
6 not more than three thousand dollars. Notwithstanding the
7 provisions of section eleven, article five of this chapter, or
8 any other limitations to the contrary, magistrate courts
9 shall have jurisdiction to enter an order for support and to
10 enforce said orders as provided in articles seven and eight,
11 chapter forty-eight of this code. Magistrate courts shall
12 have jurisdiction of matters involving unlawful entry or
13 detainer of real estate so long as the title to such real estate
14 is not in dispute. Except as the same may be in conflict with
15 the provisions of this chapter, the provisions of article
16 three, chapter fifty-five of this code, regarding unlawful
17 entry and detainer, shall apply to such actions in magistrate
18 court. Magistrate courts shall have jurisdiction of actions
19 on bonds given pursuant to the provisions of this chapter.
20 Magistrate courts shall have continuing jurisdiction to
21 entertain motions in regard to post-judgment process
22 issued from magistrate court and decisions thereon may be
23 appealed in the same manner as judgments.
24 Magistrate courts shall not have jurisdiction of actions in
25 equity, of matters in eminent domain, of matters in which
26 the title to real estate is in issue, of proceedings seeking
27 satisfaction of liens through the sale of real estate, of
28 actions for false imprisonment, of actions for malicious
29 prosecution or of actions for slander or libel or of any of the
30 extraordinary remedies set forth in chapter fifty-three of
31 this code.
32 Magistrates, magistrate court clerks, magistrate court
33 deputy clerks and magistrate assistants shall have the
34 authority to administer any oath or affirmation, to take any
35 affidavit or deposition, unless otherwise expressly provided
36 by law, and to take, under such regulations as are
37 prescribed by law, the acknowledgment of deeds and other
38 writings.
AN ACT to amend and reenact section three, article twenty-three chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section ten, article four, chapter seventeen-a of said code; and to amend and reenact sections four and ten, article six, chapter seventeen-a of said code, all relating to salvage yards; increasing licensing fee; permitting one assignment of salvage certificates for wrecked or damaged vehicles without charge therefor; increasing time period for surrender of certificates; requiring surrender of title, vehicle identification number plate and submission of photograph for certain vehicles; reducing salvage certificates fee; exempting from payment of privilege tax certain applicants for titles to reconstructed vehicles; changing certain titling provisions for reconstructed vehicles; expanding bonding provisions for applicants for license certificates; deleting reference to license certificate appeal board; and providing special license plates for used parts dealers, wreckers and dismantlers.

Be it enacted by the Legislature of West Virginia:

That section three, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section ten, article four, chapter seventeen-a of said code be amended and reenacted; and that sections four and ten, article six of chapter seventeen-a of said code be amended and reenacted, all to read as follows:

Chapter.
17. Roads and Highways.
17A. Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 23. SALVAGE YARDS.

§17-23-3. License required; issuance; fee; renewal; disposition of fees.

No salvage yard or any part thereof shall be established,
operated or maintained without a state license. The commis-
sioner shall have the sole authority to issue such a state license,
and he shall charge therefor a fee of two hundred dollars
payable annually in advance. All licenses issued under this
section shall expire on the first day of January following the
date of issuance. A license may be renewed from year to year
upon paying the commissioner the sum of two hundred dollars
for each such renewal. All such renewal license fees collected
under the provisions of this article shall be deposited in the
special fund provided for in section ten of this article.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.

Article.

4. Transfer of Title or Interest.
6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates;
Temporary Plates or Markers, etc.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-10. Salvage certificates for certain wrecked or damaged
vehicles; fee; penalty.

In the event a motor vehicle is determined to be a total loss
or otherwise designated as "totaled" by any insurance company
or insurer, and upon payment of an agreed price as a claim
settlement to any insured or claimant owner for the purchase
of the vehicle, the insurance company or the insurer shall
receive the certificate of title and the vehicle. The insurance
company or insurer shall within ten days surrender the
certificate of title and a copy of the claim settlement to the
department of motor vehicles. The department shall issue a
"salvage certificate," on a form prescribed by the commis-
sioner, in the name of the insurance company or the insurer.
Such certificate shall contain on the reverse thereof spaces for
one successive assignment before a new certificate at an
additional fee is required. Upon the sale of the vehicle the
insurance company or insurer shall endorse the assignment of
ownership on the salvage certificate and deliver it to the
purchaser who shall also apply for a salvage certificate, even
if the insured or claimant owner is the purchaser. The vehicle
shall not be titled or registered for operation on the streets
or highways of this state unless there is compliance with subsection (b) of this section:

(a) Any owner, who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title or salvage certificate has been issued, shall, within twenty days, surrender the certificate of title or salvage certificate to the department for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the department. Should a vehicle less than eight years old be determined to be a complete fire, flood or basket, the vehicle identification number plate and a photograph of the vehicle shall accompany the surrendered certificate: Provided, That the term "basket" means a vehicle which has been damaged more than seventy-five percent of the retail price as described in the national automobile dealers association official used car guide. If the vehicle is to be reconstructed, the owner must obtain a salvage certificate and comply with the provisions of subsection (b) of this section.

(b) If the motor vehicle is a "reconstructed vehicle" as defined in section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an authorized law-enforcement officer or official state inspection station to determine the operating condition and vehicle identification number and all other inspection requirements. Following an approved inspection, an application for a new certificate of title may be submitted to the department; however, the applicant may be required to submit all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate must also be surrendered to the department before a certificate of title may be issued.

(c) The department shall charge a fee of fifteen dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for a reconstructed vehicle, the department shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax.
(d) A certificate of title issued by the department for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed vehicle: Provided, That if the application for a certificate of title is accompanied by a sworn statement under penalty of perjury that cost of repair to the vehicle is not more than fifty percent of the national automobile dealers association official used car guide value of the vehicle, the boldface markings “reconstructed vehicle” shall not appear on the title.

Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars, or imprisoned in the county jail for not more than one year, or both fined and imprisoned.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-4. Application for license certificate; insurance; bonds; investigation; information confidential.

(a) Application for any license certificate required by section three of this article shall be made on such form as may be prescribed by the commissioner. There shall be attached to the application a certificate of insurance certifying that the applicant has in force an insurance policy issued by an insurance company authorized to do business in this state insuring the applicant and any other person, as insured, using any vehicle or vehicles owned by the applicant with the express or implied permission of such named insured, against loss from the liability imposed by law for damages arising out of the ownership, operation, maintenance or use of such vehicle or vehicles, subject to minimum limits, exclusive of interest and cost, with respect to each such vehicle, as follows: Ten thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, twenty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and five thousand dollars because of injury to or destruction of
property of others in any one accident.

(b) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, used motor vehicle dealer or house trailer dealer, such application shall disclose, but not be limited to, the following:

1. The type of business for which a license certificate is sought;

2. If the applicant be an individual, the full name and address of the applicant and any trade name under which he will engage in said business;

3. If the applicant be a copartnership, the full name and address of each partner therein, the name of the copartnership, its post-office address and any trade name under which it will engage in said business;

4. If the applicant be a corporation, its name, the state of its incorporation, its post-office address and the full name and address of each officer and director thereof;

5. The location of each place in this state at which the applicant will engage in said business and whether the same is owned or leased by the applicant;

6. Whether the applicant, any partner, officer or director thereof has previously engaged in said business or any other business required to be licensed under the provisions of this article and if so, with or for whom, at what location and for what periods of time;

7. Whether the applicant, any partner, officer, director or employer thereof has previously applied for a license certificate under the provisions of this article or a similar license certificate in this state or any other state, and if so, whether such license certificate was issued or refused, and, if issued, whether it was ever suspended or revoked;

8. A statement of previous general business experience and past history of the applicant; and

9. Such other information as the commissioner may reasonably require which may include information relating to any contracts, agreements or understandings between the applicant and other persons respecting the transaction of said
business, and any criminal record of the applicant if an individual, or of each partner if a copartnership, or of each officer and director, if a corporation.

(c) In the case of an application for a license certificate to engage in the business of new motor vehicle dealer, such application shall, in addition to the matters outlined in subsection (b) of this section disclose:

1. The make or makes of new motor vehicles which the applicant will offer for sale in this state during the ensuing fiscal year; and
2. The exact number of new motor vehicles, if any, sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, and if no new motor vehicles were sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, the number of new motor vehicles the applicant reasonably expects to sell at retail in this state during the ensuing fiscal year.

(d) In the case of an application for a license certificate to engage in the business of used motor vehicle dealer, such application shall in addition to the matters outlined in subsection (b) of this section, disclose the exact number of used motor vehicles, if any, sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, and if no used motor vehicles were sold at retail in this state by such applicant or his predecessor, if any, during the preceding fiscal year, the number of used motor vehicles the applicant reasonably expects to sell at retail in this state during the ensuing fiscal year.

(e) In the case of an application for a license certificate to engage in the business of trailer dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, such application shall disclose such information as the commissioner may reasonably require.

(f) Such application shall be verified by the oath or affirmation of the applicant, if an individual, or if the applicant is a copartnership or corporation, by a partner or officer thereof, as the case may be. Such application must be accompanied by a bond of the applicant in the penal sum of
two thousand dollars, in such form as may be prescribed by
the commissioner, conditioned that the applicant will not in
the conduct of his business practice any fraud which, or make
any fraudulent representation which, shall cause a financial
loss to any purchaser, seller or financial institution or agency,
or the state of West Virginia, with a corporate surety thereon
authorized to do business in this state, which bond shall be
effective as of the date on which the license certificate sought
is issued.

(g) Upon receipt of any such fully completed application,
together with any bond required as aforesaid, the certificate
of insurance as aforesaid and the appropriate fee as hereinafter
provided in section ten of this article, the commissioner may
conduct such investigation, as he deems necessary to determine
the accuracy of any statements contained in such application
and the existence of any other facts which he deems relevant
in considering such application. To facilitate such investiga-
tion, the commissioner may withhold issuance or refusal of the
license certificate for a period not to exceed twenty days.

(h) Any application for a license certificate under the
provisions of this article and any information submitted
therewith shall be confidential for the use of the department.
No person shall divulge any information contained in any such
application or any information submitted therewith except in
response to a valid subpoena or subpoena duces tecum issued
pursuant to law.

PART III. FEES AND DEALER SPECIAL PLATES GENERALLY.

§17A-6-10. Fee required for license certificate; dealer special plates.

(a) The annual fee required for a license certificate to engage
in the business of new motor vehicle dealer shall be one
hundred dollars. This fee shall also entitle such licensee to one
dealer's special plate which shall be known as a Class D special
plate. Up to nine additional Class D special plates shall be
issued to any such licensee upon application therefor on a form
prescribed by the commissioner for such purpose and the
payment of a fee of five dollars for each additional Class D
special plate. Any such licensee who obtains a total of ten
Class D special plates as aforesaid shall be entitled to receive
additional Class D special plates on a formula basis, that is,
one additional Class D special plate per twenty new motor
vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D special plate per twenty new motor vehicles which such licensee estimates on his application for his license certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D special plates in addition to the ten plates authorized above and any authorized on a formula basis, but the cost of each such Class D special plate shall be thirty dollars.

(b) The annual fee required for a license certificate to engage in the business of used motor vehicle dealer shall be one hundred dollars. This fee shall also entitle such licensee to one dealer's special plate which shall be known as a Class D-U/C special plate. Up to four additional Class D-U/C special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each additional Class D-U/C special plate. Any such licensee who obtains a total of five Class D-U/C special plates as aforesaid shall be entitled to receive additional Class D-U/C special plates on a formula basis, that is, one additional Class D-U/C special plate per thirty used motor vehicles sold at retail in this state by such licensee or his predecessor during the preceding fiscal year, upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-U/C special plate: Provided, That in the case of a licensee who did not own or operate such business during such preceding fiscal year and who has no predecessor who owned or operated such business during the preceding fiscal year, additional Class D-U/C special plates shall be issued, for the ensuing fiscal year only, on a formula basis of one additional Class D-U/C special plate per thirty used motor vehicles which such licensee estimates on his application for his license
certificate he will sell at retail in this state during said ensuing fiscal year. Any such licensee may obtain Class D-U/C special plates, in addition, to the five plates authorized above and any authorized on a formula basis, but the cost of each such Class D-U/C special plate shall be thirty dollars.

(c) The annual fee required for a license certificate to engage in the business of house trailer dealer or trailer dealer, as the case may be, shall be twenty-five dollars. This fee shall also entitle such licensee to four dealer's special plates which shall be known as Class D-T/R special plates. Additional Class D-T/R special plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class D-T/R special plate.

(d) The annual fee required for a license certificate to engage in the business of motorcycle dealer shall be ten dollars. This fee shall also entitle such licensee to two dealer's special plates which shall be known as Class F special plates. Additional Class F special plates shall be issued to any such dealer upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of five dollars for each such additional Class F special plate.

(e) The annual fee required for a license certificate to engage in the business of used parts dealer, or wrecker, or dismantler, as the case may be, shall be fifteen dollars. Upon payment of the fee for said license certificate, a licensee shall be entitled to up to four special license plates which shall be known as Class WD special plates. Such plates shall be issued to any such licensee upon application therefor on a form prescribed by the commissioner for such purpose and the payment of a fee of twenty-five dollars for each such plate. Such plate issued under the provisions of this subsection shall have the words “Towing Only” affixed thereon.

(f) All of the special plates provided for in this section shall be of such form and design and contain such other distinguishing marks or characteristics as the commissioner may prescribe.
CHAPTER 118
(Com. Sub. for S. B. 329—By Senator Tucker)

[Passed April 10, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred four and one hundred six, article two, chapter forty-six-a of said code; and to amend and reenact sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, all relating to credit transactions generally; priority of a security interest in a motor vehicle by delivery of certificate of origin and actual and continued possession of such certificate; notice of liability to a surety, cosigner, co-maker, endorser or guarantor of a consumer credit sale or consumer loan obligation; notice of a consumer's right to cure default; curing of such default and acceleration of the maturity of a consumer credit sale or consumer loan; application of payments on account; rebate upon prepayment, refinancing or consolidation of a consumer loan or consumer credit sale; judgments and interest on judgments arising from a consumer credit sale or consumer loan; delinquency charges on precomputed consumer credit sales or consumer loans; and delinquency charges on non-precomputed consumer credit sales or consumer loans.

Be it enacted by the Legislature of West Virginia:

That section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one hundred four and one hundred six, article two, chapter forty-six-a of said code be amended and reenacted; and that sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, be amended and reenacted, all to read as follows:

Article.
2. Consumer Credit Protection.
CHAPTER 118] MOTOR VEHICLES 1225

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-104. Notice to cosigners.
§46A-2-106. Notice of consumer’s right to cure default; cure; acceleration.

§46A-2-104. Notice to cosigners.

No person shall be held liable as surety, cosigner, co-maker, endorser or guarantor or be charged with personal liability for payment in a consumer credit sale or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of the disclosure required by the “Federal Consumer Credit Protection Act.” Such notice shall be sufficient if it appears under the conspicuous caption “NOTICE TO COSIGNER” and contains substantially the following language:

“You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn’t pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility.”

“You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.”

“The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.”

“This notice is not the contract that makes you liable for the debt.”

The caption shall be typewritten or printed in at least twelve point bold Helvetica upper case type. The body of the notice shall be typewritten or printed in at least eight point regular Helvetica type, in upper or lower case, where appropriate.
§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

1 After a consumer has been in default on any installment obligation or any other secured obligation for five days for failure to make a scheduled payment or otherwise perform pursuant to such a consumer credit sale or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. A copy of the notice required by this section shall be (i) retained by the creditor, (ii) certified in the manner prescribed by this section by an officer or other authorized representative of such creditor, and (iii) notarized by a person licensed as a notary under the laws of the state of West Virginia or any other state or territory of the United States. The certification required by this section shall substantially conform to the following language:

"I, ........................................ (name of person certifying),
the ........................................ (title of person certifying)
of ........................................ (creditor's name), hereby certify that the notice of the consumer's right to cure default on which this certification appears [or to which this certification is attached] was on this .... day of
........... ...., 19 ...., mailed to the person(s) whose
name(s) appear herein [therein] at the address(es) set
Exempt as hereinafter provided in this section, after a default on any installment obligation or any other secured obligation other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, a creditor may not accelerate maturity of the unpaid balance of any such installment obligation or any other such secured obligation. Commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section even though previous defaults have been cured and his creditor's right to proceed against him and his collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in such a consumer credit sale or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.
§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (1) When a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78.")

2 (2) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code:

Provided, That no rebate of less than one dollar need be made.

3 (3) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered and such judgment shall bear interest until paid at the rate of ten percent per annum.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties
may contract for a delinquency charge on any install-
ment not paid in full within ten days after its scheduled
due date in an amount not exceeding the greater of:
(a) An amount, not exceeding ten dollars, which is
five percent of the unpaid amount of the installment, but
in any event not less than one dollar; or
(b) An amount equivalent to the deferral charge that
would be permitted to defer the unpaid amount of the
installment for the period that it is delinquent.
(2) A delinquency charge under subdivision (a) of
subsection (1) may be collected only once on an in-
stallment however long it remains in default. No delin-
quency charge may be collected with respect to a de-
ferred installment unless the installment is not paid in
full within ten days after its deferred due date. A
delinquency charge may be collected at the time it ac-
crues or at any time thereafter.
(3) No delinquency charge may be collected on an
installment which is paid in full within ten days after
its scheduled or deferred installment due date, even
though an earlier maturing installment or a delinquency
or deferral charge on an earlier installment may not
have been paid in full. For purposes of this subsection,
payments shall be applied first to current installments,
then to delinquent installments, and then to delinquency
and other charges.
(4) If two installments or parts thereof of a precomputed
consumer credit sale or consumer loan are in default
for ten days or more, the creditor may elect to convert
such sale or loan from a precomputed sale or loan to
one in which the sales finance charge or loan finance
charge is based on unpaid balances. In such event the
creditor shall make a rebate pursuant to the provisions
on rebate upon prepayment, refinancing or consolidation
as of the maturity date of any installment then delin-
quent, and thereafter may make a sales finance charge
or loan finance charge as authorized by the appropriate
provisions on sales finance charges or loan finance charges
for consumer credit sales or consumer loans.
The amount of the rebate shall not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

(1) As an alternative to the continuation of the sales finance charge or loan finance charge on a delinquent installment of a nonprecomputed credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount, not exceeding ten dollars, which is five percent of the unpaid amount of the installment, but in any event not less than one dollar.

(2) A delinquency charge under subsection (1) may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled due date, even though an earlier maturing installment or a delinquency or deferral charge on an earlier installment may not have been paid in full. For purposes of this subsection, payments shall be applied first to current installments, then to delinquent installments, and then to delinquency and other charges.
CHAPTER 119
(S. B. 254—By Senators Tucker and Spears)

[Passed March 19, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article four, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen, relating to providing accident reports to the commissioner of the department of highways when property of the department is damaged as a result of the accident and to the mayor of a municipality when property of the municipality is damaged as a result of the accident.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCIDENTS.

§17C-4-16. Accidents involving state and municipal property; reports to be provided.

1 Whenever a report of a motor vehicle accident prepared by a member of the department of public safety, a member of a county sheriff's department or a municipal police officer, in the regular course of their duties, indicates that as a result of such accident damage has occurred to any bridge, sign, guardrail or other property, exclusive of licensed motor vehicles, a copy of such report shall, in the case of such property belonging to the department of highways, be provided to the commissioner of the department of highways, and, in the case of such property belonging to a municipality, be provided to the mayor of that municipality. The copies of such reports shall be provided to the commissioner or mayor, as applicable, without cost to them.
AN ACT to amend and reenact sections four and eleven-b, article seventeen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the height and weight of vehicles and loads; length of combination vehicles permitted.

Be it enacted by the Legislature of West Virginia:

That sections four and eleven-b, 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.
§17C-17-11b. Authority of state road commissioner to increase length limitations upon highways designated by him.

§17C-17-4. Height and length of vehicles and loads.

1 (a) A vehicle including any load thereon shall not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

2 (b) A motor vehicle including any load thereon shall not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumpers.

3 (c) Except as hereinafter provided, 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-five 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
19 limitation that a combination of vehicles coupled together
20 shall not consist of more than two units shall not apply to a
21 combination of vehicles coupled together by a saddle mount
22 device used to transport motor vehicles in a drive-away
23 service when no more than three saddle mounts are used:
24 Provided, however, That equipment used in said
25 combination meets the requirements of the safety
26 regulations of the United States department of
27 transportation and shall not exceed an overall length of
28 more than sixty-five feet.
29 (d) The length limitations for truck tractor-semitrailer
30 combinations and truck tractor-semitrailer-trailer
31 combinations operating on the national system of interstate
32 and defense highways and those classes of qualifying
33 federal-aid primary system highways so designated by the
34 United States secretary of transportation, and those
35 highways providing reasonable access to and from
36 terminals, facilities for food, fuel, repairs and rest, and
37 points of loading and unloading for household goods
38 carriers from such highways, and further, as to other
39 highways so designated by the West Virginia commissioner
40 of highways, shall be as follows: The maximum length of a
41 semitrailer unit operating in a truck tractor-semitrailer
42 combination shall not exceed forty-eight feet in length and
43 the maximum length of any semitrailer or trailer operating
44 in a truck tractor-semitrailer-trailer combination shall not
45 exceed twenty-eight feet in length and in no event shall any
46 combinations exceed three units, including the truck
47 tractor: Provided, That nothing herein contained shall
48 impose an overall length limitation as to commercial motor
49 vehicles operating in truck tractor-semitrailer or truck
50 tractor-semitrailer-trailer combinations.

§17C-17-11b. Authority of state road commissioner to increase
length limitations upon highways designated by him.

1 If, in the opinion of the commissioner of the department
2 of highways, the design, construction and safety of any
3 highway, or portion thereof, are such that the length
4 limitations prescribed in subsection (c), section four of this
5 article can be increased without undue risk of damage to
other vehicles lawfully using such highway or portion thereof, to bridges or other road structures, and to municipal and utility company facilities, wires, traffic devices or other structures, the commissioner may, by order, increase the length limitations of vehicles which may be operated upon any such highway, or portion thereof, designated by him in such order and may establish therein the maximum length limitations which shall thereafter be applicable to the highway or portion thereof so designated by him; Provided, That the maximum length of any combination of vehicles including any load thereon shall not exceed sixty feet, except as otherwise provided in this article with respect to the size of vehicles: Provided, however, That no such order of the commissioner shall establish any height or length limitation in excess of or in conflict with any height or length limitation prescribed by or pursuant to acts of Congress with respect to the national system of interstate defense highways.

CHAPTER 121

(H. B. 1450—By Delegate McCormick)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article nineteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to parties subject to penalties for certain traffic violations; creating a violation of driving less than ten miles per hour over the stated speed limit on certain highways; penalty; violations not subject to report to department of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That section two, article nineteen, 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 19. PARTIES, PROCEDURE UPON ARREST AND REPORTS IN CRIMINAL CASES.
§17C-19-2. Offenses by persons owning or controlling vehicles; owner present in vehicle to be arrested rather than driver for certain traffic violations.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

If the owner of a motor vehicle is present in the vehicle at a time when another driver is operating the vehicle upon the highways of this state (1) with defective or improper equipment in violation of the provisions of article fifteen of this chapter, (2) in violation of the weight, height, length or width provisions of article seventeen of this chapter, (3) with improper registration in violation of the provisions of article three, chapter seventeen-a of this code or (4) with an expired vehicle inspection decal or certificate in violation of the provisions of article sixteen of this chapter, the owner rather than the driver shall be arrested for any violation enumerated herein in lieu of an arrest of the driver. If the owner of the vehicle is not present therein, then the driver shall be arrested for any violation enumerated in this section.

If an owner or driver is arrested under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then upon conviction thereof, such person shall be fined not more than five dollars, plus court costs.

If an owner or driver is convicted under the provisions of this section for the offense of driving above the speed limit on a controlled access highway or interstate highway, and if the evidence shall show that the motor vehicle was being operated at less than ten miles per hour above said speed limit, then notwithstanding the provisions of section four, article three, chapter seventeen-b of this code, a certified abstract of the judgment on such conviction shall not be transmitted to the department of motor vehicles.
**CHAPTER 122**

*(Com. Sub. for H. B. 1064—By Delegate Given)*

[Passed April 5, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five, article four of said chapter, all relating generally to the framing and adopting of city charters; election of charter boards; convening and organizing of charter boards; powers and duties of charter boards; requiring that a city charter provide for a form of city government; specifying such forms of city government as may be provided in a city charter; effective date of an approved charter; recordation of an approved charter and the election results relating thereto; and rejection of a proposed charter.

Be it enacted by the Legislature of West Virginia:

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

Article.

3. Framing and Adopting an Original Charter Following Incorporation of a City; Revising or Amending a Charter; Expenses of Incorporation.

4. Framing and Adopting a Charter Other Than Immediately Following Incorporation; Revising or Amending a Charter; Elections and Expenses.

ARTICLE 3. FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION.

§8-3-2. Charter board for cities—Organization; journal; quorum; duties; time for draft of charter; form of city government.

1. If on the returns being canvassed on the question of incorporation of a city, such canvassing to be done by the county commission, a majority of the legal votes cast be in favor of such incorporation, then the legal votes cast for members of the charter board shall be counted and canvassed by the county commission, and the candidates in the number
to be chosen who received the highest number of votes shall be declared elected. The charter board shall be convened at a suitable place within the territory, by the member receiving the highest number of votes, not less than five days nor more than ten days after the canvass of the returns. He shall notify the other members of the board in writing of the time and place of the first meeting of the charter board. At such first meeting, the board shall perfect its organization by electing a chairman and secretary from its membership and by determining the rules to govern its proceedings. Any vacancy in the membership of the board occurring before a charter is approved by the qualified voters of the incorporated territory shall be filled by appointment by majority action of the remaining members, and any vacancy occurring after approval of a charter as aforesaid shall be filled as specified in section nine of this article. A journal shall be kept by the secretary, in which journal shall be entered, upon demand by any member, the vote by ayes and nays on any question. A majority of the members of said board shall constitute a quorum. The board shall specify the manner for nominating and electing candidates for the first elective offices provided for in the proposed charter at the election to be held on the question of approval of the charter. It shall fix the date of said election and it shall do and provide all other things necessary for making nominations and holding and conducting such election. Any qualified voter and any freeholder of the incorporated territory may file with said charter board any written material bearing upon the purposes of the board, and the board shall give such material so filed such consideration as it may deem proper. The charter drafting process may be carried on through committees, but their work shall be advisory only. The charter board shall complete its draft of a charter within ninety days after its first meeting. It shall be the duty of the charter board to provide in the charter so drafted for a form of city government in accordance with one of the following plans:

Plan 1—"Mayor-Council Plan." Under this plan:

(1) There shall be a city council, elected at large or by wards, or both at large and by wards, by the qualified voters of the city; a mayor elected by the qualified voters of the city; and such other elective officers as the charter may prescribe;
and

(2) The mayor and council shall be the governing body and administrative authority.

Plan II—“Strong-Mayor Plan.” Under this plan:

(1) There shall be a mayor elected by the qualified voters of the city; and a city council elected at large or by wards, or both at large and by wards, by the qualified voters of the city;

(2) The council shall be the governing body;

(3) The mayor shall be the administrative authority; and

(4) Other officers and employees shall be appointed by the mayor or by his order in accordance with this chapter, but such appointments by the mayor or by his order may be made subject to the approval of the council.

Plan III—“Commission Government.” Under this plan:

(1) There shall be, except as hereinafter in this plan provided, a commission of five members elected at large by the qualified voters of the city;

(2) The members of the commission shall be a commissioner of public affairs, a commissioner of finance, a commissioner of public safety, a commissioner of public works and a commissioner of streets: Provided, That a charter for a Class I or Class II city may, and a charter for a Class III city shall, provide for a commission of three members, viz., a commissioner of finance, a commissioner of public works and a commissioner of public safety;

(3) The members of the commission shall elect a mayor from among their membership;

(4) The commission shall be the governing body and administrative authority; and

(5) Officers and employees, other than members of the commission, shall be appointed in accordance with this chapter by the commissioners or by each commissioner with respect to his department, as the charter may prescribe.

Plan IV—“Manager Plan.” Under this plan:
There shall be a council of not less than five nor more than eleven members, elected either at large or from such geographical districts as may be established by the charter, or partly at large and partly from such geographical districts, and the charter may empower the council to change, from time to time, such districts without amending the charter: Provided, that the change of such districts shall not take effect during the terms of office of the members of such council making such change;

(2) There shall be a mayor elected by the council from among its membership who shall serve as the presiding officer of the council; and a city manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority. He shall manage the affairs of the city under the supervision of the council and he shall be responsible to such council. He shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work he is responsible to the council.

Plan V—"Manager-Mayor Plan." Under this plan:

(1) There shall be a council of not less than five nor more than eleven members, elected either at large or from such geographical districts as may be established by the charter, or partly at large and partly from such geographical districts, and the charter may empower the council to change, from time to time, such districts without amending the charter: Provided, that the change of such districts shall not take effect during the terms of office of the members of such council making such change;

(2) There shall be a mayor elected at large by the qualified voters of the municipality as may be established by the charter, who shall serve as a member and the presiding officer of the council; and a city manager who shall be appointed by the council;

(3) The council shall be the governing body; and

(4) The manager shall be the administrative authority. He shall manage the affairs of the city under the supervision of
the council and he shall be responsible to such council. He shall appoint or employ, in accordance with this chapter, all subordinates and employees for whose duties or work he is responsible to the council.

The purpose of the provisions of this section pertaining to Plan I, Plan II, Plan III, Plan IV and Plan V is to establish basic requirements of alternative plans of structure and organization of city government. The structure and organization of a city government may be specified by the charter in respects other than those enumerated, and in elaboration of the basic requirements, insofar as such charter provisions do not conflict with the purpose and the provisions of the alternative plans prescribed.

ARTICLE 4. FRAMING AND ADOPTING A CHARTER OTHER THAN IMMEDIATELY FOLLOWING INCORPORATION; REVISIONING OR AMENDING A CHARTER; ELECTIONS AND EXPENSES.

§8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection.

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election. If approved as aforesaid, one of the signed copies of the charter on file with the recorder of the city, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by such recorder to the clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

If the charter is approved as aforesaid, a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval shall be forwarded by the recorder of the city to the clerk of the county commission for filing with the signed copy of the charter previously filed with him.

Rejection of the proposed charter by a majority of the legal votes cast shall have the same effect as a majority vote against the question of framing a charter as specified in section two
of this article, and no further effort shall be made to have a
charter approved until the question of framing a charter is
again submitted to the qualified voters of the city and is
approved by a majority vote, subject to the two-year limitation
set forth in said section two of this article.

CHAPTER 123
(H. B. 1522—By Delegate J. Martin)
[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty, article thirteen,
chapter eight of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to and providing for
alternative methods by which a municipality may provide for
the defeasance or payment of bonded indebtedness.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. TAXATION AND FINANCE.

§8-13-20. Balances in municipal bond commission fund may be
transferred or remitted to general fund where bonded
indebtedness has been paid or where defeasance or
payment of bonded indebtedness has been provided
for; use of transferred or remitted funds.

(a) As used in this section, unless the context in which used
clearly requires a different meaning, the word “commission”
means the West Virginia municipal bond commission.

(b) Every municipality shall have plenary power and
authority to transfer to the general fund of such municipality:

(l) Any unexpended balances of funds raised to pay the
interest on and create sinking funds for any bonded indebted-
ness when the bonded indebtedness for the payment of which
such funds were raised has been fully paid and discharged or
when provision has been made, as hereinafter provided in
subsection (d) of this section, to fully pay and discharge such
bonded indebtedness, and

(2) Any balance remaining in any fund levied and collected
under authority of any special levy election.

(c) The commission is authorized to remit to the munici-
pality which has issued or issues any bonds, to be credited to
the general fund of such municipality, any balances of funds
remaining under the supervision and control of the commis-
ion when the bonded indebtedness for the payment of which
such funds were raised and paid to the commission has been
fully paid and discharged or when provision has been made,
as hereinafter provided in subsection (d) of this section, to fully
pay and discharge such bonded indebtedness.

(d) All outstanding bonds of any series shall, prior to the
maturity date thereof, be deemed to have been fully paid and
discharged when there shall have been deposited with the
commission:

(1) Either moneys in an amount which shall be sufficient,
or

(2) Securities of a quality in which the commission is
authorized by law to invest moneys in its possession and
control, the principal of and interest on which will provide
moneys which, together with the moneys, and investment
securities, if any, theretofore deposited with, or acquired by,
the commission and held by it for the payment of such bonds
and the moneys, if any, then deposited with the commission
for such purpose, (i) shall be sufficient to pay when due the
principal and interest due and to become due on said bonds
on and prior to the maturity date thereof, or (ii) if the
outstanding bonds are redeemable and the municipality by
ordinance determines to redeem said outstanding bonds, shall
be sufficient to pay when due the redemption price, and
interest due and to become due on said bonds on and prior
to the next redemption date thereof.

The moneys and securities held by the commission pursuant
to this subsection (d) shall be held by the commission in trust
for the payment of the principal or redemption price, if
applicable, of and interest on the bonds for the payment or
redemption of which such provision is made: Provided, That
any cash received from principal or interest payments on
securities so held by the commission, if not then needed for
such purpose, shall, to the extent practicable, be reinvested in
securities maturing at times and in principal amounts sufficient
to pay when due the principal or redemption price, if
applicable, of and interest to become due on such bonds on
and prior to the redemption date or maturity date thereof, as
the case may be, and the interest earned from any such
reinvestments shall be paid over to the municipality which
issued such bonds, as received by the commission, free and
clear of any trust. Any moneys, and the proceeds of any
securities, held by the commission in trust for the redemption,
if applicable, or for the payment and discharge of any series
of bonds, which are in excess of the moneys required to fully
pay and discharge such bonds, by redemption, if applicable,
or upon maturity thereof, shall also be transferred to the
general fund of the municipality which issued such bonds after
such bonds are redeemed, if applicable, or after such bonds
are fully paid and discharged at maturity, as the case may be.

(e) In any case where such funds are transferred from
sinking funds, or are remitted from the commission, as
hereinabove provided, no part of the moneys so transferred
or remitted shall be expended for the payment of current
expenses of the municipality, but such funds shall be expended
as the governing body of such municipality shall elect for the
liquidation of existing nonbonded indebtedness, if any, of such
municipality or for the liquidation of other bonded indebted-
ness of such municipality or for any combination of such uses.

CHAPTER 124
(Com. Sub. for S. B. 147—By Senators Loehr and Cook)

[Passed March 22, 1985; in effect ninety days from passage. Approved by the Governor.]
ing municipalities to contract to provide services for the prevention and extinguishment of fire for property located outside corporate limits; providing such services beyond three miles of corporate limits in accordance with a rural fire protection district plan approved by the state fire commission; disallowing such rural fire protection district plans to infringe upon the response area of an existing fire department without such department's written consent; annual payments for contracted fire services; liens for and collection of defaulted payments; cancellation of contracts upon default; such contracts passing to the successors in title to property covered by such contracts; and cancellation of such contracts.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.


1 (a) Any municipality may contract to render services in the prevention and extinguishment of fires upon property located within three miles of its corporate limits. A municipality may contract beyond the three-mile limit for fire service protection, if fire protection is provided in accordance with and under a rural fire protection district plan based upon the fire suppression rating schedule approved by the state insurance commissioner. All rural fire protection district plans shall be approved by the state fire commission. No rural fire protection district plan providing for a municipality to contract beyond the three-mile limit may infringe upon an existing fire department's response area without the written consent of the fire department providing fire services for that area.

15 No contract entered into under the authority of this
section may operate to impose any greater obligation or
liability upon the municipality than that with respect to
property within its corporate limits. Nothing contained in
this section may be construed as requiring any munici-
pality to contract to render such services.

Any contract entered into under the authority of this
section, on or after the first day of July, one thousand
nine hundred sixty-nine, shall require the property owner
to pay as consideration for said services an annual pay-
ment, determined as provided in the remainder of this
subsection. If the municipality does not impose a fire
service fee on the users of such service within the munici-
pality as authorized in section thirteen, article thirteen
of this chapter, the annual payment shall be equivalent
to eighty percent of the annual tax levied for current
municipal purposes upon property within said munici-
pality of like assessed valuation to the property under
contract. If the municipality does impose a fire service
fee on the users of such service within the municipality,
as authorized in section thirteen, article thirteen of this
chapter, the annual payment shall be equivalent to the
amount of fire service fee which would be imposed if the
property under contract were located within the munici-
pality plus at least fifty percent of the annual tax levied
for current municipal purposes upon property within said
municipality of like assessed valuation to the property
under contract. No contract entered into under the au-
thority of this section, and nothing herein contained, may
be construed as requiring or permitting any municipality
to install or maintain any special additional apparatus or
equipment beyond that necessary for the protection of
property within its corporate limits.

(b) The annual payments due under any such contract
are payable on or before the first day of October of each
calendar year in which such contract remains in effect, or
upon such day as may be hereinafter provided as the due
date of the first installment of ad valorem taxes. If any
annual payment is in default for a period of more than
thirty days, it shall bear interest at the same rate as that
provided for delinquent property taxes and shall be a lien
upon the property under contract if a notice of such lien
is recorded in the proper deed of trust book in the office
of the clerk of the county commission of the county in
which such property or the major portion thereof is lo-
cated. Such lien is void at the expiration of two years
after such defaulted annual payment became due, unless
within such two-year period a civil action seeking equi-
table relief to enforce the lien was instituted by the
municipality. The municipality may by civil action collect
any annual payment and the interest thereon at any time
within five years after such payment became due; and
upon default in any annual payment, the municipality
may cancel the contract involved.

(c) Any contract made under the authority of this sec-
tion shall inure to the benefit of and be binding upon the
successors in title of the person making the same con-
tract; and such person, upon conveying the property
subject to such contract is no longer liable under such
contract, except as to annual payments which were due
prior to the conveyance and which remain unpaid.

(d) Any property owner may cancel any such contract
with respect to the property of such owner upon giving
a thirty-day written notice to the municipality, if the
owner is not in default with respect to any annual pay-
ment due thereunder, except that if such notice is given
subsequent to July first of any calendar year, the next
succeeding annual payment shall be made by the prop-
erty owner as soon as the amount thereof is ascertainable.
Upon cancellation as aforesaid, the municipality shall
deliver to the property owner a recordable release dis-
charging such owner and such property from any further
lien or obligation with respect to the annual payments.
The annual payments due under any such contract shall
be made to the officials as the municipality, in the con-
tract, designates to receive them, who likewise may re-
ceive notice of cancellation and execute upon behalf of
the municipality the release for which provision is here-
inbefore made.
AN ACT to amend and reenact sections twenty-four, twenty-five and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to municipal policemen and firemen pension and relief funds; increase of minimum benefits paid to certain disability and retirement pensioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; 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.


1 (a) The monthly sum to be paid to each member eligible for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary or compensation being received by such member, at the time he is so disabled, or the sum of three hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of this act.

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.
section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workers' compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability. Lump sum payments of state workers' compensation benefits shall not be considered for purposes of this subsection unless such lump sum payments represent commuted values of monthly state workers' compensation benefits.

*§8-22-25. Retirement pensions.*

(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability; and on such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling within the member's final five years of employment with such department, in which such member received his highest salary or compensation while a member of the department, or an amount of three hundred dollars per month, whichever shall be greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement, as herein provided, shall, in addition to the sixty

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.*
percent authorized in said subsection (a), receive one additional percent, to be added to the sixty percent, per each year served in excess of twenty years up to a maximum of ten additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article prior to the first day of July, one thousand nine hundred eighty-one, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

Any member of any such department who has served in active duty with the armed forces of the United States as described in section twenty-seven of this article, whether prior to or subsequent to becoming a member of a paid police or fire department covered by the provisions of this article, shall receive, in addition to the sixty percent authorized in subsection (a) of this section and the additional percent credit authorized in subsection (b) of this section, one additional percent per each year so served in active military duty, up to a maximum of four additional percent. In no event, however, may the total benefit granted to any member exceed seventy-five percent of the member's annual average salary calculated in accordance with subsection (a) of this section.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department shall have reached the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixty-fifth birthday; and the mayor shall cause such sixty-five-year-old member of the paid police or fire department to be retired within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection, such member shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods, not necessarily consecutive, each of such three periods beginning with the same calendar month of different years and all such three periods falling
within the member's final five years of employment with such
department, in which such member received his highest salary
or compensation while a member of the department, or an
amount of three hundred dollars per month, whichever is
greater. If such member has been employed in said department
for more than twenty years, the provisions of subsection (b)
of this section shall apply.

(e) It shall be the duty of each member of a paid police or
fire department at the time a fund is hereafter established to
furnish the necessary proof of his date of birth to the said
board of trustees, as specified in section twenty-three of this
article, within a reasonable length of time, said length of time
to be determined by the said board of trustees; and then the
board of trustees and the mayor shall proceed to act in the
manner provided in subsection (d) of this section and shall
cause all members of the paid police or fire department who
are over the age of sixty-five years to be retired in not less
than sixty days from the date the fund is established. Upon
retirement under the provisions of this subsection (e), such
member, whether he has been employed in said department
for twenty years or not, shall receive retirement pension
benefits payable in twelve monthly installments for each year
of the remainder of his life, in an amount equal to sixty
percent of such member's average annual salary or compen-
sation received during the three twelve-consecutive-month
periods, not necessarily consecutive, each of such three periods
beginning with the same calendar month of different years and
all such three periods falling within the member's final five
years of employment with such department, in which such
member received his highest salary or compensation while a
member of the department, or an amount of three hundred
dollars per month, whichever shall be greater. If such member
has been employed in said department for more than twenty
years, the provisions of subsection (b) of this section shall
apply.

*§8-22-27. General provisions concerning disability pensions,
retirement pensions and death benefits.

(a) In determining the years of service of a member in a
paid police or fire department for the purpose of ascertaining
certain disability pension benefits, all retirement pension

*Clerk's Note: This section was also amended by S. B. 440, which passed subsequent to this act.
benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, whose reserve unit or guard unit is called into active duty for one year or more, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such pension benefits:

(1) A former member who on June thirtieth, one thousand nine hundred sixty-two, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred eighty-five, such pension benefits shall be in the amount of three hundred dollars per month; and
(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred eighty-five, shall receive not less than the minimum disability pension benefits, or not less than the minimum retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department, receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on the effective date of this article, the following provisions shall govern and control the amount of such death benefits:

(1) A dependent spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, shall continue to receive death benefits, but on and after July one, one thousand nine hundred seventy-one, such death benefits shall be in the following amounts: To a dependent spouse, until death or remarriage, the sum of two hundred dollars per month; to each dependent child the sum of thirty dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent orphaned child the sum of forty-five dollars per month, until such child shall attain the age of eighteen years or marry, whichever first occurs; to each dependent father and mother the sum of thirty dollars per month for each; to each dependent brother or sister the sum of five dollars per month, until such individual shall attain the age of eighteen years or marry, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed thirty dollars per month; but if at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments: Provided, That in no case shall the payments to the surviving spouse and children be cut
below sixty-five percent of the total amount to be paid to all
dependents;

(2) A dependent spouse, child or children, or dependent
father or mother, or dependent brothers or sisters, of any
former member, who became eligible for death benefits on or
after July one, one thousand nine hundred sixty-two, shall
continue to receive death benefits, but on and after July one,
one thousand nine hundred seventy-one, shall receive the death
benefits provided for in section twenty-six of this article.

(d) A former member who is receiving disability pension
benefits on the thirtieth day of June, one thousand nine
hundred eighty-one, shall continue to receive disability pension
benefits provided for in section twenty-four of this article.

CHAPTER 126
(Com. Sub. for S. B. 440—By Senator Boettner)
[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to municipal policemen's and firemen's pension and relief funds generally; calculation of monthly disability pensions; maximum aggregate monthly payments from disability pension and workers' compensation benefits; increasing the minimum amount of monthly disability and retirement pensions; calculation of monthly retirement benefits; providing an additional benefit credit on retirement pensions for members with more than twenty years of service; retirement pensions for members who served in the armed forces; requiring retirement of members at age sixty-five; requiring members to furnish proof of birth date to the board of trustees; providing for death benefits to surviving dependents of deceased members and calculation thereof; calculation of years of service of members; and monthly disability, retirement and death benefits.
Be it enacted by the Legislature of West Virginia:

That sections twenty-four, twenty-five, twenty-six and twenty-seven, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all 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.


(a) The monthly sum to be paid to each member eligible for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workers' compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability.


(a) The monthly sum to be paid to each member eligible for disability under the provisions of section twenty-three-a of this article, shall be equal to sixty percent of the monthly salary being received by such member, at the time he is so disabled, or the sum of five hundred dollars per month, whichever shall be greater: Provided, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after the first day of July, one thousand nine hundred eighty-one, under the provisions of section twenty-three-a of this article, as a proximate result of service rendered in the performance of his duties within such departments, his monthly disability payment as provided in subsection (a) of this section shall not, when aggregated with the monthly amount of state workers' compensation, result in such disabled member receiving a total monthly income from such sources in excess of one hundred percent of the basic compensation which is paid to members holding the same position which such member held within such department at the time of his disability.

Lump sum payments of state workers' compensation

*Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.

(a) Any member of a paid police or fire department who is entitled to a retirement pension hereunder, and who has been in the honorable service of such department for twenty years, may, upon written application to the board of trustees, be retired from all service in such department without medical examination or disability. On such retirement the board of trustees shall authorize the payment of annual retirement pension benefits commencing upon his retirement or upon his attaining the age of fifty years, whichever is later, payable in twelve monthly installments for each year of the remainder of his life, in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods of employment with such department in which such member received his highest salary or compensation while a member of the department, or an amount of five hundred dollars per month, whichever is greater.

(b) Any member of any such department who is entitled to a retirement pension under the provisions of subsection (a) of this section and who has been in the honorable service of such department for more than twenty years at the time of his retirement shall receive, in addition to the sixty percent authorized in said subsection (a):

(1) Two additional percent, to be added to the sixty percent, for each of the first five additional years of service completed at the time of retirement in excess of twenty years of service up to a maximum of seventy percent; and

(2) One additional percent, to be added to such maximum of seventy percent, for each of the first five additional years of service completed at the time of retirement in excess of twenty-five years of service up to a maximum of seventy-five percent.

The total additional credit provided for in this subsection

* Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.
may not exceed fifteen additional percent.

(c) Any member of any such department whose service has been interrupted by duty with the armed forces of the United States as provided in section twenty-seven of this article prior to the first day of July, one thousand nine hundred eighty-one, shall be eligible for retirement pension benefits immediately upon retirement, regardless of his age, if he shall otherwise be eligible for such retirement pension benefits.

Any member or previously retired member of any such department who has served in active duty with the armed forces of the United States as described in section twenty-seven of this article, whether prior to or subsequent to becoming a member of a paid police or fire department covered by the provisions of this article, shall receive, in addition to the sixty percent authorized in subsection (a) of this section and the additional percent credit authorized in subsection (b) of this section, one additional percent for each year so served in active military duty, up to a maximum of four additional percent. In no event, however, may the total benefit granted to any member exceed seventy-five percent of the member's annual average salary calculated in accordance with subsection (a) of this section.

(d) Any member of a paid police or fire department shall be retired at the age of sixty-five years in the manner provided in this subsection. When a member of the paid police or fire department reaches the age of sixty-five years, the said board of trustees shall notify the mayor of this fact, within thirty days of such member's sixty-fifth birthday. The mayor shall cause such sixty-five-year-old member of the paid police or fire department to retire within a period of not more than thirty additional days. Upon retirement under the provisions of this subsection, such member shall receive retirement pension benefits payable in twelve monthly installments for each year of the remainder of his life in an amount equal to sixty percent of such member's average annual salary or compensation received during the three twelve-consecutive-month periods of employment with such department in which such member received his highest salary or compensation while a member of the department, or an amount of five hundred dollars per month, whichever is greater. If such member has been
employed in said department for more than twenty years, 
the provisions of subsection (b) of this section shall apply.

(e) It shall be the duty of each member of a paid police or 
fire department at the time a fund is hereafter established to 
furnish the necessary proof of his date of birth to the said 
board of trustees, as specified in section twenty-three of 
this article, within a reasonable length of time, said length 
of time to be determined by the said board of trustees. Then 
the board of trustees and the mayor shall proceed to act in 
the manner provided in subsection (d) of this section and 
shall cause all members of the paid police or fire 
department who are over the age of sixty-five years to retire 
in not less than sixty days from the date the fund is 
established. Upon retirement under the provisions of this 
subsection (e), such member, whether he has been employed 
in said department for twenty years or not, shall receive 
retirement pension benefits payable in twelve monthly 
installments for each year of the remainder of his life in an 
amount equal to sixty percent of such member's average 
annual salary or compensation received during the three 
twelve-consecutive-month periods of employment with 
such department in which such member received his 
highest salary or compensation while a member of the 
department, or an amount of five hundred dollars per 
month, whichever is greater. If such member has been 
employed in said department for more than twenty years, 
the provisions of subsection (b) of this section shall apply.


(a) In case:

(1) Any member of a paid police or fire department who 
has been in continuous service for more than five years dies 
from any cause other than as specified in subsection (b) of 
this section before retirement on a disability pension under 
the provisions of, prior to the first day of July, one thousand 
nine hundred eighty-one, section twenty-four of this article 
or, after the thirtieth day of June, one thousand nine 
hundred eighty-one, sections twenty-three-a and twenty-
four of this article or a retirement pension under the 
provisions of subsection (a) or both subsections (a) and (b), 
section twenty-five of this article, leaving in either case 
surviving a spouse, or any dependent child or children
under the age of eighteen years, or dependent father or
mother or both, or any dependent brothers or sisters or both
under the age of eighteen years; or
(2) Any former member of any such department who is
on a disability pension prior to the first day of July, one
thousand nine hundred eighty-one, under section twenty-
four of this article, or after the thirtieth day of June, one
thousand nine hundred eighty-one, under sections twenty-
three-a and twenty-four of this article, or is receiving or is
entitled to receive retirement pension benefits under the
provisions of subsection (a) or both subsections (a) and (b),
section twenty-five of this article, dies from any cause other
than as specified in subsection (b) of this section leaving in
either case surviving a spouse or any dependent child or
children under the age of eighteen years or dependent
father or mother or both, or any dependent brothers or
sisters or both under the age of eighteen years; then in any of
the cases set forth above in (1) and (2) the board of trustees
of such pension and relief fund shall, immediately following
the death of such member, pay to or for each of such entitled
surviving dependents the following pension benefits: To
such spouse, until death or remarriage, a sum per month
equal to sixty percent of such member's pension or, in the
event such member was not receiving a pension at the time
of his death, a sum per month equal to sixty percent of the
monthly retirement pension such member would have been
entitled to receive pursuant to section twenty-five of this
article on the date of his death if such member had then
been eligible for a retirement pension thereunder, or the
sum of three hundred dollars per month, whichever is
greater; to each such dependent child, a sum per month
equal to ten percent of such member's pension or, in the
event such member was not receiving a pension on the date
of his death, a sum per month equal to ten percent of the
monthly retirement pension such member would have been
entitled to receive pursuant to section twenty-five of this
article on the date of his death if such member had then
been eligible for a retirement pension thereunder, or until
such child attains the age of eighteen years or marries,
whichever first occurs; to each such dependent orphaned
child, a sum per month equal to twenty-five percent of such
member's pension or, in the event such member was not
receiving a pension at the time of his death, a sum per month
equal to twenty-five percent of the monthly retirement
pension such member would have been entitled to receive
pursuant to section twenty-five of this article on the date of
his death if such member had then been eligible for a
retirement pension thereunder, until such child attains the
age of eighteen years or marries, whichever first occurs; to
each such dependent father or mother, a sum per month for
each equal to ten percent of such member’s pension or, in
the event such member was not receiving a pension on the
date of his death, a sum per month equal to ten percent of
the monthly retirement pension such member would have
been entitled to receive pursuant to section twenty-five of
this article on the date of his death if such member had then
been eligible for a retirement pension thereunder; to each
such dependent brother or sister, the sum of fifty dollars per
month until such individual attains the age of eighteen
years or marries, whichever first occurs, but in no event
shall the aggregate amount paid to such brothers and sisters
exceed one hundred dollars per month. If at any time,
because of the number of dependents, all such dependents
cannot be paid in full as herein provided, then each
dependent shall receive his pro rata share of such payments.
In no case shall the payments to the surviving spouse and
children be cut below sixty-five percent of the total amount
paid to all dependents.
(b) The surviving spouse, child or children, or
dependent father or mother, or dependent brothers or
sisters, of any such member who dies by reason of service
rendered in the performance of such member’s duties shall,
regardless of the length of such member’s service and
irrespective of whether such member was or was not
entitled to receive, or was or was not receiving, disability
pension or temporary disability payments at the time of his
death, receive the death benefits provided for in subsection
(a) of this section. If such member had less than three years’
service at the time of his death, the member’s pension shall
be computed on the basis of the actual number of years of
service.
(c) If a member dies without leaving a spouse,
dependent child or children, or dependent father or mother,
or dependent brothers or sisters, his contributions to the
fund plus six percent interest shall be refunded to his named beneficiary or, if no beneficiary has been named, to his estate to the extent that such contributions plus interest exceed any disability or retirement benefits that he may have received before his death.

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits herein authorized to be made, all the provisions hereof and benefits provided for hereunder being expressly subject to such subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.


(a) In determining the years of service of a member in a paid police or fire department for the purpose of ascertaining certain disability pension benefits, all retirement pension benefits and certain death benefits, the following provisions shall be applicable:

(1) Absence from the service because of sickness or injury for a period of two years or less shall not be construed as time out of service; and

(2) Any member of any paid police or fire department covered by the provisions of sections sixteen through twenty-eight of this article who has been required to or shall at any future time be required to enter the armed forces of the United States by conscription, by reason of being a member of some reserve unit of the armed forces or a member of the West Virginia national guard or air national guard, whose reserve unit or guard unit is called into active duty for one year or more, or who enlists in one of the armed forces of the United States during hostilities, and who upon receipt of an honorable discharge from such armed forces presents himself for resumption of duty to his appointing municipal official within six months from his date of discharge, and is accepted by the pension board's board of medical examiners as being mentally and physically

*Clerk's Note: This section was also amended by H. B. 1488, which passed prior to this act.
capable of performing his required duties as a member of such paid police or fire department, shall be given credit for continuous service in said paid police or fire department, and his rights shall be governed as herein provided. No member of a paid police or fire department shall be required to pay the monthly assessment as now required by law, during his period of service in the armed forces of the United States.

(b) As to any former member of a paid police or fire department receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, on the first day of July, one thousand nine hundred eighty-five, the following provisions shall govern and control the amount of such pension benefits:

(1) A former member who on June thirtieth, one thousand nine hundred sixty-two, was receiving disability pension benefits or retirement pension benefits from a policemen's or firemen's pension and relief fund, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred eighty-five, such pension benefits shall be no less than the amount of five hundred dollars per month; and

(2) A former member who became entitled to disability pension benefits or retirement pension benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive pension benefits, but on and after July one, one thousand nine hundred eighty-five, shall receive the disability pension benefits, or retirement pension benefits provided for in section twenty-four or section twenty-five of this article, as the case may be.

(c) As to any surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member of a paid police or fire department receiving any death benefits from a policemen's pension and relief fund or firemen's pension and relief fund, on the first day of July, one thousand nine hundred eighty-five, the following provisions shall govern and control the amount of such death benefits:
(1) A surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters of any former member, who on June thirty, one thousand nine hundred sixty-two, was receiving any death benefits from a policemen’s pension and relief fund or firemen’s pension and relief fund, shall continue to receive death benefits, but on and after July one, one thousand nine hundred eighty-five, such death benefits shall be no less than the following amounts: To a surviving spouse, until death or remarriage, the sum of three hundred dollars per month; to each dependent child, the sum of thirty dollars per month, until such child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, the sum of forty-five dollars per month, until such child attains the age of eighteen years or marries, whichever first occurs; to each dependent father or mother, the sum of thirty dollars per month for each; to each dependent brother or sister, the sum of fifty dollars per month, until such individual attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to such brothers and sisters exceed one hundred dollars per month. If at any time, because of the number of dependents, all such dependents cannot be paid in full as herein provided, then each dependent shall receive his pro rata share of such payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents; and

(2) A surviving spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, of any former member who became eligible for death benefits on or after July one, one thousand nine hundred sixty-two, shall continue to receive death benefits, but on and after July one, one thousand nine hundred eighty-five, shall receive the death benefits provided for in section twenty-six of this article.

(d) A former member who is receiving disability pension benefits on the first day of July, one thousand nine hundred eighty-five, shall continue to receive disability pension benefits provided for in section twenty-four of this article.
AN ACT to amend article twenty-seven, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a, relating to prohibiting smoking on any urban mass transportation system vehicle; providing for signs to be posted; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That article twenty-seven, 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 ten-a, to read as follows:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-10a. Smoking on vehicles prohibited; posting of signs required; criminal penalties.

(a) Every authority operating any vehicle accessible to the public, designed for the ground transportation of eight or more persons, shall post "No Smoking" signs conspicuously at the entrance to, and on the inside of, each such vehicle. No person shall smoke or carry a lighted pipe, cigar or cigarette in any such vehicle wherein a sign prohibiting smoking is posted.

(b) The posting requirements set forth in subsection (a) above do not apply to any vehicle operated in interstate commerce, nor to any chartered vehicle: Provided, That if any vehicle operated in interstate commerce or chartered vehicle has a posted nonsmoking area, no person shall smoke or carry a lighted pipe, cigar or cigarette in the posted nonsmoking area of such vehicle.

(c) Any person who violates any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty nor more than one hundred dollars.
AN ACT to amend and reenact section five, article thirty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing municipalities and counties to make appropriations for the celebration of historical and commemorative occasions; legislative findings; nonprofit corporations eligible to receive such appropriations; such appropriations to be made from general funds; requiring accounting of funds received; requiring recipients to return any unexpended funds at the conclusion of the funded event; prohibiting indebtedness to be incurred for such appropriations; recordation and certification of an eligible nonprofit corporation's charter; and prohibiting such appropriation as a prerequisite for grants.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 32. INTERGOVERNMENTAL RELATIONS—CONTRIBUTIONS TO OR INVOLVEMENT WITH NONSTOCK, NONPROFIT CORPORATIONS OR HEALTH INSTITUTIONS FOR PUBLIC PURPOSES.

PART V. CELEBRATION OF HISTORICAL AND COMMEMORATIVE EVENTS.

§8-32-5. Legislative findings; authority of municipalities and counties to make appropriations for the celebration of historical and commemorative events; limitations and restrictions.

(a) The Legislature hereby finds that the support of nonstock, nonprofit corporations dedicated to making available to the general public, programs, activities or events organized by a commission, committee, group, organization or community, for the purpose of providing historical or cultural activities, municipal, county or regional improvement events
or other programs related to the celebration of historical and
commemorative events, is for the general welfare of the public
and is a public purpose for which funds of a municipality or
county may be lawfully expended. This section is enacted in
view of this finding and shall be liberally construed in the light
thereof.

(b) When a commission, committee, group, organization or
community (hereinafter referred to as corporation) is chartered
as a nonstock, nonprofit corporation under the laws of this
state, and, (1) is organized for the purpose of providing
historical or cultural activities, municipal, county or regional
improvement events or other programs related to the
celebration of a historical or commemorative event, and
provides in its charter that its programs, activities or events
shall be devoted to the use by the public for all purposes set
forth in such charter without regard to race, sex, religion,
national origin or economic circumstance, and free from
charge except such as is necessary to provide the means to
keep any buildings, facilities or grounds in proper condition
and repair, or to pay the cost of insurance, care, management,
operations, programs, activities or events, so that the general
public may have the benefit of such establishments, programs,
activities or events for the uses set forth in such corporation's
charter at as little expense as possible, (2) provides in its
charter that no member, trustee or member of the board of
directors (by whatever name the same may be called) of the
corporation shall receive any compensation, gain or profit
from such corporation, and (3) is operated in compliance with
such charter provisions as aforesaid, any municipality in the
county in which such corporation is operating, and the county
commission of any county in which such corporation is
operating, are hereby empowered and authorized to appro-
priate funds to any such corporation, subject to the provisions
and limitations set forth in this section.

(c) Any appropriation shall be made from the general funds
of such municipality or county that have not been otherwise
appropriated. Each corporation receiving an appropriation
from a municipality or county shall upon demand at any time
make a full and complete accounting of all such funds to such
governing body of the municipality or to the county
commission, as the case may be, and shall in every event
without demand make to such governing body or county
commission an accounting thereof. Each corporation shall
return to the county or municipality all of the funds the county
or municipality appropriated pursuant to this section or
pursuant to the previous enactments of this section for the
celebration of the American Revolution Bicentennial which are
unexpended after the conclusion of the programs, activities or
events relating to the historical or commemorative event. The
county or municipality may at any time set a date after the
conclusion of the programs, activities or events by which such
return shall be made.

(d) Under no circumstances whatever shall any action taken
by any municipality or county commission under the authority
of this section give rise to or create any indebtedness on the
part of the municipality, the governing body of such
municipality, the county, such county commission, any
member of such governing body or county commission or any
municipal or county official or employee.

(e) No municipality or county commission may appropriate
funds to any corporation under this article unless and until
such corporation has recorded a certified copy of its corporate
charter in the county in which the principal office of such
corporation is located, and has received from the prosecuting
attorney a written statement that the charter of such
corporation contains the necessary language to comply with
the provisions of this article.

(f) No officer, agent or instrumentality of the state shall
require that local government funds be appropriated or
expended under this section as a prerequisite for, or as
matching funds for, a federal or state grant or as a prerequisite
to entitle such corporation to receive a grant of federal or state
funds.

CHAPTER 129

(Com. Sub. for S. B. 469—By Senators Whitlow and Palumbo)

[Passed April 10, 1985; in effect from passage. Approved by the Governor.]

AN ACT to repeal section two hundred five, article two, chapter
twenty-nine-c of the code of West Virginia, one thousand
nine hundred thirty-one, as amended; to amend and reenact section one hundred three, article one, section three hundred one, article two, section one hundred two, article three, section one hundred two, article four and section one hundred one, article six, all of said chapter; and to further amend said chapter by adding thereto a new article, designated article nine, all relating to notary publics; prospective effect of chapter; exceptions; removing required bond; clarifying disqualifying interest; application to notaries public commissioned prior to the effective date of the uniform notary act; optional use of rubber stamp seals by notaries appointed under prior law; requiring such notaries not commissioned on a statewide basis to include the county on the seal; uniform application of chapter; validation of good faith notarial acts; and nonliability for such good faith acts.

Be it enacted by the Legislature of West Virginia:

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

Article
4. Duties.
5. Liability, Fines and Imprisonment.

ARTICLE 1. GENERAL PROVISIONS.

§29C-1-103. Prospective effect of chapter; exceptions.

1 Except as otherwise provided herein, this chapter applies prospectively and shall be applicable to all notaries public whether commissioned before, on or after the effective date of this chapter: Provided, That the following sections in article two of this chapter shall apply only
ARTICLE 2. APPOINTMENT PROVISIONS.

§29C-2-301. State and local government employees.

(a) The governor may appoint and commission such number of state and local government employees as notaries public, to act for and in behalf of their respective state and local government offices, as he deems proper. An appointee commissioned as a notary public under this section may act only for and in behalf of the government office or offices in which he is employed.

(b) An appointee under this section shall meet the requirements for qualification and appointment prescribed in article two of this chapter except that the head of the state or local government office where the applicant is employed may execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the governor together with the application for appointment as a notary public, in which case the fee for appointment specified in article two, section two hundred two, is waived.

(c) The costs of all notary supplies for a commissioned state or local government employee shall be paid from funds available to the office in which he is employed.

(d) All fees received for notarial services by a notary public appointed for and in behalf of a state or local government office shall be remitted by him to the state or local government office in which he is employed.

(e) A notary public who is an employee of a state or local government office in this state must comply with all provisions of this chapter.
ARTICLE 3. POWERS.
§29C-3-102. Limitations on powers.

(a) A notary public who has a disqualifying interest, as hereinafter defined, in a transaction may not legally perform any notarial act in connection with the transaction.

(b) For the purposes of this chapter, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(1) May receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash or property, exceeding in value the sum of any fee properly received in accordance with section three hundred one, article four of this chapter, or exceeding his regular compensation and benefits as an employee whose duties include performing notarial acts for and in behalf of his employer; or

(2) Is named, individually, as a party to the transaction.

ARTICLE 4. DUTIES.
§29C-4-102. Rubber stamp seal.

Under or near his official signature on every notarial certificate, a notary public shall rubber stamp clearly and legibly, so that it is capable of photographic reproduction:

(a) The words “Official Seal”;

(b) His name exactly as he writes his official signature;

(c) The words “Notary Public,” “State of West Virginia” and “My Commission expires (commission expiration date)”;

(d) The address of his business or residence in this state; and

(e) A serrated or milled edge border in a rectangular form not more than one inch in width by two and one-half inches in length surrounding the information.

No person holding a notary commission pursuant to former section two, article four, chapter twenty-nine on...
the effective date of this chapter may be required to obtain or use a rubber stamp seal prior to the expiration of that commission. However, such a notary who was appointed for one or more counties of the state may obtain and use the rubber stamp seal prior to the expiration of that commission if the name of the county in which the notarial act is performed is on the seal used for that act.

ARTICLE 6. LIABILITY, FINES AND IMPRISONMENT.

§29C-6-101. Liability of notary.

1 A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct.

ARTICLE 9. CURATIVE PROVISIONS.

§29C-9-101. Uniform application of chapter; validation of good faith notarial acts; nonliability for good faith notarial acts.

1 This article is to prevent or redress problems which might be caused by notaries public who in good faith performed notarial acts in substantial compliance with the laws which were replaced by the uniform notary act, chapter twenty-nine-c of this code, during a forgiveness period which begins with the effective date of that act and ends with the effective date of this section.

8 With respect to notarial acts performed in good faith and in substantial compliance with prior law during the forgiveness period:

11 (a) Instruments so notarized shall be conclusively presumed to have been validly notarized;

13 (b) Notaries public and all parties to such notarial acts shall be immune from civil and criminal liability for such acts or the consequences of such acts. The rebuttable presumption created by section nine, article seven, chapter fifty-five of this code, that any violation of a statute which proximately causes injury constitutes negligence, does not apply; and
(c) The retrospective application of this section applies to all litigation which has not been fully adjudicated, including cases pending on appeal. This section does not apply to notarial acts performed prior to or subsequent to the forgiveness period.

The purposes of this article are remedial and shall be construed liberally to accomplish the purposes set forth herein.

CHAPTER 130
(Com. Sub. for H. B. 1431—By Delegate McCormick)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the licensing of physicians to practice medicine in this state; permitting certain temporary permittees points on the licensure examination.

Be it enacted by the Legislature of West Virginia:

That section ten, article 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 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry; educational training permits; temporary 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 certificate 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: Provided further, That said board is required to establish a program that will assist all temporary license holders in preparing for and passing the medical examination prescribed by it: And provided further, That said board shall maintain the program until the first day of July, one thousand nine hundred eighty-four, and shall make an
annual report of its activities to the Legislature for each year
the program is maintained.

(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 educa-
tional 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, 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-
ine, 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.

(4) An individual subject to the provisions of this subsection
and holding a temporary permit who shall have taken the
examination after the first day of June, one thousand nine
hundred eighty-two, and no later than the thirtieth day of
June, one thousand nine hundred eighty-five, shall be allowed
one point toward his score on the licensure examination for
every year he has held a temporary permit in this state, up
to a maximum of five points for five years of practice.

(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, designed to improve his ability to engage in the practice of podiatric medicine, before being eligible for reexamination.

(e) An individual meeting the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section, may be granted an educational training permit to practice medicine and surgery. Such permits shall authorize the permit holder to practice medicine and surgery only under the supervision of a licensed physician in a training program approved by the liaison committee on graduate medical education or the board. The board may fix and collect a fee not to exceed fifty dollars for this class of permit.

(f) If the board determines that the public health in a specified geographical area of the state requires such action, the board may grant a temporary permit to an individual who meets the requirements set forth in subdivisions (1) and (2), subsection (b) and subdivisions (1) and (2), subsection (c), if applicable, of this section. Such license shall be limited to the
specified geographical area and shall be valid for a period of
not more than one year. The board may fix and collect a fee
not to exceed fifty dollars for this class of temporary permit.

(g) All licenses or temporary permits granted prior to the
effective date of this article and valid on the effective date of
this article shall continue in full effect for such term and under
such conditions as provided by law at the time of the granting
of the license or temporary permit: Provided, That any
physician who has been certified by the educational council
for foreign medical graduates or who, as of the effective date
of this section, holds a temporary permit to practice in a
prescribed area, shall not when under the supervision of a
licensed physician be ineligible for a temporary license permit
to practice in any mental health or state-owned facility and
in any hospital, clinic, physician’s office and any other
approved health care facility until the first day of July, one
thousand nine hundred eighty-five, by virtue of his failure 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 such physician shall be
enrolled in an educational program approved by the board
that will assist him in preparing for the examination and that
the program sponsored by the University of Charleston shall
be deemed to be approved: Provided further, That any such
physician granted a temporary permit who fails to pass the
medical examination prescribed by the board before the first
day of July, one thousand nine hundred eighty-five, shall be
thereafter disqualified from obtaining any further temporary
permits in this state: And provided further, That notwithstanding
any provision of law to the contrary, the name, address,
and type of license or permit held by any physician shall be
public information: And 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 responsi-
bilities of a podiatrist set out in this article.
CHAPTER 131
(Com. Sub. for H. B. 1157—By Delegate Wooton)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing fees charged by the board of dental examiners; changing the term West Virginia dental society to West Virginia dental association; requiring the annual registration of dental corporations; expanding the voting rights of dental hygienist member of the board; requiring the board to promulgate rules and regulations pursuant to legislative rule-making authority; and increasing the per diem payments to members of the board.

Be it enacted by the Legislature of West Virginia:

That sections four, four-a, four-b, four-c, five, six, ten, fourteen, sixteen, seventeen-a and seventeen-b, article four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTISTS, DENTAL HYGIENISTS AND DENTAL CORPORATIONS.

§30-4-4. Board of dental examiners.
§30-4-4a. Powers and duties of board.
§30-4-4b. Registration of dental corporations.
§30-4-4c. Practice of dentistry by dental corporations; limitations; dentist-patient relationship not affected; biennial registration; penalty; severability.
§30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.
§30-4-6. Qualifications of applicant for license; examinations; examination fee; licensing.
§30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.
§30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.
§30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.
§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.
§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fee; waiver of payment of fee on retirement or disability; change of address.
§30-4-4. Board of dental examiners.

The "West Virginia Board of Dental Examiners" heretofore established shall be continued and shall be composed of six members. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified. Members of the board shall serve for a term of five years. In addition to the five practicing dentists appointed to the board, there shall be appointed one dental hygienist with a degree in dental hygiene from an accredited college, who shall be appointed for a term beginning on the first day of July, one thousand nine hundred seventy-seven. The member of the board who is a licensed dental hygienist is empowered to participate in and vote on all transactions and business of the board.

All members of the board shall be appointed by the governor, by and with the advice and consent of the Senate. Each member of the board, at the time of his appointment and during his term as such member, shall have been a citizen of this state and shall have been either a licensed dentist or a licensed dental hygienist for a period of not less than five years immediately preceding his appointment.

No person may be eligible for appointment to the board who is connected with or interested in any dental college or dental department of any institution of learning or in a dental supply business.

Except for the dental hygienist, any member shall be eligible for reappointment for one additional consecutive term.

Each appointment of a licensed dentist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental association and each appointment of a licensed dental hygienist, whether for a full term or to fill a vacancy, shall be made by the governor from among three nominees therefor selected by the West Virginia dental hygienists' association. In the case of an appointment for a full term such nominations shall be submitted to the governor not later than eight months prior to the date on which the appointment shall become effective. In the case of an appointment to fill a vacancy, such nominations shall be submitted to the governor within thirty
days after a request for such nominations shall have been made
by the governor to the president of the West Virginia dental
association or the president of the West Virginia dental
hygienists' association. In the event of the failure of an
association to submit to the governor nominations for an
appointment in accordance with the requirements of this
section, the governor may make the appointment without such
nominations.

Each member of the board shall receive one hundred dollars
for each day actually spent in attending meetings of the board,
or of its committees, and shall also be reimbursed for all
reasonable and necessary expenses actually incurred in the
discharge of his duties under the provisions of this article.

§30-4-4a. Powers and duties of board.

1 The West Virginia board of dental examiners shall examine
all qualified applicants for license to practice dentistry or
dental hygiene, and it shall license all such applicants who are
qualified under applicable statutes and who pass the exami-
nations that may be required by statute or by any legally
adopted rule or regulation. The board shall examine all
applications filed in accordance with the provisions of section
four-b of this article and shall issue certificates of authoriza-
tion to all applicants legally entitled to receive the same, such
certificates to be signed by the chairman and secretary of the
board.

The said board shall have the power to make such
examination of all applicants appearing before it for any type
of license as may be necessary to determine that the applicant
is qualified. The board shall also have authority to license
dental corporations authorized under the provisions of and
subject to the limitations of this article, to practice dentistry
through duly licensed dentists. The said board shall also have
the power to revoke or suspend any license issued by it, for
cause, after having given the person whose license is sought
to be revoked or suspended, an opportunity to be heard in
the manner provided by section eight, article one, chapter
thirty of this code. It shall have the power to reinstate any
license revoked or suspended by it.

The said board is authorized and empowered to hold and
conduct hearings and investigations on the issuance, suspen-
The board shall have the authority to promulgate such rules and regulations as are necessary to carry out the provisions of this article, in accordance with chapter twenty-nine-a of this code.

The board, acting by and through its members, employees and agents, is further authorized and empowered, at any time during customary office hours, to enter into the office or place of business of any dental laboratory, licensed dentist, dental corporation or other dental practitioner of this state, and to obtain access to, make inspection of and request information regarding any work authorization which such dental laboratory, licensed dentist, dental corporation or other dental practitioner is required under the provisions of section two-a of this article, to retain therein, and is further authorized and empowered to inspect any items of dental technological work then in the course of performance by such dental laboratory or person employed by it, and to inspect any dental prosthesis then in the place of business of, or upon the premises occupied by, such dental laboratory for making, production, reproduction, construction, repair, alteration or restoration, and to request any information which it, its members, employees or agents deem to be pertinent relating to any such dental technological work and any such dental prosthesis. For the purpose of this paragraph the definition of terms contained in subsection-a, section two-a of this article is made expressly applicable.

The said board shall have the power to hire, fix the compensation of and discharge such employees as are necessary for the performance of the powers and duties vested in the said board by law and to expend such sums as said board may deem necessary to maintain an office and to carry out and enforce the provisions of this article.

All fees and other moneys collected by the board pursuant to the provisions of this article shall be kept in a separate fund and expended solely for the purpose of carrying out the provisions of this article. The compensation provided for in this article and all expenses incurred under this article shall be paid from this special fund. No compensation or expense
incurred under this article shall be a charge against or payable out of the general revenue fund of this state.

§30-4-4b. Registration of dental corporations.

When any one or more dentists duly licensed to practice dentistry in the state of West Virginia wish to form a dental corporation, such dentist or dentists shall file a written application with the board of dental examiners, on a form prescribed by the board, and shall furnish proof satisfactory to the board that the signer is such a duly licensed dentist, or if there be more than one that all of the signers of such application are such duly licensed dentists. A fee of two hundred dollars shall accompany each such application, no part of which shall be returnable.

If the board finds that the signer is a duly licensed dentist, or if there be more than one that all of the signers of such application are such duly licensed dentists, the board shall notify the secretary of state that a certificate of authorization has been issued to the individual or individuals signing such application to form a dental corporation.

When the secretary of state receives notification from the board of dental examiners that a person or persons have been issued a certificate of authorization, he shall attach such authorization to the agreement of incorporation and upon compliance by the corporation with the applicable provisions of chapter thirty-one of this code, shall notify the incorporators that such corporation, through a duly licensed dentist or dentists, may engage in the practice of dentistry.

§30-4-4c. Practice of dentistry by dental corporations; limitations; dentist-patient relationship not affected; biennial registration; penalty; severability.

(1) A dental corporation may practice dentistry only through an individual dentist or dentists duly licensed to practice dentistry in the state of West Virginia, but such dentist or dentists may be employees rather than shareholders of such corporation, and nothing herein contained shall be construed to require a license or other legal authorization of any individual employed by such corporation to perform services for which no license or other legal authorization 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 dentist-patient relationship nor is it meant or intended to change in any way the personal character of the dentist-patient relationship. A corporation holding such certificate of authorization shall register annually, on or before the thirtieth day of June, on a form prescribed by the board of dental examiners and shall pay an annual registration fee of one hundred fifty dollars.

(2) A dental corporation holding a certificate of authorization shall cease to engage in the practice of dentistry upon being notified by the board of dental examiners that any of its shareholders is no longer a duly licensed dentist, or when any shares of such corporation have been sold or disposed of to a person who is not a duly licensed dentist: 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 dentistry.

(3) No corporation shall practice dentistry, or any of its branches, or hold itself out as being capable of doing so, without a certificate from the board of dental examiners, nor shall any corporation practice dentistry, or any of its branches, or hold itself out as being capable of doing so, after its certificate has been revoked, or if suspended, during the term of such suspension. A certificate signed by the secretary of the board of dental examiners 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 dentistry or any of its branches 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.

(4) 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, shall be fined not exceeding one thousand dollars.
(5) If any provision of section four-b or four-c of this article be held to be invalid, such invalidity shall not affect the other provisions of said sections, and to this end the provisions of said sections are severable.

§30-4-5. License required as prerequisite to practice dentistry; exceptions; temporary and special permits.

Except as otherwise provided in this section, no person shall practice or offer to practice dentistry or dental hygiene in this state until a license for such purpose shall be issued to him by the board of dental examiners, nor shall any person so practice after the first anniversary of the issuance of such license until he shall have in his possession a current renewal certificate issued by the board.

The board of dental examiners under such regulations as it may prescribe may issue a temporary permit to practice dentistry or dental hygiene to graduates of schools of dentistry or dental hygiene approved by the board who are certified to the board of directors of dental clinics established by law, by the chief executive of any hospital or sanitarium licensed or operated by the state or by the chief dental officer of the health department of the state. Such permits shall expire thirty days after the date of the next examination given by the board for licenses in dentistry or dental hygiene and shall not be subject to renewal. Such permits shall terminate when the holder thereof ceases to be employed by the person certifying him.

A fee of one hundred dollars shall be paid to the board upon issuance of such permit by the person certifying the applicant.

The board of dental examiners under such regulations as it may prescribe may issue a dental intern or dental residency permit to graduates of dental schools approved by the board who are not licensed to practice dentistry in this state and who have not failed an examination for a license to practice dentistry in this state. Applicants for such permits shall be certified to the board by the director of a hospital operated or licensed by the state which maintains a dental intern or residency program. Such permits shall authorize the holder thereof to serve as a dental intern or a dental resident for a period of not more than one year in any hospital licensed or operated by the state which maintains an established dental department under the supervision of a licensed dentist. The
holder of such a permit shall function under the supervision of the dental staff of the hospital and shall limit his practice to patients selected by the hospital. The holder of such a permit shall not be entitled to receive any fee or other compensation other than such salary as may be paid by such hospital. Permits may be revoked by the board for cause and shall expire at the end of one year or on the date the dental internship or residency is discontinued, whichever first occurs. A fee of fifty dollars shall be paid to the board upon the issuance of such a permit by the hospital nominating him.

The board of dental examiners under such regulations as it may prescribe may issue teaching permits to persons who are graduates of a school of dentistry or dental hygiene approved by the board where such persons are not licensed to practice dentistry or dental hygiene in this state. Such permits shall be issued only upon the certification of the dean of a dental school located in this state that the applicant is a bona fide member of the staff of that school. Such permits shall be valid for one year and may be reissued by the board in its discretion. The holder of such a permit shall be entitled to perform all operations which a person licensed to practice dentistry or dental hygiene in this state would be entitled to perform, but only within the facilities of the dental school and as an adjunct to his teaching functions in such school. A fee of one hundred dollars shall be paid to the board on the issuance of a teaching permit or upon each renewal thereof by the school nominating the applicant.

Nothing in this article shall be deemed to prohibit the practice of dentistry or dental hygiene by persons licensed in another state who, at the request of an approved dental school or any regularly organized dental society, may give a clinic at such school or at a scientific meeting of such dental society for the purpose of advancing the professional knowledge of members of the dental profession or members of the student body of a dental school.

An applicant for a permit under this section shall transmit with his application a fee of fifty dollars which sum the board is authorized to expend in an investigation of the applicant's qualifications. No portion of this fee is refundable.
examination fee; licensing.

An applicant for a dental license shall be of good moral character, a citizen of the United States or an individual who has declared his intention to become and who shows progress toward becoming a citizen of the United States, at least eighteen years of age at the time of making application, and be a graduate of, and possess an acceptable dental diploma from the faculty of a dental school approved by the board. The board may require the application to be accompanied by sufficient evidence of these qualifications.

The applicant shall transmit with his application an examination fee of fifty dollars, which sum the board is authorized to expend in an investigation of the applicant’s qualifications. No portion of this fee is refundable.

An applicant whose application has been accepted by the board shall be given an examination on subjects selected by the board from among those currently being taught in approved dental schools which shall test the qualifications of the applicant to practice dentistry. The testing body for such examinations shall be decided by the board under rules and regulations promulgated by it.

The board may recognize a certificate granted by the national board of dental examiners in lieu of the written portion of the required examination.

An applicant obtaining a satisfactory grade on such examination and otherwise fulfilling the requirements of the board shall be granted a license by the board to practice dentistry, which license shall bear a serial number, the full name of the licensee, the date of issuance of the license, the seal of the board and the signatures of a majority of the members of the board.

The board shall not issue a license to any person found guilty of cheating, deception or fraud in the examination or on any part of the application. All manuscripts used in any examination and all applications for licensure shall be filed for a period of two years by the secretary of the board for the purpose of reference and inspection.

§30-4-10. Fees for licenses and certificates issued under §§30-4-8 and 30-4-9.
The fee for issuing the license to a legal practitioner from another state, as provided in section eight of this article, shall be one hundred dollars, and the fee for issuing a certificate to a legal practitioner in this state, as provided in section nine of this article, shall be ten dollars, and in each case the fee shall be paid before the license or certificate, respectively, is issued. No portion of these fees is refundable.

§30-4-14. Prerequisites to practice dental hygiene; examination fee; licensing.

No person who has not been licensed as a dental hygienist in this state on or before the first day of September, one thousand nine hundred thirty-seven, shall practice as a dental hygienist until he has first passed an examination or examinations selected by the West Virginia board of dental examiners and otherwise qualifies under such rules and regulations as the board may establish. Such examination or examinations shall be both practical and theoretical. The fee for the examination shall be thirty-five dollars and shall accompany the application. An applicant failing to pass the first examination shall be entitled to one reexamination at the next regular meeting of the board without additional cost. The fee for every reexamination after that shall be ten dollars. No portion of these fees is refundable.

The board of dental examiners shall issue a license to practice dental hygiene in this state to any person who has passed such an examination and who has otherwise qualified to practice dental hygiene under the rules and regulations established by the board: Provided, That no person shall be entitled to such dental hygiene license unless he be: (a) At least eighteen years of age, (b) of good moral character, (c) a graduate of a first class high school of this state or its equivalent and (d) be a graduate of, and possess an acceptable diploma in dental hygiene from a school having a course in dental hygiene approved by the board of dental examiners.

§30-4-16. Dental hygienists from other states who desire to practice in this state; qualifications.

The board of dental examiners may, at its discretion, without the examination herein provided, issue a license to practice dental hygiene to any applicant therefor, who shall furnish proof satisfactory to the board that he has been duly
licensed to practice as a dental hygienist in another state after full compliance with the requirements of its dental laws: Provided, That his professional and preliminary education shall not be less than that required in this state, and that he shall have been in active practice at least two years previous to his application for a license. The fee for issuing a license to a legal practitioner of dental hygiene from another state shall be fifty dollars, which shall be paid before the license is issued. No portion of this fee is refundable.

§30-4-17a. Specialties; qualifications; application for certificate; fee; limitation of practice.

No licensee shall announce or otherwise hold himself out to the public as a specialist or as being specially qualified in any particular branch of dentistry, or as giving special attention to any branch of dentistry, or as limiting his practice to any branch of dentistry, unless he has first complied with the requirements established by the board of dental examiners for such specialty and has been issued a certificate of qualification authorizing him so to do.

The board of dental examiners may establish higher standards and additional requirements for any licensee who desires to announce or otherwise hold himself out to the public as being specially qualified in a branch or specialty of dentistry recognized by the board. The board may give such examinations and secure such assistance as it may deem necessary in determining the qualifications of applicants.

The state board of dental examiners may appoint not more than three specialists to examine the credentials of applicants, and each specialist so appointed shall receive ten dollars for each day actually spent in examining the credentials of applicants and shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in discharging such duties. The state board of dental examiners may appoint not more than three specialists to administer and grade the specialty examination given to applicants, and each specialist so appointed shall receive forty dollars for each day actually spent in administering and grading such examination.

Application to the board for a certificate of qualification in a specialty of dentistry shall be upon such form and contain such information as the board may require and shall be
accompanying a fee of three hundred dollars. No portion
of this fee is refundable. A licensee found by the board to be
qualified under the standards and other requirements
promulgated by the board in the specialty indicated in his
application shall be issued a certificate of qualification
authorizing the licensee to announce or otherwise hold himself
out to the public as specially qualified in the indicated specialty
under such terms and in a manner approved by the board.

§30-4-17b. Annual information and renewal fee; notice; reinstatement; penalty fee; waiver of payment of fee on retirement or disability; change of address.

On or before the first day of February of each year, every
dentist licensed to practice dentistry in this state, and every
dental hygienist licensed to practice dental hygiene in this state,
shall transmit to the secretary of the board upon a form
prescribed by the board, his signature, post-office address,
office address, the serial number of his license certificate,
whether he has been engaged during the preceding year in the
active and continuous practice of dentistry or dental hygiene,
as the case may be, whether within or without this state, and
such other information as may be required by the board,
together with an information and renewal fee herein provided
for.

The annual information and renewal fee for a dentist shall
be fifty dollars and for a dental hygienist shall be twenty-five
dollars.

Upon receipt of the required information and the payment
of the proper renewal fee, the licensee shall be issued a renewal
certificate authorizing him to continue the practice of dentistry
or the practice of dental hygiene in this state for a period of
one year from the first day of February.

A license to practice dentistry or dental hygiene granted
under the authority of this article shall be canceled on the first
day of May if the holder thereof fails to secure a current
renewal certificate by that date. Any licensee whose license is
thus canceled by reason of the failure, neglect or refusal to
secure the proper renewal certificate may be reinstated by the
board at any time within six months from the date of the
cancellation of said license upon the payment of the proper
renewal fee and an additional fee of twenty-five dollars. If the
licensee shall not apply for renewal of his license as herein required within the said six months, that person shall, at the discretion of said board, be required to file an application for and take the examination provided in this article should he desire to practice dentistry or dental hygiene in this state.

Upon failure of any licensee to submit the required information and pay the annual renewal fee as herein required by the statutory date, the board shall attempt to notify such licensee in writing by mailing to his last registered address a notice of the requirements of this section apprising him of the fact that his license to practice will be canceled on the statutory date: Provided, That failure to mail or receive such notice shall not affect the cancellation of his license.

The board may waive the annual payment of the renewal fee herein required, and issue a renewal certificate to any West Virginia licensee who has held a West Virginia license for at least twenty-five years and is presently retired from active practice, or to any West Virginia licensee who has retired for reasons of physical disability, so long as such retirement continues: Provided, That the licensee provides the board with the information required by this section.

Every licensed dentist within thirty days of changing his place of practice or establishing additional offices shall furnish the secretary of the board with his new professional address.

Every licensed dental hygienist within thirty days of changing his place of employment shall furnish the secretary of the board with his new professional address and the name of his employer.

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CHAPTER 132
(S. B. 423—By Senator Palumbo)

[Passed April 4, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and sixteen, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relat-
ing generally to the powers and duties of the West Virginia board of pharmacy; removing the requirement that a registered pharmacist be a citizen of the United States; requiring a permit for the distribution of any legend drug; extending the requirement of obtaining a permit to manufacture, package, make or prepare or distribute certain products to include partnerships, companies, cooperative societies or organizations; and providing penalties for the violation of such section sixteen.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

§30-5-16. Permit for manufacture, packaging, etc., of drugs, medicines, cosmetics, distribution of legend drugs, etc.; regulations as to sanitation and equipment; penalties; revocation of permit.

§30-5-5. Qualifications for registration as pharmacist; certificates of registration.

In order to be registered as a pharmacist within the meaning of this article, a person shall be not less than eighteen years of age, shall present to the board of pharmacy satisfactory evidence that he or she is a graduate of a recognized school of pharmacy as defined by the board of pharmacy. In addition thereto, he or she shall have had at least nine months of practical experience in a pharmacy or drugstore under the instruction and supervision of a registered pharmacist and shall pass satisfactorily an examination by or under the direction of the board of pharmacy: Provided, That any registered pharmacist who has renewed his or her registration as such assistant pharmacist for each consecutive year since his or her original registration with the state board of pharmacy, may upon application to the board of pharmacy, be registered as a
16 pharmacist within the meaning of this article. An applicant for examination shall forward to the secretary a fee of one hundred twenty-five dollars with his or her application.

20 Every applicant for registration as a pharmacist shall present to the board of pharmacy satisfactory evidence that he or she is a person of good moral character and not addicted to drunkenness or the use of controlled substances. The board shall issue certificates of registration to all persons who successfully pass the required examination and are otherwise qualified and to all those whose certificates or licenses the board shall accept in lieu of an examination as provided in section six of this article.

§30-5-16. Permit for manufacture, packaging, etc., of drugs, medicines, cosmetics, distribution of legend drugs, etc.; regulations as to sanitation and equipment; penalties; revocation of permit.

1 No drugs or medicines, or toilet articles, dentifrices, or cosmetics, shall be manufactured, made, produced, packed, packaged or prepared within the state, except under the personal and immediate supervision of a registered pharmacist or such other person as may be approved by the board of pharmacy, after an investigation and determination by the said board that they are qualified by scientific or technical training and/or experience to perform such duties of supervision as may be necessary to protect the public health and safety; and no person shall manufacture, make, produce, pack, package or prepare any such articles without first obtaining a permit to do so from the board of pharmacy. Such permit shall be subject to such rules and regulations, with respect to sanitation and/or equipment, as the said board of pharmacy may from time to time adopt for the protection of the public health and safety.

18 Any person, firm, corporation, partnership, company, cooperative society or organization who offers for sale, sells, offers or exposes for sale through the method of distribution any legend drug shall be subject to this article.
The application for such permit shall be made on a form to be prescribed and furnished by the said board of pharmacy and shall be accompanied by the required fee of fifty dollars which amount shall also be paid as the fee for each annual renewal of such permit. Separate applications shall be made and separate permits issued for each separate place of manufacture, distribution, making, producing, packing, packaging or preparation.

Permits issued under the provisions of this section shall be posted in a conspicuous place in the factory or place for which issued; such permits shall not be transferable, and shall expire on the thirtieth day of June following the day of issue and shall be renewed annually. Nothing in this section shall be construed to apply to those operating registered pharmacies or drugstores.

Any person, firm or corporation, partnership, company, cooperative society or organization violating any of the provisions of this section and any permittee hereunder who shall violate any of the conditions of this permit or any of the rules and regulations adopted by the said board of pharmacy in pursuance of the power hereby conferred, shall, upon conviction, be deemed guilty of a misdemeanor or and fined not more than fifty dollars for each offense, and each and every day such violation continues shall constitute a separate and distinct offense, and upon conviction of a permittee, his permit shall also forthwith be revoked and become null and void.

Any person, firm, corporation, partnership, company, cooperative society or organization or any permittee hereunder who shall have been convicted of two or more successive violations of the provisions of this section or of the rules and regulations adopted by the board of pharmacy in pursuance of the powers hereby conferred, shall at the discretion of the board of pharmacy have such permit permanently revoked, and the board of pharmacy is hereby authorized to refuse the issuance of further permits to such person, firm, corporation, partnership, company, cooperative society or organization or permittee.
AN ACT to amend and reenact section four, article fourteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to osteopathic physicians and surgeons; application for examination; fee increase.

Be it enacted by the Legislature of West Virginia:

That section four, article fourteen, 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 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-4. Application for examination.

Each applicant for examination by the board, with the exception of assistants to osteopathic physicians and surgeons, as hereinafter provided, shall submit an application therefor on forms prepared and furnished by the board, accompanied by evidence verified by oath and satisfactory to the board, establishing that the applicant has satisfied the following requirements: (a) That the applicant is eighteen years of age or over; (b) that the applicant is of good moral character; (c) that the applicant has graduated from an approved osteopathic college; and (d) that the applicant has paid to the board a fee of one hundred fifty dollars.
beauticians; sign; removal of certain prohibitions on conduct of business other than barbering or beauty culture; removal of prohibition on advertising of prices.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§30-27-7. Shop to be managed by licensed barbers and beauticians; sign.

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. A barbershop and a beauty shop may be conducted within the same shop. A suitable sign shall be displayed at the main entrance of all barber and beauty shops, plainly indicating the business conducted therein.

CHAPTER 135

(H. B. 1442—By Delegate Roop and Delegate Mastranton) [Passed March 25, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-nine, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the governor's committee on crime, delinquency and corrections; law-enforcement training subcommittee; addition of member from the department of natural resources enforcement division.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-nine, 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 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-2. Law-enforcement training subcommittee.

1 (a) A subcommittee of the governor's committee on crime,
delinquency and corrections is hereby created and assigned responsibility for review and administration of programs for qualification, training and certification of law-enforcement officers in the state. The subcommittee shall be comprised of ten members of the governor's committee including one representative of each of the following: The department of public safety, the law-enforcement division of the department of natural resources, the West Virginia sheriffs association, the West Virginia association of chiefs of police, the West Virginia deputy sheriffs association, the West Virginia fraternal order of police lodge, the West Virginia municipal league, the West Virginia association of county officials, the human rights commission and the public at large.

(b) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

CHAPTER 136
(Com. Sub. for S. B. 312—By Senator R. Williams, et al)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections two, fourteen, seventeen and twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six-h, article seven-a, chapter eighteen of said code, all relating to the state public employees retirement act and the state teachers retirement system; providing increased supplemental benefits for certain annuitants contingent on legislative budgetary action; specifying factors for eligibility and computation thereof, under both systems; providing, in respect of the public employees retirement act, for all temporary employees of the Legislature who have been employed for ten years or more to be eligible for participation in such public employees retirement system; membership; definitions; and service credit.
Be it enacted by the Legislature of West Virginia:

That sections two, fourteen, seventeen and twenty-two-b, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six-h, article seven-a, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

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

18. Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-2. Definitions.
§5-10-14. Service credit.
§5-10-17. Retirement system membership.
§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-2. Definitions.

1 The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, shall have the following meanings:

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the West Virginia public employees retirement system created and established by this article;

8 (3) "Board of trustees" or "board" means the board of trustees of the West Virginia public employees retirement system;

11 (4) "Political subdivision" means the state of West Virginia, a county, city or town in the state; a school corporation or corporate unit; any separate corporation or
instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns, any agency or organization established by, or approved by the department of mental health for the provision of community health or mental retardation services, and which is supported in part by state, county or municipal funds;

(5) "Participating public employer" means the state of West Virginia, any board, commission, department, institution or spending unit, and shall include any agency created by rule of the supreme court of appeals having full-time employees, which for the purposes of this article shall be deemed a department of state government; and any political subdivision in the state which has elected to cover its employees, as defined in this article, under the West Virginia public employees retirement system;

(6) "Employee" means any person who serves regularly as an officer or employee, full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, in whole or in part, by any political subdivision, or an officer or employee whose compensation is calculated on a daily basis and paid monthly or on completion of assignment, including technicians and other personnel employed by the West Virginia national guard whose compensation, in whole or in part, is paid by the federal government: Provided, That members of the state Legislature, the Clerk of the House of Delegates, the Clerk of the state Senate, employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions for ten or more years, members of the legislative body of any politi-
cal subdivision and judges of the state court of claims shall be considered to be employees, anything contained herein to the contrary notwithstanding. In any case of doubt as to who is an employee within the meaning of this article the board of trustees shall decide the question;

(7) "Member" means any person who is included in the membership of the retirement system;

(8) "Retirant" means any member who retires with an annuity payable by the retirement system;

(9) "Beneficiary" means any person, except a retirant, who is entitled to, or will be entitled to, an annuity or other benefit payable by the retirement system;

(10) "Service" means personal service rendered to a participating public employer by an employee, as defined in this article, of a participating public employer;

(11) "Prior service" means service rendered prior to July one, one thousand nine hundred sixty-one, to the extent credited a member as provided in this article;

(12) "Contributing service" means service rendered by a member from and after the date of his entrance in the retirement system, to the extent credited him as provided in this article;

(13) "Credited service" means the sum of a member's prior service credit and contributing service credit standing to his credit as provided in this article;

(14) "Compensation" means the remuneration paid a member by a participating public employer for personal services rendered by him to the participating public employer. In the event a member's remuneration is not all paid in money, his participating public employer shall fix the value of the portion of his remuneration which is not paid in money;

(15) "Final average salary" means either (a) the average of the highest annual compensation received by a member (including a member of the Legislature who participates in the retirement system in the year one thousand nine hundred seventy-one or thereafter) during
any period of three consecutive years of his credited service contained within his ten years of credited service immediately preceding the date his employment with a participating public employer last terminated, or (b) if he has less than five years of credited service, the average of the annual rate of compensation received by him during his total years of credited service; and in determining the annual compensation, under either (a) or (b) of this subdivision (15), of a member of the Legislature who participates in the retirement system as a member of the Legislature in the year one thousand nine hundred seventy-one or in any year thereafter, his actual legislative compensation (the total of all compensation paid under sections two, three, four and five, article two-a, chapter four of this code) in the year one thousand nine hundred seventy-one or in any year thereafter, plus any other compensation he receives in any such year from any other participating public employer including the state of West Virginia, without any multiple in excess of one times his actual legislative compensation as aforesaid and other compensation, shall be used: Provided, That "final average salary" for any former member of the Legislature or for any member of the Legislature in the year one thousand nine hundred seventy-one who, in either event, was a member of the Legislature on November thirty, one thousand nine hundred sixty-eight, or November thirty, one thousand nine hundred sixty-nine, or November thirty, one thousand nine hundred seventy, or on November thirty in any one or more of said three years, and who participated in the retirement system as a member of the Legislature in any one or more of such years of one thousand nine hundred sixty-eight, one thousand nine hundred sixty-nine or one thousand nine hundred seventy, means (i) either (notwithstanding the provisions of this subdivision (15) preceding this proviso) one thousand five hundred dollars multiplied by eight, plus the highest other compensation such former member or member received in any one of said three years from any other participating public employer including the state of West Virginia, or (ii) "final average salary" determined in accordance with (a) or (b) of this subdivision (15), whichever com-
putation shall produce the higher final average salary
(and in determining the annual compensation under (ii)
of this proviso, the legislative compensation of any such
former member shall be computed on the basis of one
thousand five hundred dollars multiplied by eight, and
the legislative compensation of any such member shall be
computed on the basis set forth in the provisions of this
subdivision (15) immediately preceding this proviso or on
the basis of one thousand five hundred dollars multiplied
by eight, whichever computation as to such member shall
produce the higher annual compensation);

(16) "Accumulated contributions" means the sum of all
amounts deducted from the compensations of a member
and credited to his individual account in the members'
deposit fund, together with regular interest thereon;

(17) "Regular interest" means such rate or rates of
interest per annum, compounded annually, as the board of
trustees shall from time to time adopt;

(18) "Annuity" means an annual amount payable by
the retirement system throughout the life of a person. All
annuities shall be paid in equal monthly installments,
using the upper cent for any fraction of a cent;

(19) "Annuity reserve" means the present value of all
payments to be made to a retirant or beneficiary of a
retirant on account of any annuity, computed upon the
basis of such mortality and other tables of experience, and
regular interest, as the board of trustees shall from time
to time adopt;

(20) "Retirement" means a member's withdrawal from
the employ of a participating public employer with an
annuity payable by the retirement system;

(21) "Actuarial equivalent" means a benefit of equal
value computed upon the basis of such mortality table
and regular interest as the board of trustees shall from
time to time adopt; and

(22) The masculine gender shall include the feminine
gender, and words of the singular number with respect to
persons shall include the plural number, and vice versa.
§5-10-14. Service credit.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he is entitled based upon such rules and regulations as the board of trustees shall from time to time adopt: Provided, That in no case shall less than ten days of service rendered by a member in any calendar month be credited as a month of service; nor shall less than ten months of service rendered in any calendar year be credited as a year of service; nor shall more than one year of service be credited any member for all service rendered by him in any calendar year; nor shall any member who was not in the employ of a political subdivision within a period of twenty-five years immediately preceding the date the political subdivision became a participating public employer be credited with prior service.

(b) The board of trustees shall grant service credit to employees of boards of health, the Clerk of the House of Delegates and the Clerk of the state Senate, or to any former and present member of the state teachers retirement system who have been contributing members for more than three years, for service previously credited by the state teachers' retirement system, and shall require the transfer of the member's contributions to the retirement system, and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to said member's retirement. Repayment of withdrawals shall be as directed by the board of trustees.

(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or state auditor, may receive prior service credit for such time as served in such capacity.

(d) Employees of the state Legislature whose term of employment is otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between sessions for ten or more years, may receive service credit for such time as served in that capacity.
§5-10-17. Retirement system membership.

1 The membership of the retirement system shall consist of the following persons:

3 (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.

13 (b) The membership of the retirement system shall not include any person who is a member of, or who has been retired by, the state teachers retirement system, the judges retirement system, the retirement system of the department of public safety, or any municipal retirement system for either, or both, policemen or firemen; and the West Virginia department of employment security, by the commissioner of such department, may elect whether its employees will accept coverage under this article or be covered under the authorization of a separate enactment: Provided. That such exclusions of membership shall not apply to any member of the state Legislature, the Clerk of the House of Delegates, the Clerk of the state Senate or to any member of the legislative body of any political subdivision provided he once becomes a contributing member of the retirement system: Provided, however, That any retired member of the retirement system of the department of public safety, and any retired member of any municipal retirement system for either, or both, policemen or firemen may on and after the effective date of this section become a member of the retirement system as provided in this article, without receiving credit for prior service as a municipal policeman or fireman or as a member of the department of public safety.

38 (c) Any member of the state Legislature, the Clerk of
the House of Delegates, the Clerk of the state Senate, any 
employee of the state Legislature whose employment is 
otherwise classified as temporary and who is employed to 
perform services required by the Legislature for its regu- 
lar sessions or during the interim between regular ses-
sions and who has been or is so employed during regular 
Sessions or during the interim between sessions for ten 
or more years, 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 
board of trustees shall prescribe, and each person, upon 
files 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 per-
son or legislative agency 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 deduc-
tions have been made from said member's compensation, 
such deductions shall be forwarded to the retirement 

system.

(d) Should any question arise regarding the member-
ship status of any employee, the board of trustees has the 
final power to decide the question.

§5-10-22.b. Supplemental benefits for certain annuitants.

Any annuitant who is receiving a retirement annuity of 
less than seven thousand five hundred 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 appropriations for the payment of 
such benefit: Provided, That the effective date of retire-
ment for such annuitants was prior to the first day of 
July, one thousand nine hundred seventy-eight, and he 
had ten years or more of credited service at the time of 
such retirement. For the purposes of this section, "effec-
tive date of retirement" means the last day of actual
employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. 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 eighteen 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 seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four, and irrespective of the maximum total annuity proviso and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active public employees, there may also be given an increase in retirement benefits for retired public employees, if funding is available for this purpose.

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.

On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant's own benefit and that which
may be receivable as beneficiary of another, under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26h. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity of less than seven thousand five hundred 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 the first day of July, one thousand nine hundred seventy-eight, and he had ten years or more of credited service at the time of such retirement. For the purposes of this section, "effective date of retirement" means the last day of actual employment, or the last day carried on the payroll of the employer, whichever is later, together with a meeting fully of all eligibility requirements for retirement prior to the aforesaid effective date. 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 eighteen 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 seven thousand five hundred dollars annually.

Any annuitant receiving the supplemental benefit provided for herein for the annuity payment period just prior to the first day of July, one thousand nine hundred eighty-four, or any annuitant made newly eligible for receipt of such supplemental benefit on such date, shall
32 receive a nineteen percent increase in the amount of such supplemental benefit prior received or newly calculated, effective on and after the first day of July, one thousand nine hundred eighty-four, and irrespective of the maximum total annuity proviso, and limitation of seven thousand five hundred dollars annually. In any fiscal year in which pay increases are granted by the Legislature to active teachers, there may also be given an increase in retirement benefits for retired teachers, if funding is available for this purpose.

42 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.

47 On or after the first day of July, one thousand nine hundred eighty-two, for the purpose of computation for determination of eligibility and for the amount of any supplemental benefit hereunder, separate computation shall be made of a retirant’s own benefit and that which may be receivable as beneficiary of another under the provisions of this article, with each such benefit being eligible for the supplemental benefit herein provided.

CHAPTER 137

(Com. Sub. for H. B. 1239—By Delegate Wooton and Delegate Shiflet)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; providing coverage for certain retired employees; specifying insurance coverages available for surviving spouses and dependents of deceased employee who was either an active or retired employee just prior to such decease; and providing for premium cost payment methods.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

*§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; additional eligible retired employees.

The board is hereby authorized to provide under any contract or contracts entered into under the provisions of this article that the costs of any such group hospital and surgical insurance, group major medical insurance, group life and accidental death insurance benefit plan or plans may be paid by the employer and employee. In addition, each employee shall be entitled to have his spouse and dependents, as defined by the rules and regulations of the board, included in any group hospital and surgical insurance or group major medical insurance coverage provided. The board shall adopt rules and regulations according to chapter twenty-nine-a of this code governing the discontinuance and resumption of any employee's coverage for his spouse and dependents.

Should a participating employee be terminated from employment involuntarily or in reduction of work force, the employee's insurance coverage provided under this article shall continue for a period of three months at no additional cost to the employee: Provided, That an employee discharged for misconduct shall not be eligible for extended benefits under this section: Provided, however, That coverage may be extended up to the maximum period of three months, while administrative remedies contesting the charge of misconduct are pursued: Provided further, That should the discharge for misconduct be upheld, the full cost of the extended coverage shall be reimbursed by the employee. If the employee is again employed or recalled to active employment within twelve months of his prior termination, he shall not be considered

* Clerks Note: This section was also amended in H. B. 2091, which passed prior to this bill.
a new enrollee and shall not be required to again contribute
his share of the premium cost, if he had already fully
contributed such share during the prior period of employment.

When a participating employee is compelled or required by
law to retire before reaching the age of sixty-five, or when a
participating employee voluntarily retires as provided by law,
that employee's accrued annual leave and sick leave, if any,
shall be credited toward an extension of the insurance coverage
provided by this article, according to the following formulae:
Such insurance coverage for a retired employee shall continue
one additional month for every two days of annual leave or
sick leave, or both, which the employee had accrued as of the
effective date of his retirement. For a retired employee, his
spouse and dependents, such insurance coverage shall continue
one additional month for every three days of annual leave or
sick leave, or both, which the employee had accrued as of the
effective date of his retirement.

Any employee who retired prior to the twenty-first of April,
one thousand nine hundred seventy-two, and who also
otherwise meets the conditions of the "retired employee"
definition in section two of this article, shall be eligible for
insurance coverage under the same terms and provisions of this
article. The premium cost for any such coverage shall be borne
by the retired employee and the rates for such coverage shall
accurately reflect the total cost of such coverage and shall not
be subsidized by the rate structure for any other insurance
programs administered pursuant to the West Virginia public
employees insurance act.

A surviving spouse and dependents of a deceased employee,
who was either an active or retired employee just prior to such
decease, shall be entitled to be included in any group insurance
coverage provided under this article, and such spouse and
dependents shall bear the premium cost of such insurance
coverage and the rates for such coverage shall accurately
reflect the total cost of such coverage and shall not be
subsidized by any other insurance programs administered
pursuant to the West Virginia public employees insurance act.

In construing the provisions of this section or any other
provisions of this code, the Legislature declares that it is not
now nor has it ever been the Legislature's intent that elected
public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of such positions preclude the arising or accumulation of such, so as to be thereafter usable as premium paying credits for which such officials may claim extended insurance benefits.

CHAPTER 138
(H. B. 2091—By Delegate Farley)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia public employees insurance act; payment of costs by employer and employee; coverage for employee's spouse and dependents; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; elected public officials not eligible.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

*§5-16-12. Payment of costs by employer and employee; coverage for employee's spouse and dependents generally; short term continuance of coverage for involuntary employee termination; extended insurance coverage for retired employees with accrued annual leave and sick leave; elected public officials ineligible.

The board is hereby authorized to provide under any contract or contracts entered into under the provisions of this act.

*Clerks Note: This section was also amended in H. B. 1239, which passed subsequent this bill.
article that the costs of any such group hospital and surgical
insurance, group major medical insurance, group life and
accidental death insurance benefit plan or plans may be paid
by the employer and employee. In addition, each employee
shall be entitled to have such employee's spouse and
dependents, as defined by the rules and regulations of the
board, included in any group hospital and surgical insurance
or group major medical insurance coverage provided. The
board shall adopt rules and regulations according to chapter
twenty-nine-a of this code governing the discontinuance and
resumption of any employee's coverage for such employee's
spouse and dependents.

Should a participating employee be terminated from
employment involuntarily or in reduction of work force, the
employee's insurance coverage provided under this article shall
continue for a period of three months at no additional cost
to the employee: Provided, That an employee discharged for
misconduct shall not be eligible for extended benefits under
this section: Provided, however, That coverage may be
extended up to the maximum period of three months, while
administrative remedies contesting the charge of misconduct
are pursued: Provided further, That should the discharge for
misconduct be upheld, the full cost of the extended coverage
shall be reimbursed by the employee. If the employee is again
employed or recalled to active employment within twelve
months of his prior termination, such employee shall not be
considered a new enrollee and shall not be required to again
contribute his share of the premium cost, if such employee had
already fully contributed such share during the prior period
of employment.

When a participating employee is compelled or required by
law to retire before reaching the age of sixty-five, or when a
participating employee voluntarily retires as provided by law,
that employee's accrued annual leave and sick leave, if any,
shall be credited toward an extension of the insurance coverage
provided by this article, according to the following formulae:
Such insurance coverage for a retired employee shall continue
one additional month for every two days of annual leave or
sick leave, or both, which the employee had accrued as of the
effective date of such retirement. For a retired employee, such
employee's spouse and dependents, such insurance coverage
shall continue one additional month for every three days of annual leave or sick leave, or both, which the employee had accrued as of the effective date of his retirement.

In construing the provisions of this section or any other provisions of this code, the Legislature declares that it is not now nor has it ever been the Legislature's intent that elected public officials be provided any sick leave, annual leave or personal leave, and the enactment of this section is based upon the fact and assumption that no statutory or inherent authority exists extending sick leave, annual leave or personal leave to elected public officials and the very nature of such positions preclude the arising or accumulation of such, so as to be thereafter usable as premium paying credits for which such officials may claim extended insurance benefits.

CHAPTER 139
(Com. Sub. for S. B. 194—By Senators Ash and Harman)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven, relating to authorizing a minimum security facility for the housing of youthful male offenders and certain female offenders at Pruntytown Correctional Center.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

The commissioner of corrections is hereby authorized to
2 house youthful male offenders as defined in section six, article four, chapter twenty-five of this code, and any such other female criminal offenders as he deems necessary to the operation of a just, humane and efficient system of corrections at the facility located at Pruntytown, West Virginia, heretofore known as the West Virginia Industrial School for Boys. Henceforth, this facility shall be known as the Pruntytown Correctional Center and it may be operated as a minimum security facility according to rules and regulations promulgated by the commissioner pursuant to the provisions of section four, article thirteen, chapter sixty-two.

CHAPTER 140
(Com. Sub. for H. B. 1175—By Delegate Springston and Delegate Starcher)

[Passed March 21, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article eight and section one, article eleven, both of chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections six, eight, seventeen and eighteen, article three, chapter twenty-eight of said code, all relating to changing the name of Fairmont Emergency Hospital to “Marion Health Care Hospital”; clarifying that the director of health is to manage, direct and control that institution; and deleting the name Fairmont Emergency Hospital from parts of the code pertaining to state correctional and penal institutions.

Be it enacted by the Legislature of West Virginia:

That section one, article eight, and section one, article eleven, both of chapter twenty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections six, eight, seventeen and eighteen, article three, chapter twenty-eight of said code, be amended and reenacted, all to read as follows:

Chapter.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

Article.
8. Emergency Hospitals.
11. State Extended Care and Emergency Facilities.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-1. Continuation; management; superintendent; qualifications of superintendent; division of fiscal, administrative and clinical duties; certain persons exempted from qualification requirements.

(a) The hospitals heretofore established and known, respectively, as Welch Emergency Hospital and Fairmont Emergency Hospital shall be continued and shall be managed, directed and controlled as prescribed in article eleven, chapter twenty-six of this code: Provided, That the hospital heretofore known as Fairmont Emergency Hospital shall henceforth be known as the Marion Health Care Hospital and any reference in this code to the Fairmont Emergency Hospital shall mean the Marion Health Care Hospital. The chief executive officer of each of said hospitals shall be the superintendent, who shall be a college graduate and have a minimum of two years' experience in either hospital administration, health services administration or business administration with broad knowledge of accounting, purchasing and personnel practices as related to the rendition of health and health related services.

(b) A superintendent is the person having the fiscal responsibility of the hospital and the authority to manage and administer the financial, business and personnel affairs of the hospital.

(c) A clinical director is the person having the responsibility for decisions involving clinical and medical treatment of patients, and who shall be a duly qualified physician licensed to practice medicine in the state of West Virginia.

(d) The provisions of this section relating to the qualification of persons eligible to serve as superintendent shall not apply to any person serving in the capacity of business manager on the effective date hereof, and who has served in such capacity for at least six consecutive months next preceding such effective date.
ARTICLE 11. STATE EXTENDED CARE AND EMERGENCY FACILITIES.

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

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

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

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 3. INDUSTRIAL HOME FOR YOUTH.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.
§28-3-8. Transfer of certain inmates to other institutions.
§28-3-17. Same—Preparation of inmate lists for billing purposes; application of county funds in state treasury.
§28-3-18. Same—Determination of payments due; levy; compelling payment.

§28-3-6. Custody and conveyance of girls committed to institutions; expenses.

Whenever a girl is committed to the industrial home by any of the courts hereinbefore named, it shall be the duty of the clerk of the court before whom the trial was held to prepare the commitment papers in the case and forward the same by mail without delay to the superintendent of the industrial home. On receipt of such commitment papers, the superintendent of the home, if the commitment is found by her to conform to the provisions of this article, and there is room in said home, shall promptly so advise the authority making the commitment, who shall at once send the girl so committed to
11 the home, under escort of a discreet woman of mature age.
12 Such escort shall be designated by the authority by whom the
13 commitment was made, and her compensation, which shall be
14 fixed by the same authority and shall not exceed three dollars
15 per day of twenty-four hours, and her expenses, and the girl's
16 necessary traveling expenses, fully itemized and sworn to by
17 the escort, shall be paid out of the treasury of the county from
18 which the commitment was made, by the county commission
19 thereof. No girl committed to said industrial home shall be
20 lodged in any jail or lockup; but the authority committing her
21 shall designate an officer or other proper person, preferably
22 a woman, in whose custody she will be kept until she is
23 delivered to the person duly authorized to conduct her to said
24 home. The expense of keeping such girl shall be paid like any
25 other expense of the hearing or trial.

§28-3-8. Transfer of certain inmates to other institutions.

1 The state commissioner of corrections shall have authority
2 to transfer any girl who is an inmate of the industrial home,
3 in accordance with the provisions of chapter twenty-seven of
4 this code, who is mentally ill, mentally retarded or addicted,
5 to any state institution charged with the care and treatment
6 of such persons; to transfer any girl in such home who is blind
7 or deaf, or whose sight or hearing is so impaired as to make
8 a transfer desirable, to the schools for the deaf and blind; to
9 transfer to Welch Emergency Hospital, any girl infected with
10 syphilis or gonorrhea.

§28-3-17. Same—Preparation of inmate lists for billing purposes;
application of county funds in state treasury.

1 The superintendent of the industrial home shall, before the
2 tenth day of January of each year, prepare and certify to the
3 auditor and the state commissioner of corrections each a list
4 by counties of all such girls as are mentioned in the preceding
5 section, who were kept in the home during the preceding year
6 or any part of it, showing as to each girl what part of the
7 year she was so kept in the home. On receiving such list the
8 auditor shall charge to each county fifty dollars on account
9 of each girl from such county who was kept in such home
10 during the preceding year, and a proportionate amount on
11 account of each girl kept in the home for any part of such
12 year less than the whole. Any money in the treasury of the
state to the credit of any such county, from whatever source arising, and not appropriated to pay any other debt of the county to the state, shall be applied, so far as necessary, to the payment of the sums so charged. If any sum in the treasury due the county shall not be sufficient to pay the whole amount so charged against it, such sum shall be applied as a credit on the amount charged, and the balance shall remain a charge against the county.

§28-3-18. Same—Determination of payments due; levy; compelling payment.

Within ten days after receiving such list the auditor shall certify to the county commission of such county a list of the girls from the county in such home, stating the length of the term during the year each girl was in such home, as shown by the list certified by the superintendent, the amount due from the county on her account, and the total amount due on account of all. He shall credit on such statement whatever amount has been applied as a payment thereon from any funds of the county in the treasury. Such statement shall be a receipt to the county for any amount so credited, and shall be a bill for any amount still appearing to be due from the county. Unless the bill shall have been paid by the application of funds of the county in the state treasury, the county commission shall, at its next levy term, provide for the payment of the same, or such part as may not have been paid, and cause the amount to be paid into the state treasury. If the amount so due from any county be not paid in a reasonable time after such levy term, the auditor may in the name of the state, apply to the circuit court of the county for a mandamus to require the county commission to provide for and pay the same, or he may proceed in the name of the state by any other appropriate remedy to recover the same.

CHAPTER 141
(S. B. 495—By Senator Tucker)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five-b,
chapter twenty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sale of prison-made goods; and authorizing prison-made goods designed and intended to be used solely by blind and handicapped persons to be offered for sale or distributed on the open market.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5B. PRISON-MADE GOODS.
§28-5B-15. Sale of prison-made goods on open market prohibited; penalty; exceptions.

1. (a) Subject to the provisions of subsections (b) and (c) of this section, it is unlawful to sell or offer for sale on the open market of this state any articles or products manufactured or produced wholly or in part, in this or any other state, by convicts or prisoners of this state, or any other state, except convicts or prisoners on parole or probation. Any person violating the provisions of this section is guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars, or by imprisonment in jail not less than three months nor more than one year, or by both fine and imprisonment. Each such sale or offer for sale shall constitute a separate offense under this section.

2. (b) Notwithstanding the provisions of subsection (a) of this section, any articles or products manufactured or produced, wholly, or in part, by inmates of West Virginia penal and correctional institutions and facilities which are designed and intended to be used solely by blind and handicapped persons, including, but not limited to, braille books and reading materials, may be sold or offered for sale or distributed on the open market by the department of corrections or other state department or agency.

3. (c) Notwithstanding the provisions of subsection (a) of this section, arts and crafts produced by inmates may
be sold to the general public by the department of corrections or by such other agencies or departments of state government as the commissioner of corrections may designate. The arts and crafts shall be sold only on a consignment basis so that inmates whose arts and crafts products are sold shall receive payment for the products. The payment shall be deposited in such accounts or funds and managed in such a manner as provided by section six, article five of this chapter: Provided, That where the state department of corrections or any other agency or department of state government provides any materials used in the production of an arts and crafts product, the fair market value of such materials may be deducted from the account of the individual inmate after the sale of such product.

(d) For purposes of this section, "arts and crafts" means articles produced individually by artistic or craft skill such as, but not limited to, painting, sculpture, pottery and jewelry.

CHAPTER 142

(S. B. 569—Originating in the Committee on Finance)

[Passed April 1, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public moneys and the state general revenue appropriations and expenditures; providing for reducing the period within which warrants may be drawn after the close of a fiscal year for payment of bills for such fiscal year to just the subsequent month of July, with effect of weekend days being last day or days of such month; and expiration of unexpended appropriations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-12. Expiration of unexpended appropriations.

1. Every appropriation which is payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, shall be deemed to have expired at the end of the year for which it is made, and no warrant shall thereafter be issued upon it:

2. Provided, That warrants may be drawn through the thirty-first day of July after the end of the year for which the appropriation is made if the warrants are in payment of bills for such year and have been encumbered by the budget office prior to July first; but appropriations for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made: Provided, however, That if such thirty-first day of July is on Saturday, then warrants may only be drawn through the Friday immediately preceding such Saturday, but if such thirty-first day of July is on Sunday, the warrants may be drawn through the Monday immediately following such Sunday.

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CHAPTER 143
(Com. Sub. for H. B. 1182—By Delegate Love)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to the establishment of a deputy sheriff's reserve in each county by the sheriff; stating purpose; relating to appointment, qualifications, duties, attire, oath, training, bond and liability insurance; reserves not employees of sheriff or county commission; and limitations on liability of sheriff and county commission for actions of reserves.
Be it enacted by the Legislature of West Virginia:

That article three, chapter six 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 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.

(a) The sheriff of any county may, for the purposes hereinafter set forth, designate and appoint a deputy sheriff's reserve, hereinafter referred to as "reserve" or "reserves." No such reserve shall be designated or created without the prior approval of the county commission for the establishment thereof.

(b) Each sheriff is authorized to appoint as members of the reserve bona fide citizens of the county who are of good moral character and who have not been convicted of a felony or other crime involving moral turpitude. Any person so appointed shall serve at the will and pleasure of the sheriff and shall not be subject to the provisions of article fourteen, chapter seven of this code. No member of the reserves shall engage in any political activity or campaign involving the office of sheriff or from which activity or campaign the sheriff or candidates therefor appointing such member would directly benefit.

(c) Members of the reserves shall not carry weapons nor serve as law-enforcement officers. Such reserves may, however, be provided with radio communication equipment for the purpose of maintaining contact with the sheriff's department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, such reserves may perform such other duties of a nonlaw-enforcement nature as are designated by the sheriff or by a deputy sheriff designated
and appointed by the sheriff for that purpose: Provided, That in no case shall any member of the reserves aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.

(d) Members of the reserves may be uniformed; however, if so uniformed, such uniforms shall clearly differentiate such members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves but prior to service as such, each member of the reserves shall receive appropriate training and instruction in their functions and authority as well as the limitations of such authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the constitution of the state of West Virginia, but the taking of such oath shall not serve to make such member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) No member of the reserve shall be regarded as an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers' compensation, civil service, unemployment compensation, public employees retirement, public employees insurance or for any other purpose. No member of the reserves shall receive any compensation or pay for any services performed as such member nor shall such member use the designated uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff shall be liable for any of the acts of any member of the reserves except in the case of gross negligence on the part of the county commission or sheriff in the appointment of such member or in the case of gross negligence on the part of either the sheriff or any of his deputies in directing any action on the part of such member.
CHAPTER 144
(Com. Sub. for H. B. 1013—By Delegate Murphy)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections twenty-nine, thirty and thirty-one, article eight, chapter eleven of said code; and to further amend article eight by adding thereto a new section, designated section thirty-one-a, all relating generally to the liability of and the removal from office of certain public officials in the several political subdivisions of the state; setting forth the grounds upon which such persons may be so removed; identifying the person or persons and number thereof who may prefer charges against such officers; requiring such charges to be preferred in writing before the circuit court of the county wherein such officer resides; requiring the convening of a three-judge court consisting of three circuit judges to hear the matter without a jury; establishing certain procedures with respect to such proceedings and the time within which the same must be heard; requiring certain findings of fact and conclusions of law to be made with respect to any final decision of such three-judge court; providing for an appeal to the supreme court of appeals with respect to a final decision of such court and certain procedures relating to such appeal; providing for the filling of any vacancy of the office from which any such person was removed; requiring certain duties of the prosecuting attorney of the county wherein the charges are brought and of the attorney general of the state upon any appeal therefrom in certain cases; providing for the personal liability of such officers for the negligent illegal expenditure of public moneys; providing for certain criminal liability for the willful illegal expenditure of such moneys and prescribing the punishment therefor; providing that such persons may not be removed from office except upon a showing of willful or grossly negligent behavior with respect to such illegal expenditures; clarifying that certain described conduct shall not constitute gross negligence or willful conduct; setting forth certain instances wherein such officials may be personally liable or
liable upon his or her official bond; recovery of punitive damages in certain instances and the amount thereof; and providing for the recovery of attorney fees in certain instances.

Be it enacted by the Legislature of West Virginia:

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

Chapter.
  11. Taxation.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 6. REMOVAL OF OFFICERS.

§6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds.

1 (a) Any person holding any county, school district or municipal office, including the office of member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality or for any of the causes or on any of the grounds provided by any other statute.

11 (b) Charges may be preferred:

12 (1) In the case of any county officer, member of a district board of education or magistrate, by the county commission, or other tribunal in lieu thereof, any other officer of the county or by any number of persons other than such county officers, which number shall be the lesser of fifty or one percent of the total number of voters of the county participating in the general election next preceding the filing of such charges.
(2) In the case of any municipal officer, by the prosecuting attorney of the county wherein such municipality, or the greater portion thereof, is located, any other elective officer of the municipality, or by any number of persons other than the prosecuting attorney or other municipal elective officer of the municipality who are residents of the municipality, which number shall be the lesser of twenty-five or one percent of the total number of voters of the municipality participating in the election at which the governing body was chosen which election next preceded the filing of the petition.

(3) By the chief inspector and supervisor of public offices of the state where the person sought to be removed is entrusted by law with the collection, custody and expenditure of public moneys because of any misapplication, misappropriation or embezzlement of such moneys.

(c) The charges shall be reduced to writing in the form of a petition duly verified by at least one of the persons bringing the same, and shall be entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the petition, requiring the officer or person named therein to appear before the court, at the courthouse of the county where such officer resides, and answer the charges on a day to be named therein, which summons shall be served at least twenty days before the return day thereof in the manner by which a summons commencing a civil suit may be served.

The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall without delay forward a copy of the petition to the supreme court of appeals and shall ask for the impaneling or convening of a three-judge court consisting of three circuit judges of the state. The chief justice of the supreme court of appeals shall without delay designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the petition is filed and, in the order of such appointment, shall designate the date, time and place for the convening of such three-judge court, which date and time shall not be less than twenty days from the date of the filing of the petition.

Such three-judge court shall, without a jury, hear the
charges and all evidence offered in support thereof or in
opposition thereto and upon satisfactory proof of the charges
shall remove any such officer or person from office and place
the records, papers and property of his office in the possession
of some other officer or person for safekeeping or in the
possession of the person appointed as hereinafter provided to
fill the office temporarily. Any final order either removing or
refusing to remove any such person from office shall contain
such findings of fact and conclusions of law as the three-judge
court shall deem sufficient to support its decision of all issues
presented to it in the matter.

(d) An appeal from an order of such three-judge court
removing or refusing to remove any person from office
pursuant to this section may be taken to the supreme court
of appeals within thirty days from the date of entry of the
order from which the appeal is to be taken. The supreme court
of appeals shall consider and decide the appeal upon the
original papers and documents, without requiring the same to
be printed and shall enforce its findings by proper writ. From
the date of any order of the three-judge court removing an
officer under this section until the expiration of thirty days
thereafter, and, if an appeal be taken, until the date of
suspension of such order, if suspended by the three-judge court
and if not suspended, until the final adjudication of the matter
by the supreme court of appeals the officer, commission or
body having power to fill a vacancy in such office may fill
the same by a temporary appointment until a final decision
of the matter, and when a final decision is made by the
supreme court of appeals shall fill the vacancy in the manner
provided by law for such office.

(e) In any case wherein the charges are preferred by the
chief inspector and supervisor of public offices against the
county commission or any member thereof or any county
district or municipal officer, the proceedings under this section
shall be conducted and prosecuted by the prosecuting attorney
of the county in which the officer proceeded against resides,
and on any appeal from the order of the three-judge court in
any such case, the attorney general of the state shall represent
the people. When any municipal officer is proceeded against
the solicitor or municipal attorney for such municipality may
assist in the prosecution of the charges.
CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

§11-8-29. Personal liability of official participating in unlawful expenditure.

§11-8-30. Recovery of unlawful expenditure from participating official by action; costs.

§11-8-31. Criminal liability of official violating provisions of article; proceeding for removal.

§11-8-31a. Recovery of attorneys' fees authorized.

§11-8-30. Personal liability of official participating in unlawful expenditure.

A person who in his official capacity negligently participates in the violation of either section twenty-five or section twenty-six of this article shall be personally liable, jointly and severally, for the amount illegally expended.

§11-8-30. Recovery of unlawful expenditure from participating official by action; costs.

A person who in his official capacity negligently participates in an illegal expenditure may be proceeded against for the recovery of the amount illegally expended. The political subdivision concerned, a taxpayer of the subdivision, the state tax commissioner or a person prejudiced may bring the proceeding.

All moneys recovered in these proceedings shall be paid into the treasury of the proper fiscal body and credited to the proper fund. Recovery in these proceedings shall, in all cases, include the principal and interest on the principal at a reasonable rate of interest as set by the court in the judgment order and may include, in the discretion of the court, a penalty of not more than twenty-five percent of the aggregate amount of the judgment and interest.

If the plaintiff prevail, he shall recover against the defendant, the costs of the proceedings, including a reasonable attorney's fee to be fixed by the trial court and included in the taxation of costs.

§11-8-31. Criminal liability of official violating provisions of article; proceeding for removal.

A person who in his official capacity willfully violates the provisions of this article shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than five hundred
4 dollars, or confined in jail not more than one year, or both.
5 Upon conviction he shall also forfeit his office: Provided, That
6 no liability shall arise under the provisions of this section so
7 far as obligations may have been incurred or may be incurred
8 prior to the time tax levies may be made under the provisions
9 of this article by fiscal bodies having for their purpose the
10 maintenance and operation of free schools or other govern-
11 mental functions for the fiscal year one thousand nine hundred
12 thirty-three—one thousand nine hundred thirty-four.

13 Proceedings for the removal of a member of a local fiscal
14 body who has willfully or with gross negligence violated any
15 of the provisions of this article shall be brought and
16 maintained in accordance with and shall be subject to the
17 provisions of section seven, article six, chapter six of this code.

18 An attested copy of the petition and the charges contained
19 therein shall be served upon the defendants at least twenty
20 days prior to the date of hearing. No other pleading or notice
21 of the proceedings shall be necessary.

22 If any person in his or her official capacity participates in
23 an illegal expenditure and in so doing acts in accordance with
24 and upon the advice of his or her statutory attorney or duly
25 appointed attorney, which advice was asked for, received and
26 given in good faith, such person so acting shall not be deemed
27 guilty of gross negligence or of willfully violating any of the
28 provisions of this article but may be found to have so acted
29 in a negligent manner and may be proceeded against for the
30 recovery of the amount illegally or improperly expended, both
31 personally or upon his or her official bond.

§11-8-31a. Recovery of attorneys’ fees authorized.

1 The governing body of the governmental entity of which a
2 person is an official is hereby authorized to reimburse such
3 person for the reasonable amount of such person’s attorney
4 fees in any case:

5 (a) Wherein such person has successfully defended against
6 an action seeking his or her removal from office, or

7 (b) Wherein such person has successfully defended against
8 an action seeking the recovery of moneys alleged to have been
9 wrongfully expended.
In either case such governing body shall have authority to determine if such reimbursement is warranted and the reasonableness of the amount sought to be recovered.

CHAPTER 145
(Com. Sub. for H. B. 1758—By Delegate Wooton)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article fourteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to facsimile signatures of public officials; use; legal effect.

Be it enacted by the Legislature of West Virginia:

That section two, article fourteen, 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 14. UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT.

§6-14-2. Facsimile signature; use; legal effect.

Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed. If a public security is required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, the signature of any or all authorized officers may be executed by facsimile; and

(b) Any instrument of payment.

Upon compliance with this article by the authorized officer, his facsimile signature shall have the same legal effect as his manual signature.
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 the maximum supplemental payment to the members of the department of public safety in lieu of overtime; and increasing salaries.

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, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

1 Members of the department shall receive annual salaries pursuant to appropriation by the Legislature, payable at least monthly as follows:

2 Any lieutenant colonel shall receive an annual salary of thirty-one thousand five hundred dollars; any major shall receive an annual salary of twenty-eight thousand eight hundred eighty-four dollars; any captain shall receive an annual salary of twenty-six thousand seven hundred seventy-two dollars; any lieutenant shall receive an annual salary of twenty-five thousand two hundred dollars; any master sergeant or first sergeant shall receive an annual salary of twenty-three thousand six hundred twenty-eight dollars; any sergeant shall receive an annual salary of twenty-two thousand fifty-six dollars; any corporal shall receive an annual salary of twenty thousand four hundred seventy-two dollars; any trooper first class shall receive an annual salary of eighteen thousand nine hundred dollars; and any newly enlisted trooper shall receive a salary of one thousand three hundred fifty-five dollars
monthly during the period of his basic training, and upon
the satisfactory completion of such training and assign-
ment to active duty, each such trooper shall receive, dur-
ing the remainder of his first year's service, a salary of
one thousand four hundred sixty-four dollars monthly.
During the second year of his service in the department,
each trooper shall receive an annual salary of seventeen
thousand nine hundred fifty-two dollars; during the third
year of his service, each such trooper shall receive an
annual salary of eighteen thousand two hundred fifty-two
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 eighteen thousand four hun-
dred ninety-two dollars. Each member of the department
whose salary is fixed and specified herein shall receive
and be entitled to an increase in salary over that herein-
before set forth, for grade in rank, based on length of ser-
vice, 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 receive under the provisions hereof.

The Legislature finds and declares that there is litiga-
tion pending in the circuit court of Kanawha County on
the question whether members of the department of pub-
lic 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 be-
cause of the unique duties of members of the department,
it is not appropriate to apply said wage and hour provi-
sions to them. Accordingly, members of the department
of public safety are hereby excluded from the provisions
of said wage and hour law. The express exclusion hereby
enacted shall not be construed as any indication 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
received 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 supple-
mental pay as hereinafter provided.

The superintendent shall, within thirty days after the
effective 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 promulgated pur-
suant to the provisions of chapter twenty-nine-a of this
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 two hundred
twenty-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 superin-
tendent 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 ap-
proved as to form by the attorney general and to suffi-
ciency by the governor.

Any member of the department who is called to per-
form 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 147
(H. B. 1800—By Delegate Damron)

[Passed April 13, 1985; in effect from passage. Approved
by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter
fifteen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to allowing an
increase in the age limit for persons with prior military
experience applying for positions as state police helicopter
pilots.

Be it enacted by the Legislature of West Virginia:

That section seven, 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.

§15-2-7. Cadet selection board; qualifications for and appointment
to membership in department; civilian employees.

(a) The superintendent shall establish within the department
of public safety a cadet selection board which shall be
representative of commissioned and noncommissioned officers
within the department.

(b) The superintendent shall appoint a member to the
position of trooper from among the top three names on the
current list of eligible applicants established by the cadet
selection board.

(c) Preference in making appointments shall be given
whenever possible to honorably discharged members of the
armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one nor more than thirty years of age, of sound constitution and good moral character; shall be required to pass such mental examination and meet other requirements as may be provided for in regulations promulgated by the cadet selection board; and shall be required to pass such physical examination as may be provided for in regulations promulgated by the retirement board: Provided, That a former member may, at the discretion of the superintendent, be reenlisted if the period of his former service subtracted from his age does not exceed thirty years: Provided, however, That the age limit requirement may be modified for persons over the age of thirty with active duty military experience who are applying for positions as helicopter pilots in the department. For each full year of active military service, the age limit requirement shall be raised by one year to a maximum age of thirty-five years for helicopter pilot applicants.

(d) No person may be barred from becoming a member of the department because of his religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code, and shall take positive steps to encourage applications for department membership from females and minority groups within the state.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the department at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint such civilian employees as may be necessary, and all such employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

CHAPTER 148

(Com. Sub. for S. B. 523—By Senator White and Mr. Tonkovich, Mr. President)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-seven, twenty-nine, thirty, thirty-three, thirty-four and thirty-five, ar-
Ch. 148]  

Let article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to increasing retirement and disability benefits for members of the department of public safety.

Be it enacted by the Legislature of West Virginia:

That sections twenty-seven, twenty-nine, thirty, thirty-three, thirty-four and thirty-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.

§15-2-27. Retirement; awards and benefits.


§15-2-30. Same—Due to other causes.

§15-2-33. Awards and benefits to dependents of member—When member dies in performance of duty, etc.

§15-2-34. Same—When member dies from nonservice—connected causes.

§15-2-35. Same—When member dies after retirement or after serving twenty years.

§15-2-27. Retirement; awards and benefits.

1 (a) The retirement board shall retire any member of the department of public safety when the member has both attained the age of fifty-five years and completed twenty-five years of service as a member of the department, including military service credit granted under the provisions of section twenty-eight of this article.

(b) The retirement board shall retire any member of the department of public safety who has lodged with the secretary of the retirement board his voluntary petition in writing for retirement, and:

(1) 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 provisions of this section, the board shall, by order in writing, make an award directing that the member shall be entitled to receive annually and that there shall be paid to the member from the death, disability and retirement fund in equal monthly installments during the natural lifetime of the member while in status of retirement one or the other of two amounts, whichever is the greater:

(1) An amount equal to five percent of the aggregate of salary paid to the member during the whole period of service as a member of the department of public safety; or

(2) The sum of five thousand five hundred dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the department and shall be retired under any of the provisions of this section before he shall have attained the age of fifty years, payment of monthly installments of the amount of retirement award to such member shall commence on the date he attains the age of fifty years.


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 ter-
minate, one or the other of two amounts, whichever is
greater:

(1) An amount equal to five and one-half percent of
the total salary which would have been earned during
twenty-five years or actual service if more than twenty-
five years in said department based on the average earn-
ings of such member while employed as a member of
said department; or

(2) The sum of five thousand five 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 and one-half
percent of the total salary which would have been earned
by such member during twenty-five years or actual ser-
vice if more than twenty-five years of service in said
department based on the average earnings of such mem-
ber 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, ambu-
lance 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 dis-
abled 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 in-
curred 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 de-
termine that any disabled member is ineligible to receive
any of the aforesaid benefits at public expense the super-
intendent shall, at the request of such disabled member,
refer such matter to the retirement board for hearing and
final decision.

§15-2-30. Same—Due to other causes.

If any member while in active service of said depart-
ment has or shall, in the opinion of the retirement board,
become permanently disabled to the extent that such
member cannot adequately perform the duties required of
a member of the department from any cause other than
those set forth in the next preceding section and not
due to vicious habits, intemperance or willful misconduct
on his part, such member shall be retired by the retire-
ment board and, if such member at the time of such re-
tirement under this section, shall have served less than
twenty years as a member of said department, such mem-
ber shall be entitled to receive annually and there shall
be paid to such member while in status of retirement,
from the death, disability and retirement fund in equal
monthly installments during a period equal to one half
the time such member has served as a member of said
department, a sum equal to five and one-half percent of
the total salary which would have been earned during
twenty-five years of service in said department based on
the average earnings of such member while employed
as a member of said department, but if such member, at
the time of such retirement under the terms of this sec-
tion, shall have served twenty years or longer as a mem-
ber of said department, such member shall be entitled to
receive annually and there shall be paid to such member
from the death, disability and retirement fund in equal
monthly installments, commencing on the date such mem-
ber shall be retired and continuing during the natural
lifetime of such member while in status of retirement.
one or the other of the two amounts, based upon either
the aggregate of salary paid to such member during the
whole period of service of such member or the period of
twenty years or longer during which such member at
the time of such retirement has, or shall have served as
§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 and one-half 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 five thousand five 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.

§15-2-34. Same—When member dies from nonservice-connected causes.

In any case where a member while in active service of said department, before having completed twenty years of service as a member of said department, has died or shall die from any cause other than those specified in this article and not due to vicious habits, intemperance or willful misconduct on his part, there shall be paid annually in equal monthly installments from said death, disability and retirement fund to the surviving spouse of such member during his or her natural lifetime or until such time said surviving spouse remaries, a sum equal to two and three-quarters percent of the total salary which would have been earned by said member during twenty-five years of service in said department based on his or her average earnings while employed as a member of said department. If there be no surviving spouse there shall be paid from said fund to each dependent child or children of said deceased member the sum of one hundred dollars monthly. If there be no surviving spouse and no dependent child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse would have been entitled to receive: Provided, That when there shall be but one dependent parent surviving then such dependent parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.
§15-2-35. Same—When member dies after retirement or after serving twenty years.

When any member of said department has heretofore completed or hereafter shall complete twenty years of service or longer as a member of said department and has died or shall die from any cause or causes other than those specified in this article before having been retired by the retirement board, and when a member in retirement status has died or shall die after having been retired by the retirement board under the provisions of this article, there shall be paid annually in equal monthly installments from said fund to the surviving spouse of said member, commencing on the date of the death of said member and continuing during the lifetime or until remarriage of said surviving spouse an amount equal to three fourths the retirement benefits said deceased member was receiving while in status of retirement, or would have been entitled to receive to the same effect as if such member had been retired under the provisions of this article immediately prior to the time of his death; and in addition thereto said surviving spouse shall be entitled to receive and there shall be paid to such surviving spouse from said fund the sum of one hundred dollars monthly for each dependent child or children. If such surviving spouse die or remarry, or if there be no surviving spouse there shall be paid monthly from said fund to each dependent child or children of said deceased member the sum of one hundred dollars. If there be no surviving spouse or no surviving spouse eligible to receive benefits and no dependent child or children there shall be paid annually in equal monthly installments from said fund to the dependent parents of said deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse without children would have been entitled to receive: Provided, That when there shall be but one dependent parent surviving, such parent shall be entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.
CHAPTER 149
(H. B. 2132—By Delegate Starcher)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public service commission; commission continued; membership; chairman; compensation; and increasing the salaries of commissioners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS.

§24-1-3. Commission continued; membership; chairman; compensation.

(a) The public service commission of West Virginia, heretofore established, is continued and directed as provided by this chapter, chapter twenty-four-a and chapter twenty-four-b. The public service commission may sue and be sued by that name. Such public service commission shall consist of three members who shall be appointed by the governor with the advice and consent of the Senate. The commissioners shall be citizens and residents of this state and at least one of them shall be duly licensed to practice law in West Virginia, of not less than ten years' actual experience at the bar. No more than two of said commissioners shall be members of the same political party. Each commissioner shall, before entering upon the duties of his office, take and subscribe to the oath provided by section five, article IV of the constitution, which oath shall be filed in the office of the secretary of state. The governor shall designate one of the commissioners to serve as chairman at the governor's will and pleasure. The chairman shall be the chief administrative officer of the commission. The governor may remove any commissioner only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of subsection (c) of this section.
(b) The unexpired term of members of the public service commission at the time this subsection becomes effective are continued through the thirtieth day of June, one thousand nine hundred seventy-nine. In accordance with the provisions of subsection (a) of this section, the governor shall appoint three commissioners, one for a term of two years, one for a term of four years and one for a term of six years, all the terms beginning on the first day of July, one thousand nine hundred seventy-nine. All future appointments are for terms of six years, except that an appointment to fill a vacancy is for the unexpired term only. The commissioners whose terms are terminated by the provisions of this subsection are eligible for reappointment.

(c) No person while in the employ of, or holding any official relation to, any public utility subject to the provisions of this chapter, or holding any stocks or bonds thereof, or who is pecuniarily interested therein, may serve as a member of the commission or as an employee thereof. Nor may any such commissioner be a candidate for or hold public office, or be a member of any political committee, while acting as such commissioner; nor may any commissioner or employee of said commission receive any pass, free transportation or other thing of value, either directly or indirectly, from any public utility or motor carrier subject to the provisions of this chapter. In case any of the commissioners becomes a candidate for any public office or a member of any political committee, the governor shall remove him from office and shall appoint a new commissioner to fill the vacancy created.

(d) Effective the first day of July, one thousand nine hundred eighty-four, and in light of the assignment of new, substantial duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of thirty-nine thousand two hundred forty dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty thousand two hundred ten dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six,
chapter twenty-four-a of this code, seven thousand five hundred twenty-five dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred five dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand five hundred dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-four.

(e) Effective the first day of July, one thousand nine hundred eighty-five, and in light of the assignment of new, substantial additional duties embracing new areas and fields of activity under certain legislative enactments, each commissioner shall receive a salary of forty-one thousand dollars a year to be paid in monthly installments from the special funds in such amounts as follows:

(1) From the public service commission fund collected under the provisions of section six, article three of this chapter, thirty-one thousand six hundred dollars;

(2) From the public service commission motor carrier fund collected under the provisions of section six, article six, chapter twenty-four-a of this code, seven thousand nine hundred dollars; and

(3) From the public service commission gas pipeline safety fund collected under the provisions of section three, article five, chapter twenty-four-b of this code, one thousand five hundred dollars.

In addition to this salary provided for all commissioners, the chairman of the commission shall receive three thousand six hundred seventy-five dollars a year to be paid in monthly installments from the public service commission fund collected under the provisions of section six, article three of this chapter, on and after the first day of July, one thousand nine hundred eighty-five.
AN ACT to amend and reenact section fifteen, article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter thirty-one of said code by adding thereto a new article, designated article twenty; to amend and reenact sections one, two and four, article three, chapter fifty of said code; and to further amend said article three by adding thereto a new section, designated section four-a; to amend and reenact sections eleven, twenty-eight and thirty-one, article one, chapter fifty-nine of said code; and to further amend said article one by adding thereto a new section, designated section twenty-eight-a, all relating generally to the West Virginia regional jail and prison authority and funding therefor; excepting certain costs and fees from net proceeds accounted for and sent to the treasury of the state by the sheriff; requiring certain proceeds of costs and fines to be transmitted to the regional jail and prison development fund upon completion of regional jail facilities; providing for certain expenses related to local holding facilities; creating the West Virginia regional jail and prison authority; enacting the West Virginia regional jail and prison authority act; definitions; the authority to be a body corporate and a government instrumentality; governing board; commissioner of corrections to be chairman; commissioner of finance and administration to be treasurer; members; appointment; terms; vacancies; members bond; board to be governing body and exercise powers of authority; meetings; officers; quorum; bylaws; rules regarding business of authority; executive director; personnel, consultants, technicians and legal staff; expenses from regional jail and prison development fund; comprehensive study of prison, work farm and jail facilities; deadline; requirements of study; plan to specify groups of counties; bidding procedures; notice thereof; contracts for lease not to be bid; bond of contractors; what authority to consider when creating the plan establishing regions; public hearings and
notice thereof; hearings on sites; procedures to be promulgated; requirements; powers of authority; regional jail commissions; composition; appointment; terms; vacancies; compensation and expenses; regional jail commission powers and duties; jail, work farm and prison standards commission; members; appointment; compensation and expenses; secretarial and other expenses; vacancies; quorum; purpose; standards and procedures for prisons, work farms, regional jails and local jail facilities used as temporary holding facilities; requirements of standards; promulgation of standards by legislative rule making; review and update of standards; reports to authority; regional jail and prison development fund created; special account in state treasury; revolving fund; revenues to secure bonds, security interests or notes; investments; interest to be credited to the fund; excess to general fund; what fund shall consist of; how amounts deposited to be accounted for and expended; counties to use regional jail facilities; costs per day to be paid; borrowing of money; authorization by resolution of board; not to exceed twenty-five years; provisions of resolution; notes, security interests and bonds to be general obligations and negotiable instruments; provisions of resolutions authorizing notes, security interests or bonds or any issue thereof may contain to be a part of the contract with holders; authority for purchase and redemption of notes, security interests or bonds; the state of West Virginia not to be liable on notes, security interests or bonds or other evidences of indebtedness of the authority; disclaimer thereof to be noted thereon; twenty-five percent of holders authorized to appoint a trustee in the event of default in payment, default in any agreement or failure or refusal to comply with law on the part of the authority; procedures; powers of trustee upon request of twenty-five percent of holders; incidental powers; notice before declaration that obligations due and payable; notes, security interests and bonds to be securities; who may invest therein; duties of state board of investments prior to investing therein; requirements and limits for purchase by state board of investments; tax exemption of authority; obligations, and interest and income thereon to be exempt from taxation by this state or its subdivisions or instrumentalities except inheritance taxes; limit on
principal amount of obligations; computation thereof; purchase by state board of investments limited; validity of any pledge, mortgage, deed of trust or security instrument; money of authority to be collected and received by the treasurer of the authority and paid into the state treasury; exceptions; conflicts of interest prohibited; such contracts or agreements to be void; acts of authority not to conflict with performance due by agreement with federal agency; authority not to alter or limit rights and powers inconsistent therewith; civil filing fees in magistrate courts raised; costs in criminal proceedings in magistrate courts raised; disposition of additional fees and costs to regional jail and prison development fund in the state treasury; civil filing fees in circuit court raised; fees for services in circuit court misdemeanor and felony cases raised; disposition of additional filing fees and fees for services in criminal cases to the state treasury; fees for enforcement of a judgment raised; duties of clerks; additional costs, fees, fees for services in criminal cases exempt from certain handling; authority to exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate prisons after first providing for regional jail facilities.

Be it enacted by the Legislature of West Virginia:

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

Chapter.

7. County Commissions and Officers.
50. Magistrate Courts.
59. Fees, Allowance and Costs; Newspapers; Legal Advertisements.
CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-15. Annual statement of sheriff of fines and costs received from magistrates; payment into state treasury.

The sheriff shall annually, during the month of January, render under oath to the auditor a true statement of the account of all fines and costs collected by magistrates and transmitted to him and pay into the treasury of the state, the net proceeds of such fines and costs as exhibited by such account, to be appropriated as directed by the fifth section of article twelve of the constitution of this state. Failure to do so shall be deemed a breach of his official duty. For the purposes of this section, the net proceeds of such fines and costs shall be deemed to be the proceeds remaining after deducting therefrom: (1) The cost of auditing the accounts of magistrates by the chief inspector's office; (2) the amounts of costs and fees paid into the regional jail and prison development fund of the state treasury by the clerk in the manner provided by section four-a, article three, chapter fifty of this code; (3) until a regional facility is provided pursuant to article twenty, chapter thirty-one of this code, the expenses and costs of operation and maintenance of the county jail or a regional correctional facility, other than a facility provided pursuant to article twenty, chapter thirty-one of this code, operated jointly with one or more other county or counties, and of constructing, reconstructing and renovating any jail facility used for county prisoners and of periodic payments, if any, for the establishment of a jail improvement fund in the manner provided by section nine, article one of this chapter for constructing, reconstructing or renovating any jail facility used for county prisoners; and (4) after a regional facility is made available to the county pursuant to article twenty, chapter thirty-one of this code, the expenses and costs of operation of the jail for the county in the form of the per day costs required to be paid into the regional jail and prison development fund pursuant to subsection (h), section ten, article twenty, chapter thirty-one of this code, the periodic payments, if any, for the establishment of a jail improvement fund in the manner provided by section nine,
37 article one of this chapter, which shall thereafter be
38 transmitted to the state treasurer and deposited in the
39 regional jail and prison development fund, and the funds
40 expended by the respective counties, if any, for expenses
41 incurred in housing prisoners in local jail facilities used as
42 holding facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND PRISON AU-
THORITY.

§31-20-1. Short title.
§31-20-2. Definitions.
§31-20-3. West Virginia regional jail and prison authority; composition;
appointment; terms; compensation and expenses.
§31-20-4. Governing body; organization and meetings; quorum; administrative
expenses.
§31-20-5. Powers and duties of the authority; bidding procedures.
§31-20-5a. Bidding procedures.
§31-20-6. Regional jail commissions; composition; appointment; terms;
compensation and expenses.
§31-20-7. General powers of the commission.
§31-20-8. Jail and prison standards commission; appointments; compensation;
vacancies; quorum.
§31-20-9. Purpose; powers and duties.
§31-20-10. Regional jail and prison development fund.
§31-20-12. Notes, security interests and bonds as general obligations of
authority.
§31-20-13. Notes, security interests and bonds as negotiable instruments.
§31-20-15. Redemption of notes, security interests or bonds.
§31-20-16. Disclaimer of any liability of state of West Virginia.
§31-20-17. Default in payment of principal or interest.
§31-20-18. Investment in notes, security interests and bonds.
§31-20-20. Authorized limit on borrowing.
§31-20-21. Validity of any pledge, mortgage, deed of trust or security
instrument.
§31-20-22. Money of the authority.
§31-20-23. Conflict of interest; when contracts void.
§31-20-24. Agreement with federal agencies not to alter or limit powers of
authority.

§31-20-1. Short title.

1 This article shall be known and may be cited as “The West
2 Virginia Regional Jail and Prison Authority Act.”
§31-20-2. Definitions.

Unless the context indicates clearly otherwise, as used in this article:

(a) "Authority" or "West Virginia regional jail authority" means the West Virginia regional jail and prison authority created by this article.

(b) "Board" means the governing body of the authority.

(c) "Bonds" means bonds of the authority issued under this article.

(d) "Cost of construction or renovation of a local jail facility or regional jail facility" means the cost of all lands, water areas, property rights and easements, financing charges, interest prior to and during construction and for a period not exceeding six months following the completion of construction, equipment, engineering and legal services, plans, specifications and surveys, estimates of costs and other expenses necessary or incidental to determining the feasibility or practicability of any such project, together with such other expenses as may be necessary or incidental to the financing and the construction or renovation of such facilities and the placing of same in operation.

(e) "County" means any county of this state.

(f) "Federal agency" means the United States of America and any department, corporation, agency or instrumentality created, designated or established by the United States of America.

(g) "Fund" means the regional jail development fund provided in section ten of this article.

(h) "Government" means state and federal government, and any political subdivision, agency or instrumentality thereof, corporate or otherwise.

(i) "Inmate" means any person properly committed to a local or regional jail facility or a prison.

(j) "Local jail facility" means any county facility for the confinement, custody, supervision or control of persons convicted of misdemeanors, awaiting trial or awaiting transportation to a state correctional facility.

(k) "Municipality" means any city, town or village in this state.

(l) "Notes" means any notes as defined in section one
hundred four, article three, chapter forty-six of this code issued under this article by the authority.

(m) "Prison" means any prison, penitentiary, detention center or other correctional institution operated by the department of corrections.

(n) "Regional jail facility" or "regional jail" means any facility operated by the authority and used jointly by two or more counties for the confinement, custody, supervision or control of persons convicted of misdemeanors or awaiting trial or awaiting transportation to a state correctional facility.

(o) "Regional jail commission" means the commission established in section eight of this article.

(p) "Revenues" means all fees, charges, moneys, profits, payments of principal of, or interest on, loans and other investments, grants, contributions and all other income received by the authority.

(q) "Security interest" means an interest in the loan portfolio of the authority which interest is secured by an underlying loan or loans and is evidenced by a note issued by the authority.

(r) "Work farm" shall have the same meaning as that term is used in section twelve, article eight, chapter seven of this code authorizing work farms for individual counties.

§31-20-3. West Virginia regional jail and prison authority; composition; appointment; terms; compensation and expenses.

There is hereby created the West Virginia regional jail and prison authority which shall be a body corporate and a government instrumentality.

The authority shall be governed by a board, consisting of a chairman, who shall be the commissioner of the department of corrections; a treasurer, who shall be the commissioner of the department of finance and administration or his designated representative; three members appointed by the governor, who are representative of the areas of law, medicine and county government; the state superintendent of schools or his designated representative; the state fire marshal or his designated representative; the director of the department of health or his designated representative; and a
representative from the juvenile facilities review panel. Upon the establishment of the regional jail commissions, as provided for in section five of this article, one member of each commission shall become a member of the board, such member to be appointed by the regional jail commission. Members of the Legislature are not eligible to serve on the board.

The governor shall nominate and, by and with the advice and consent of the Senate, appoint three members of the authority for staggered terms of four years beginning the first day of July, one thousand nine hundred eighty-five. Of the members of the board first appointed, one shall be appointed for a term ending the thirtieth day of June, one thousand nine hundred eighty-six, and one each for terms ending one and two years thereafter. As these original appointments expire, each subsequent appointment shall be for a full four-year term.

Any appointed member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the authority are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board of the authority shall execute an official bond in a penalty of ten thousand dollars, conditioned as required by law. Premiums on such bond shall be paid from funds accruing to the authority. Such bond shall be approved as to form by the attorney general and as to sufficiency by the governor and, when fully executed and approved, shall be filed in the office of the secretary of state.

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

The governing body of the authority shall consist of the members of the board as provided in section three of this article and shall exercise all the powers given to the authority in this article. The commissioner of the department of corrections shall be chairman of the board
and its chief executive officer. On the second Monday of
July of each year, the board shall meet to elect a secretary
from among its own members.
A majority of the members of the board constitute a
quorum, and a quorum must be present for the board to
conduct business. Unless the bylaws require a larger
number, action may be taken by majority vote of the
members present.
The board shall manage the property and business of the
authority and prescribe, amend and repeal bylaws and rules
governing the manner in which the business of the authority
is conducted.
The authority shall employ an executive director and any
other personnel it determines necessary and may appoint its
own counsel and legal staff and retain such temporary
engineering, financial and other consultants or technicians
as may be required for any special study or survey
consistent with the provisions of this article.
All costs incidental to the administration of the authority
including office expense, personal services expense and
current expense, shall be paid from the regional jail and
prison development fund in accordance with guidelines
issued by the board of the authority.

§31-20-5. Powers and duties of the authority; bidding
procedures.

The regional jail and prison authority shall complete a
comprehensive study of all prison and jail facilities in the
state of West Virginia no later than the first day of July, one
thousand nine hundred eighty-six. This study shall include
an assessment of the physical conditions of confinement
within the institutions and the relative need for the
institutions when considering other available institutions
of confinement located within the state.
After completing this study, the authority shall submit a
plan to the governor on the establishment of regional jails in
this state and the acquisition, construction or renovation of
facilities for prisons. The authority shall specify groups of
counties within the state to be formed into regions for the
establishment of such regional jails. Within each region a
local jail commission shall be established and have the
powers and duties as set forth in section six of this article.
The authority shall consider, but not be limited to, the following when creating the plan establishing regions:

1. The relative physical condition of the prisons and jail facilities located within the state;
2. The transportation costs associated with the establishment of centralized jail services including, but not limited to, the costs of transporting persons incarcerated in regional jails to court appearances, to interviews with their attorneys, and to have visitation with their families and friends all in any county seat of a county served by the regional facility;
3. The availability of medical services and educational and recreational opportunities;
4. Information received from public hearings;
5. The relative efficiency in the cost of jail services caused by establishment of regional jail facilities;
6. Available facilities which may be used as regional jails or prisons including, but not limited to, existing county and state owned properties;
7. The cost of acquiring, constructing, renovating, operating and maintaining local jail facilities for use as local holding facilities in each county and regional jail facilities for each county and the financing provided by this article;
8. The leasing of any available portion of any regional jail space and the leasing of available facilities of any regional jail to the West Virginia department of corrections for the keeping and detaining of prisoners sentenced to serve terms of incarceration under the custody of the West Virginia department of corrections for nonviolent crimes and to contract with the department of corrections for the providing of food, clothing, shelter and any and all incidental costs in the care, control and maintenance of such prisoners: Provided, That such leasing does not restrict space or facilities needed for the detention of county prisoners;
9. The advisability and cost effectiveness of acquiring, constructing, renovating, operating and maintaining work farms serving one or more counties or regions; and
10. The proximity of possible sites for the regional jail facilities to residential areas, schools, churches and other public buildings and facilities.
Public hearings pursuant to this section shall be held by the authority in convenient locations throughout the state. No less than ten public hearings shall be held for public comment on the establishment of regional jails. The authority shall cause to be published at least two weeks in advance of a hearing a Class II-O legal advertisement, as provided in section two, article three, chapter fifty-nine of this code, setting forth the reason for the hearing and the time, place and date thereof, the publication area shall be each county which may be included in a region for the purposes of a regional jail with the county in which the public hearing is held.

In addition to the hearing requirements above, before beginning construction of a new facility for use as a regional jail or prison facility or before beginning renovation or acquisition of an existing facility for use as a regional jail facility which existing facility is not already a jail, prison or secure facility for the detention of juveniles or persons otherwise involuntarily committed or confined, the authority shall hold a hearing for comment by all members of the public on all aspects relating to the advisability of the use of the site for that regional jail facility. The authority shall promulgate rules and regulations pursuant to chapter twenty-nine-a of this code for the requirements for notice and other procedures of said public hearings which requirements shall be as similar as practicable to those hearings conducted regarding the construction of bridges by the West Virginia department of highways.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(a) To acquire, own, hold and dispose of property, real and personal, tangible and intangible.
(b) To lease property, whether as lessee or lessor.
(c) To mortgage or otherwise grant security interests in its property.
(d) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation at public or private hearings, on any matter relevant to this article and necessary for information on the construction or
101 renovation of any correctional facility or the establishment
102 of any prison industries project.
103 (e) To issue subpoenas requiring the attendance of
104 witnesses and the production of books and papers relevant
105 to any hearing before such authority or one or more
106 members appointed by it to conduct any hearing.
107 (f) To apply to the circuit court having venue of such
108 offense to have punished for contempt any witness who
109 refuses to obey a subpoena, to be sworn or affirmed or to
110 testify or who commits any contempt after being summoned
111 to appear.
112 (g) To sue and be sued, implead and be impleaded, and
113 complain and defend in any court.
114 (h) To adopt, use and alter at will a corporate seal.
115 (i) To make bylaws for the management and regulation
116 of its affairs pursuant to article three, chapter twenty-nine-
117 a of this code.
118 (j) To appoint officers, agents and employees.
119 (k) To make contracts of every kind and nature and to
120 execute all instruments necessary or convenient for
121 carrying on its business.
122 (l) Without in any way limiting any other subdivision of
123 this section, to accept grants from and enter into contracts
124 and other transactions with any federal agency.
125 (m) To borrow money and to issue its negotiable bonds,
126 security interests or notes and to provide for and secure the
127 payment thereof, and to provide for the rights of the holders
128 thereof, and to purchase, hold and dispose of any of its
129 bonds, security interests or notes: Provided, That no bond
130 or other obligation may be issued or incurred unless and
131 until the Legislature by concurrent resolution has approved
132 the purpose and amount of each project for which proceeds
133 from the issuance of such bond or other obligation will be
134 used.
135 (n) To sell, at public or private sale, any bond or other
136 negotiable instrument, security interest or obligation of the
137 authority in such manner and upon such terms as the
138 authority considers would best serve the purposes of this
139 article.
140 (o) To issue its bonds, security interests and notes
141 payable solely from the revenues or other funds available to
142 the authority therefore; and the authority may issue its
bonds, security interests or notes in such principal amounts
as it considers necessary to provide funds for any purposes
under this article, including:
(1) The payment, funding or refunding of the principal
of, interest on or redemption premiums on, any bonds,
security interests or notes issued by it whether the bonds,
security interests, notes or interest to be funded or refunded
have or have not become due.
(2) The establishment or increase of reserves to secure or
to pay bonds, security interests, notes or the interest
thereon and all other costs or expenses of the authority
incident to and necessary or convenient to carry out its
corporate purposes and powers. Any bonds, security
interests or notes may be additionally secured by a pledge of
any revenues, funds, assets or moneys of the authority from
any source whatsoever.
(p) To issue renewal notes or security interests, to issue
bonds to pay notes or security interests and, whenever it
considers refunding expedient, to refund any bonds by the
issuance of new bonds, whether the bonds to be refunded
have or have not matured except that no such renewal notes
shall be issued to mature more than ten years from date of
issuance of the notes renewed and no such refunding bonds
may be issued to mature more than twenty-five years from
the date of issuance.
(q) To apply the proceeds from the sale of renewal notes,
security interests or refunding bonds to the purchase,
redemption or payment of the notes, security interests or
bonds to be refunded.
(r) To accept gifts or grants of property, funds, security
interests, money, materials, labor, supplies or services from
the United States of America or from any governmental
unit or any person, firm or corporation, and to carry out the
terms or provisions of, or make agreements with respect to,
or pledge, any gifts or grants, and to do any and all things
necessary, useful, desirable or convenient in connection
with the procuring, acceptance or disposition of gifts or
grants.
(s) To the extent permitted under its contracts with the
holders of bonds, security interests or notes of the authority,
to consent to any modification of the rate of interest, time of
payment of any installment of principal or interest, security
or any other term of any bond, security interest, note or
contract or agreement of any kind to which the authority is
a party.
(t) To sell security interests in the loan portfolio of the
authority. Such security interests shall be evidenced by
instruments issued by the authority. Proceeds from the sale
of security interests may be issued in the same manner and
for the same purposes as bond and note revenues.
(u) To promulgate rules, in accordance with the
provisions of chapter twenty-nine-a of this code, to
implement and make effective the powers, duties and
responsibilities invested in the authority by the provisions
of this article and otherwise by law.
(v) To assume the responsibility for operation and
management of regional jail facilities under the jurisdiction
of the state regional jail and prison authority including the
transportation of persons incarcerated therein for all
required purposes including, but not limited to, court
appearances and reasonable interviews with their
attorney or visitation with their family and friends all in the
county seat of any county served by the regional facility.
(w) To exercise all power and authority provided in this
article necessary and convenient to plan, finance, construct,
renovate, maintain and operate prisons after first providing
for regional jail facilities.

§31-20-5a. Bidding procedures.

When the cost under any contract or agreement entered
into by the authority other than compensation for personal
services, involves an expenditure of more than two
thousand dollars, the authority shall make a written
contract with the lowest responsible bidder after public
notice published as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, the publication area for such
publication to be the county or counties 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
general character of the materials to be furnished, the place
where plans and specifications therefor may be examined
and the time and place of receiving bids, but a contract for
lease of a prison or regional or county jail project constructed and owned by the authority is not subject to the foregoing requirements and the authority may enter into such contract for lease pursuant to negotiation 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 efficient acquisition or construction of such projects. 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 faithful performance of the contract.

§31-20-6. Regional jail commissions; composition; appointment; terms; compensation and expenses.

Upon the formation of specific regions by the regional jail and prison authority for the establishment of regional jails as provided in section five of this article, there shall be created in each region a regional jail commission composed of the following members: The sheriff from each county in the region or his designated representative; a member of the county commission from each county in the region chosen by the commission or a designated representative; one mayor from each county in the region to be appointed by the regional jail and prison authority from a list of names submitted by the West Virginia municipal league, or his designated representative; and three persons from the region who are representative of the areas of law, medicine and education to be appointed by the regional jail and prison authority and who shall serve for a term of three years: Provided, That any local regional jail authority or commission established prior to the effective date of this article shall be recognized as meeting the requirements of this section, at the option of the local regional jail authority or commission.

Any appointed member whose term has expired shall serve until his successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is
Members of the authority are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. The county commission from each county in the region shall provide the commission with secretarial and other necessary services.

§31-20-7. General powers of the commission.

Each regional jail commission shall prepare and submit such plans, suggestions and recommendations to the regional jail and prison authority which will define the needs for its region as to the construction, renovation and general operation of a regional jail facility. The report may include, but is not limited to, recommendations for conforming its jail facility to the jail standards promulgated by the jail and prison standards commission, upgrading the recreational and educational opportunities for inmates confined in the region's facility, development of programs in cooperation with community medical and mental health centers in the region to provide adequate medical and drug and alcohol addiction services within the facility and information concerning the costs incurred in the operation of the facility.

§31-20-8. Jail and prison standards commission; appointments; compensation; vacancies; quorum.

A jail and prison standards commission of eleven members is hereby created. The governor shall appoint two county sheriffs, to be chosen from a list of three names provided by the president of the West Virginia sheriff's association, and three county commissioners, to be chosen from a list of five names provided by the president of the West Virginia county commissioner's association. The chief justice of the state supreme court of appeals shall appoint a representative from the juvenile facilities review panel. Each of the members so appointed shall serve for a term of three years and be eligible for reappointment. The commissioner of the department of corrections, the director of the department of health, the state fire marshal, the commissioner of the department of human services and the
director of the division of vocational education of the state
department of education or their designees, shall be
members ex officio in an advisory capacity.

Members of the commission shall serve without
compensation, but may be reimbursed for reasonable and
necessary expenses incurred in the performance of their
duties. The governor shall provide the commission with
secretarial and other necessary services.

A vacancy among the appointed members of the
commission shall be filled, within thirty days, in the same
manner as the original appointment. A quorum consists ofive members. Members of the commission shall select a
chairman.

§31-20-9. Purpose; powers and duties.

The purpose of the commission is to assure that proper
minimum standards and procedures are developed for jail,
work farm and prison operation, maintenance and
management of inmates for prisons, regional jails and local
jail facilities used as temporary holding facilities. In order
to accomplish this purpose, the commission shall:

(1) Prescribe standards for the maintenance and
operation of prisons, county and regional jails. Such
standards shall include, but not be limited to, requirements
assuring adequate space, lighting and ventilation; fire
protection equipment and procedures; provision of specific
personal hygiene articles; bedding, furnishings and
clothing; food services; appropriate staffing and training;
sanitation, safety and hygiene; isolation and suicide
prevention; appropriate medical, dental and other health
services; indoor and outdoor exercise; appropriate
vocational and educational opportunities; classification;
inmate rules and discipline; inmate money and property;
religious services; inmate work programs; library services;
visititation, mail and telephone privileges; and other
standards necessary to assure proper operation.

(2) Promulgate such rules pursuant to the provisions of
chapter twenty-nine-a of this code as are necessary to
implement the provisions of this article, including, without
limitation, minimum jail, work farm and prison standards
which shall be promulgated on or before the first day of
July, one thousand nine hundred eighty-six.
(3) Develop a process for reviewing and updating the jail, work farm and prison standards pursuant to the provisions of chapter twenty-nine-a of this code as may be necessary to assure that they conform to current law.

(4) Report periodically to the authority to advise and recommend actions to be taken by the authority to implement proper minimum jail, work farm and prison standards.

§31-20-10. Regional jail and prison development fund.

(a) The regional jail and prison development fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a revolving fund whereby all appropriations and payments thereto may be applied and reapplied by the authority for the purposes of this article. Separate accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Revenues deposited into the fund may be used to make payments of interest and may be pledged as security for bonds, security interests or notes issued by the authority pursuant to this article.

(c) Whenever the authority determines that the balance in the fund is in excess of the immediate requirements of this article, it may request that such excess be invested until needed. In such case such excess shall be invested in a manner consistent with the investment of the temporary state funds. Interest earned on any money invested pursuant to this section shall be credited to the fund.

(d) If the authority determines that funds held in the fund are in excess of the amount needed to carry out the purposes of this article, it shall take such action as is necessary to release such excess and transfer it to the general fund of the state treasury.

(e) The fund shall consist of the following:

(1) Amounts raised by the authority by the sale of bonds or other borrowing authorized by this article;

(2) Moneys collected and deposited in the state treasury which are specifically designated by acts of the Legislature for inclusion into the fund;
(3) Contributions, grants and gifts from any source, both public and private, which may be used by the authority for any project or projects;

(4) All sums paid by the counties pursuant to subsection (h) of this section; and

(5) All interest earned on investments made by the state from moneys deposited in this fund.

(f) The amounts deposited in the fund shall be accounted for and expended in the following manner:

(1) Amounts raised by the sale of bonds or other borrowing authorized by this article shall be deposited in a separate account within the fund and expended for the purpose of construction and renovation of regional jails for which need has been determined by the authority;

(2) Amounts deposited from all other sources shall be pledged first to the debt service on any bonded indebtedness or other obligation incurred by borrowing of the authority;

(3) After any requirements of debt service have been satisfied, the authority shall requisition from the fund such amounts as are necessary to provide for payment of the administrative expenses of this article;

(4) The authority shall requisition from the fund after any requirements of debt service have been satisfied such amounts as are necessary for the maintenance and operation of the regional jails that are constructed pursuant to the plan required by this article and shall expend such amounts for such purpose. The fund shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in the fund and amounts from the jail improvement funds of the various counties. After the expenses of administration have been deducted the amounts expended in the respective regions from such sources shall be in proportion to the percentage the amount contributed to the fund by the counties in each region bears to the total amount received by the fund from such sources;

(5) Notwithstanding any other provisions of this article, sums paid into the fund by each county pursuant to subsection (h) of this section for each inmate shall be placed in a separate account and shall be requisitioned from the
fund to pay for the costs specified in that subsection incurred at the regional jail facility at which each such inmate was incarcerated; and
(6) Any amounts deposited in the fund from other sources permitted by this article shall be expended in the respective regions based on particular needs to be determined by the authority.

(g) After a regional jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the regional jail facility in the regional jail facility except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the standards and procedures developed pursuant to section nine of this article and who the sheriff or the circuit court elects to incarcerate therein.

(h) When inmates are placed in a regional jail facility pursuant to subsection (g) of this section the county shall pay into the regional jail and prison development fund a cost per day for each inmate so incarcerated to be determined by the regional jail and prison authority according to criteria and by procedures established by regulations pursuant to article three, chapter twenty-nine-a of this code to cover the costs of operating such regional jail facility to maintain each such inmate which costs shall not include the cost of construction, acquisition or renovation of said regional jail facility.


The borrowing of money and the notes, bonds and security interests evidencing any such borrowing shall be authorized by resolution approved by the board, shall bear such date or dates and shall mature at such time or times, in the case of any such bonds, not exceeding twenty-five years from the date of issue, as such resolution or resolutions may provide. The notes, bonds and security interests shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment and at such place or
§31-20-12. Notes, security interests and bonds as general obligations of authority.

Except as may otherwise be provided by the authority every issue of its notes, security interests and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes, security interests or bonds pledging any particular revenues.

§31-20-13. Notes, security interests and bonds as negotiable instruments.

The notes, security interests and bonds issued by the authority shall be and hereby are made negotiable instruments under the provisions of article eight, chapter forty-six of this code, subject only to the provisions of the notes, security interests or bonds for registration.


Any resolution or resolutions authorizing any notes, security interests or bonds or any issue thereof, may contain provisions, which shall be a part of the contract with holders, as to:

(1) Pledging all or part of the revenues of the authority to secure the payment of the notes, security interests or bonds or any issue thereof, subject to such agreements with noteholders, holders of security interests or bondholders as may then exist;

(2) Pledging all or any part of the assets of the authority to secure the payment of the notes, security interests or bonds or any issue thereof, subject to such agreements with noteholders, holders of security interests or bondholders as may then exist;

(3) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) Limitations on the purposes to which proceeds of sale of notes, security interests or bonds may be applied and pledging such proceeds to secure the payment on the notes, security interests or bonds or of any issue thereof;
(5) Limitations on the issuance of additional notes, security interests or bonds; the terms upon which additional notes, security interests or bonds may be issued and secured; and the refunding of outstanding or other notes, security interests or bonds;

(6) The procedure, if any, by which the terms of any contract with noteholders, holders of security interests or bondholders may be amended or abrogated, the amount of notes, security interests or bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(7) Limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority;

(8) Vesting in a trustee or trustees the property, rights, powers and duties of a trustee appointed by the bondholders pursuant to section thirteen of this article, and limiting or abrogating the right of the bondholders to appoint a trustee under section thirteen of this article or limiting the rights, powers and duties of such trustees; and

(9) Any other matters, of like or different character, which in any way affect the security or protection of the notes, security interests or bonds.

§31-20-15. Redemption of notes, security interests or bonds.

The authority, subject to such agreements with noteholders, holders of security interests or bondholders as may then exist, may, out of any funds available therefor, purchase notes, security interests or bonds of the authority. If the notes, security interests or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the notes, security interests or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes, security interests or bonds become subject to redemption plus accrued interest to such date. Upon such purchase, such notes, security interests or bonds shall be cancelled.
§31-20-16. Disclaimer of any liability of state of West Virginia.

1. The state of West Virginia shall not be liable on notes, security interests or bonds or other evidences of indebtedness of the authority and such notes, security interests or bonds or other evidences of indebtedness shall not be a debt of the state of West Virginia, and such notes, security interests or bonds or other evidences of indebtedness shall contain on the face thereof a statement to such effect.

§31-20-17. Default in payment of principal or interest.

1. In the event the authority shall default in the payment of principal of or interest on any issue of its notes, security interests or bonds after they become due, whether at maturity or upon call for redemption, and such default continues for a period of thirty days, or in the event the authority fails or refuses to comply with the provisions of this article or defaults in any agreement made with the holders of any issue of notes, security interests or bonds, the holders of twenty-five percent in aggregate principal amount of the notes, security interests or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county commission of any county in which the authority operates and has an office and acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes, security interests or bonds for the purposes herein provided:

   (a) Any such trustee, upon the written request of the holders of twenty-five percent in the principal amount of such notes, security interests or bonds of the authority then outstanding, shall, in his or its own name, do any one or more of the following:

   (1) By civil action or other proceeding, enforce all rights of the noteholders, holders of security interests or bondholders, including the right to require the authority to perform its duties under this article;

   (2) Bring a civil action upon such notes, security interests or bonds;

   (3) By civil action or other proceeding, require the authority to account as if it were the trustee of an express
trust for the holders of such notes, security interests or bonds;
(4) By civil action or other proceeding, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes, security interests or bonds; or
(5) Declare all such notes, security interests or bonds due and payable, and, if all defaults are made good, then annul such declaration and its consequences.
(b) In addition to the foregoing, such trustee shall have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of holders of notes, security interests or bonds of the authority in the enforcement and protection of their rights.
(c) Before declaring the principal of any notes, security interests or bonds due and payable, the trustee shall first give thirty days' notice in writing to the authority.
§31-20-18. Investment in notes, security interests and bonds.
1 The notes, security interests and bonds of the authority are hereby made securities in which the state board of investments, all insurance companies and associations and other persons carrying on an insurance business, all banking institutions, trust companies, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking business and other persons, except administrators, guardians, executors, trustees and fiduciaries, who are now or who may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital in their control or belonging to them. The state board of investments, prior to investing funds, including capital in such notes, security interests or bonds of the authority shall first inquire fully into the integrity and sufficiency of the collateral securing such investment and shall be fully satisfied as to the sufficiency and integrity thereof; and may only so invest if the yield therefrom is at least equal to or greater than the prevailing market yield from similar United States twenty-six-week treasury bills. The state board of investments shall not purchase evidences of indebtedness having terms in excess of eighteen months from date of purchase to date of maturity.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state for the improvement of their safety, convenience and welfare. Since the operation and maintenance of correctional facilities and prison industries projects will constitute the performance of essential governmental functions, the authority is not required to pay any taxes or assessments upon any such facilities or projects or upon any property acquired or used by the authority or upon the income therefrom. Such bonds, security interests and notes and all interest and income thereon are exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

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

The aggregate principal amount of notes, security interests and bonds issued by the authority may not exceed one hundred million dollars outstanding at any one time. In computing the total amount of notes, security interests and bonds which may be outstanding at any one time, the principal amount of any outstanding notes, security interests and bonds refunded or to be refunded either by application of the proceeds of the sale of any refunding notes, security interests or refunding bonds of the authority or by exchange for any such notes, security interests or refunding bonds shall be excluded. The state board of investments may have invested no more than a total aggregate principal amount of fifteen million dollars at any one time in such notes, security interests or bonds.

§31-20-21. Validity of any pledge, mortgage, deed of trust or security instrument.

It is the intention hereof that any pledge, mortgage, deed of trust or security instrument made by or for the benefit of the authority shall be valid and binding between the parties from the time the pledge, mortgage, deed of trust or security instrument is made; and that the moneys or property so pledged, encumbered, mortgaged or entrusted shall immediately be subject to the lien of such pledge, mortgage, deed of trust or security instrument without any physical delivery thereof or further act.
§31-20-22. Money of the authority.

1 All money accruing to the authority from whatever source derived, except legislative appropriations, and except that authorized to be deposited directly into the regional jail and prison development fund shall be collected and received by the treasurer of the authority, who shall pay it into the state treasury in the manner required by section two, article two, chapter twelve of this code, to be credited to the fund.

§31-20-23. Conflict of interest; when contracts void.

1 No member, officer or employee of the authority may be interested, either directly or indirectly, in any manner in any contract or agreement of any person with the authority. Any contract or agreement made in violation of the provisions of this section is void and no action thereon may be maintained against the authority.

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

1 The state hereby pledges to and agrees with each federal agency that, if such agency constructs or loans or contributes any funds for the acquisition, construction, extension, improvement or enlargement of any correctional facility or prison industries project, the state will not alter or limit the rights and powers of the authority in any manner which would be inconsistent with the due performance of any agreement between the authority and such federal agency and that the authority shall continue to have and exercise all powers granted for carrying out the purposes of this article for so long as necessary.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.
§50-3-2. Costs in criminal proceedings.
§50-3-4. Disposition of costs; magistrate court fund.
§50-3-4a. Disposition of criminal costs and civil filing fees.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts in civil actions and shall be collected in advance:
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(a) For filing and trying any civil action and for all services connected therewith but excluding services regarding enforcement of judgment. .......... $20.00

(b) For each service regarding enforcement of a judgment including execution, suggestion, garnishment and suggestee execution ..................... $5.00

(c) For each bond filed in a case .................. $1.00

(d) For taking deposition of witness for each hour or portion thereof ................................................. $1.00

(e) For taking and certifying acknowledgment of a deed or other writing or taking oath upon an affidavit ... $ .50

(f) For mailing any matter required or provided by law to be mailed by certified or registered mail with return receipt .................................................. $1.00

Costs incurred in a civil action shall be reflected in any judgment rendered thereon. The provisions of section one, article two, chapter fifty-nine of this code, relating to the payment of costs by poor persons, shall be applicable to all costs in civil actions.

§50-3-2. Costs in criminal proceedings.

In each criminal case tried in a magistrate court in which the defendant is convicted there shall be imposed, in addition to such other costs, fines, forfeitures or penalties as may be allowed by law, costs in the amount of thirty dollars. No such costs shall be collected in advance.

A magistrate shall assess costs in the amount of two dollars and fifty cents for issuing a sheep warrant, appointment and swearing appraisers and docketing the same.

In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of ten dollars shall be imposed by the magistrate court and shall be certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

§50-3-4. Disposition of costs; magistrate court fund.

Except for the funds specified in section four-a, all costs collected in magistrate courts in a civil or criminal proceeding shall be submitted on or before the tenth day of the month following the month of their collection to the
5 magistrate court clerk or, if there is no magistrate court
6 clerk, to the clerk of the circuit court along with such
7 information as may be required by the rules of the supreme
8 court and by the rules of the chief inspector of public
9 offices. Such clerk shall pay such costs into the special
10 county fund hereafter created during each fiscal year until
11 there shall have been paid a sum equal to twelve thousand
12 five hundred dollars multiplied by the number of
13 magistrates authorized for such county. All costs collected
14 in excess of such sum during a fiscal year shall be paid to the
15 state. All costs and fees collected by magistrates on or after
16 the first day of July, one thousand nine hundred seventy-
17 six, shall be paid into said special county fund hereafter
18 created.
19 There is hereby created in each county a special county
20 fund designated as the magistrate court fund. No moneys
21 shall be appropriated from the fund except for the purposes
22 provided for in this section. Any money remaining in the
23 magistrate court fund on the thirtieth day of June, one
24 thousand nine hundred seventy-nine, and on the thirtieth
25 day of June of each year thereafter, shall be paid to the state.
26 A county may appropriate and spend from such fund such
27 sums as shall be necessary to defray the expenses of
28 providing bailiff and service of process services by the
29 sheriff, to defray the cost of acquiring or renting magistrate
30 court offices and providing utilities and telephones therefor
31 and to defray the expenses of such other services which by
32 the terms of this chapter are to be provided to magistrate
33 court by the county.

§50-3-4a. Disposition of criminal costs and civil filing fees into
state treasury account for regional jail and prison
development fund.

The clerk of each magistrate court shall at the end of each
month pay into the regional jail and prison development
fund in the state treasury an amount equal to twenty dollars
of the costs collected in each criminal proceeding and ten
dollars of the costs collected for the filing of each civil
action.

CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.
ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees and fees for services in criminal cases.
§59-1-31. Monthly payments; how credited; report required.

§59-1-11. Fees to be charged by clerk of circuit court.

1 The clerk of a circuit court shall charge and collect for services rendered as such clerk the following fees, and such fees shall be paid in advance by the parties for whom such services are to be rendered:

5 For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, twenty dollars.

9 In addition to the foregoing fees, the following fees shall likewise be charged and collected:

For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, twenty-five cents;

For action on suggestion, five dollars;

For issuing an execution, two dollars;

For issuing or renewing a suggestee execution, including copies, postage, registered or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of this code, three dollars;

For vacation or modification of a suggestee execution, one dollar;

For docketing and issuing an execution on a transcript of judgment from magistrate’s court, three dollars;

For arranging the papers in a certified question, writ of error, appeal or removal to any other court, five dollars;

For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

For each witness summons over and above five, on the part of either plaintiff or defendant, to be paid by the party requesting the same, twenty-five cents;

For additional services (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, five dollars.

The clerk shall tax the following fees for services in any...
criminal case against any defendant convicted in such court:

- In the case of any misdemeanor, thirty dollars;
- In the case of any felony, forty dollars;

No such clerk shall be required to handle or accept for disbursement any fees, costs or accounts, of any other officer or party not payable into the county treasury, except it be on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.


Except for the funds designated in section twenty-eight-a of this article, all fees, costs, percentages, penalties, commissions, allowances, compensation, income and all other perquisites of whatever kind which by law may now or hereafter be collected or received as compensation for services by any clerk of the county commission, sheriff, clerk of the circuit court or of any court of limited jurisdiction and prosecuting attorney shall be collected and received by such officer for the sole use of the treasury of the county in which he is an officer, and shall be held as public moneys belonging to the county fund, and shall be accounted for and paid over as such in the manner hereinafter provided. Nothing in this article shall be construed to require any county officer to pay into the county treasury any fees earned prior to the twenty-first day of May, one thousand nine hundred fifteen. Fees are held to be earned at the time the service is rendered and not at the time the matter is finally adjudicated.

Notwithstanding any provision of law to the contrary, all fees collected by a sheriff for service of all manner of process from magistrate court, in addition to such other funds as may be provided by the county commissions, shall be dedicated by the county commission to the office of sheriff for providing bailiff and service of process services for magistrate court.

§59-1-28a. Disposition of filing fees and fees for services in criminal cases.

(a) The clerk of each circuit court shall at the end of each
month pay into the regional jail and prison development fund in the state treasury an amount equal to ten dollars of every filing fee received for instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding in the circuit court.

(b) The clerk of each circuit court shall at the end of each month pay into the regional jail and prison development fund in the state treasury an amount equal to twenty dollars of every fee for service received in any criminal case against any defendant convicted in such court.

§59-1-31. Monthly payments; how credited; report required.

Except for the funds designated in section twenty-eight-a of this article, each of the officers named in section twenty-nine of this article shall at the end of each month pay into the county treasury all fees, costs, percentages, penalties, commissions, compensation, income and all other perquisites of whatever kind collected by his office during such month, which money shall be credited to the general county fund. All such officers shall cause to be made a quarterly report to the administrative director of the supreme court of appeals, which shall indicate the money received by them during such quarter and the source and nature of such money. Such report shall be made within thirty days following the close of each quarter.

CHAPTER 151
(H. B. 2024—By Delegate Burke and Delegate Seacrist)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-b, relating generally to creation of the West Virginia toll road commission; providing for certain legislative findings and purposes with respect thereto; providing for the composition of the commission, its chairman and the manner of appointment of
its members; providing for the compensation and reimburse-
ment of expenses; the funds from which such reimbursed
expenses and other expenses of the commission are to be paid;
the powers, duties and authority of the commission; the duty
of other governmental agencies to cooperate with and assist
the commission; providing for meetings of the commission and
defining a quorum with respect to such meetings; the
interpretation of said article; and the termination of the
existence of the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. TOLL ROAD STUDY COMMISSION.
§17-2B-1. Legislative findings and purposes.
§17-2B-2. Toll road study commission created; composition; appointment of
members; chairman.
§17-2B-3. Compensation and expenses of commission members; expenses of
commission.
§17-2B-5. Meetings of the commission; quorum.
§17-2B-6. Interpretation of article; termination of commission.

§17-2B-1. Legislative findings and purposes.

(a) The Legislature hereby finds and declares:

1 (1) That modern, well-constructed and properly maintained
roads and highways are of great importance to the economic
and industrial growth and development and well-being of the
state and to the health, education, welfare and prosperity of
its citizens;

2 (2) That due to budgetary and economic constraints, it is
frequently not feasible, desirable nor prudent to meet the costs
of construction and maintenance of a modern highways system
sufficient to meet current or future needs of the state, of its
citizens and of its industrial and commercial communities
through the utilization of current revenues, increased or
expanded taxation or general obligation bonds;

3 (3) That there is opinion that alternative methods of
financing the construction and maintenance of an efficient and
modern road and highway system could be desirable; that
these alternative methods may include, but not necessarily be
limited to, the utilization of tolls to be paid by the users of such highways and other methods of financing or a combination of various methods, including tolls; and

(4) That the purpose of this article is to create a commission, as hereinafter constituted and appointed, to study various and alternative methods of financing road and highway construction and maintenance, with particular emphasis upon the feasibility and desirability of adopting a system of tolls to be paid by the users of such roads and highways either alone or in combination with other methods of financing.

(b) The Legislature further declares that it recognizes that the provisions of section 1, article V of the Constitution of West Virginia prohibit any person from exercising the powers of more than one branch or department of government at the same time; however, it is the express purpose, intent and finding of the Legislature that those members of the commission who are members of the Legislature are acting as such while serving on the commission and in the furtherance of the Legislature's inherent right and power to investigate and inquire into and report on those matters which are legitimately within its powers, and that since the commission's role and duties are investigative and reportive in nature, the service upon the commission by its legislative members is not violative of nor inimical to the constitutional mandate with respect to the separation of governmental powers.

§17-28-2. Toll road study commission created; composition; appointment of members; chairman.

The West Virginia toll road study commission is hereby created. The commission shall consist of eleven members, who are designated or to be appointed as follows:

(a) The West Virginia commissioner of highways shall serve as a voting member of the commission by virtue of that person's office and shall serve as chairman of the commission;

(b) The chairman of the West Virginia turnpike commission shall serve as a voting member of the commission by virtue of that person's office;

(c) Three members shall be appointed by the governor who shall be representative private citizens and who shall have been residents of this state for a period of at least one year
immediately next preceding such persons’ appointment no
more than two of whom shall be members of the same political
party; and

(d) Three members of the commission shall be members of
the Senate, to be appointed by the president thereof; no more
than two of whom shall be members of the same political
party; and

(e) Three members of the commission shall be members of
the House of Delegates, to be appointed by the speaker
thereof; no more than two of whom shall be members of the
same political party.

§17-2B-3. Compensation and expenses of commission members;
expenses of commission.

(a) Members of the commission shall be reimbursed for
their reasonable and necessary travel and other expenses
actually incurred in connection with the performance of their
duties as members of the commission, including, but not
limited to, their attendance at meetings thereof.

(b) Except as to those members of the commission who are
members of the Legislature, the reimbursement of expenses
provided for in subsection (a) of this section shall be paid from
legislative appropriations to the state department of highways,
account number 6700, line item number 7, “Toll Road
Examination.”

(c) As to those members of the commission who are
members of the Legislature, the reimbursement of expenses
provided for in subsection (a) of this section shall be paid from
legislative appropriations to the joint committee on govern-
ment and finance, under “Account No. 103—Joint Expenses.”

(d) Members of the commission shall receive no other
compensation for their services on or with the commission
other than the reimbursement of expenses as provided in this
section.

(e) All other expenses and costs incurred by the commis-
sion, which are not otherwise provided for in this section shall
be paid from legislative appropriations to the state department
of highways, account number 6700, line item number 7, “Toll
Road Examination.”

The commission shall have the following powers, duties and responsibilities:

(a) To conduct a thorough and comprehensive study into the various ways and means of financing the construction and maintenance of a modern and efficient system of roads and highways which would be in addition to or in augmentation of or in conjunction with already existing roads and highways, with particular, but not exclusive, emphasis upon the feasibility, desirability and prudence of utilizing the imposition of tolls upon the users of such roads and highways, either alone or together with other means and methods of financing the construction and maintenance of the same;

(b) Special attention shall be given to planning, financing and construction of a modern highway connecting the Appalachian Corridor "G" highway at Chapmanville with Interstate Highway 64 at Huntington;

(c) To file an interim report as to its progress and tentative conclusions with the governor, the president of the Senate and the speaker of the House of Delegates not later than the second Wednesday in January, in the year one thousand nine hundred eighty-six;

(d) To file its final report with respect to its findings and conclusions, together with any legislation it deems appropriate to recommend and as it deems necessary to carry its findings and conclusions into effect with the governor, the president of the Senate and the speaker of the House of Delegates not later than the second Wednesday in January in the year one thousand nine hundred eighty-seven;

(e) To employ such legal, technical, investigative, clerical, stenographic, advisory and other personnel as it deems necessary and needful and to fix the reasonable compensation of such persons as may be so employed;

(f) To request such information and data from any state officer or agency or from any political subdivision of the state as the commission may deem necessary to assist it in the performance of its duties and it shall be the duty of all such officers and agencies to cooperate with and assist the commission in and about the completion of its studies and deliberations;
(g) To confer with representative citizens and groups of the
private, business and industrial sectors with respect to all
matters deemed relevant to the study program of the
commission; and

(h) To perform every other act necessary or desirable to
carry out any of the other powers, duties or responsibilities
enumerated in this article.

§17-2B-5. Meetings of the commission; quorum.

The commission shall meet at such times and places as its
chairman shall deem to be proper and expedient. Such
meetings shall be coordinated with and be in conjunction with
the monthly meeting of the joint committee on government
and finance insofar as the same may be practicable. Nothing
herein shall preclude the commission from meeting with such
frequency or at such times and places as it may determine.
The presence of no less than six members of the commission
shall constitute a quorum for the conducting of any business
by the commission.

§17-2B-6. Interpretation of article; termination of commission.

(a) The provisions of this article shall be liberally construed
in order to permit the commission sufficient latitude for the
orderly completion of its studies and duties.

(b) The commission shall cease its existence upon the sine
die adjournment of the Legislature at its regular session held
in the year one thousand nine hundred eighty-seven.

CHAPTER 152
(H. B. 1508—By Mr. Speaker, Mr. Albright, and Delegate Swann)
[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal section eight, article seventeen-a, chapter
seventeen of the code of West Virginia, one thousand nine
hundred thirty-one, as amended; and to amend and reenact
sections one and two, article seventeen-a, chapter seventeen of
the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to authorizing the issuance and sale of notes as special obligations of the state of West Virginia to finance the construction of surface transportation improvements; setting forth the purpose and scope thereof; definition of terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17A. CONSTRUCTION FINANCING FOR SURFACE TRANSPORTATION IMPROVEMENTS.

§17-17A-1. Purpose and scope.
§17-17A-2. Definitions.

§17-17A-1. Purpose and scope.

This article is intended to facilitate the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road to be funded wholly or in part by amounts to be made available pursuant to the Federal Surface Transportation Assistance Act of one thousand nine hundred eighty-two, or from amounts to be made available pursuant to any other federal legislation, or from amounts specifically appropriated or dedicated therefor by the state, or from amounts which may be properly expended from the state road fund under article three, chapter seventeen of this code. This article authorizes notes, in an aggregate amount of outstanding notes not to exceed two hundred million dollars, to be issued to provide financing for such projects in anticipation of reimbursement from such sources, but such notes will be special obligations of the state only, and will not be general obligations of the state or secured by any claim on the general credit or taxing powers of the state.

§17-17A-2. Definitions.

As used in this article, the following words and terms shall have the following meaning:
"Commissioner" means the West Virginia commissioner of highways.

"Cost," when used with respect to any surface transportation improvement, means any and all costs of acquiring, constructing, reconstructing, replacing, completing or repairing any surface transportation improvement, including without limiting the generality of the foregoing, land, property, rights, franchises, materials, labor and services, contractors' fees, planning and engineering expenses, financing costs, legal fees, trustees' or paying agents' fees and interest on obligations issued under this article.

"Note" means any note or other obligation issued pursuant to this article.

"Outstanding note" means a note which has been issued pursuant to this article and has not been repaid, but does not include notes which are to be paid from designated moneys or securities which are irrevocably held in trust solely for such purpose.

"Surface transportation improvement" means any interstate or other highway, secondary road, bridge and toll road construction, reconstruction, improvement or repair, as to which all or a portion of the cost thereof is to be reimbursed to the state under federal legislation.

CHAPTER 153

(Com. Sub. for H. B. 1868—By Delegate Casey)

[Passed April 13, 1965; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight and fifteen, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to administrative procedures; rule making; emergency rules; and changing effective period of emergency rules.

Be it enacted by the Legislature of West Virginia:

That sections eight and fifteen, article three, chapter twenty-nine-
ARTICLE 3. RULE MAKING.

§29A-3-8. Adoption of procedural and interpretive rules.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

§29A-3-8. Adoption of procedural and interpretive rules.

A procedural and interpretive rule shall be considered by the agency for adoption not later than six months after the close of public comment and a notice of withdrawal or adoption shall be filed in the state register within that period. Failure to file such notice shall constitute withdrawal and the secretary of state shall note such failure in the state register immediately upon the expiration of the six-month period.

A procedural or interpretive rule may be amended by the agency prior to final adoption without further hearing or public comment. No such amendment may change the main purpose of the rule. If the fiscal implications have changed since the rule was proposed, a new fiscal note shall be attached to the notice of filing. Upon adoption of the rule (including any such amendment) the agency shall file the text of the adopted procedural or interpretive rule with its notice of adoption in the state register and the same shall be effective on the date specified in the rule or thirty days after such filing, whichever is later.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

(a) Any agency with authority to propose legislative rules may, without hearing, find that an emergency exists requiring that emergency rules be promulgated and promulgate the same in accordance with this section. Such emergency rules, together with a statement of the facts and circumstances constituting the emergency, shall be filed in the state register and shall become effective immediately upon such filing. Such emergency rules may adopt, amend or repeal any legislative rule but the circumstances constituting the emergency requiring such adoption, amendment or repeal shall be stated with particularity and be subject to de novo review by any court having original jurisdiction of an action challenging their
validity. Fifteen copies of the rules and of the required statement shall be filed forthwith with the legislative rule-making review committee.

An emergency rule shall be effective for not more than fifteen months and shall expire earlier if any of the following occurs:

1. The agency has not previously filed and fails to file a notice of public hearing on the proposed rule within sixty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the sixty-first day.

2. The agency has not previously filed and fails to file the proposed rule with the legislative rule-making review committee within one hundred eighty days of the date the proposed rule was filed as an emergency rule; in which case the emergency rule expires on the one hundred eighty-first day.

3. The Legislature has authorized or directed promulgation of an authorized legislative rule dealing with substantially the same subject matter since such emergency rule was first promulgated, and in which case the emergency rule expires on the date the authorized rule is made effective.

4. The Legislature has, by law, disapproved of such emergency rule; in which case the emergency rule expires on the date the law becomes effective.

(b) Any amendments to an emergency rule made by the agency shall be filed in the state register and does not constitute a new emergency rule for the purpose of acquiring additional time or avoiding the expiration dates in subdivision (1), (2), (3) or (4), subsection (a) of this section.

(c) Once an emergency rule expires due to the conclusion of fifteen months or due to the effect of subdivision (1), (2), (3) or (4), subsection (a) of this section, the agency may not refile the same or similar rule as an emergency rule.

(d) Emergency legislative rules currently in effect under the prior provisions of this section may be refiled under the provisions of this section.

(e) The provisions of this section shall not be used to avoid or evade any provision of this article or any other provisions of this code, including any provisions for legislative review and
approval of proposed rules. Any emergency rule promulgated
for any such purpose may be contested in a judicial proceeding
before a court of competent jurisdiction.

(f) The legislative rule-making review committee may review
any emergency rule to determine (1) whether the agency has
exceeded the scope of its statutory authority in promulgating
the emergency rule; (2) whether there exists an emergency
justifying the promulgation of such rule; and (3) whether the
rule was promulgated in compliance with the requirements and
prohibitions contained in this section. The committee may
recommend to the agency or the Legislature such action as it
may deem proper.

(g) For the purposes of this section, an emergency exists
when the promulgation of a rule is necessary for the immediate
preservation of the public peace, health, safety or welfare or
is necessary to comply with a time limitation established by
this code or by a federal statute or regulation or to prevent
substantial harm to the public interest.

CHAPTER 154
(S. B. 399—By Senator R. Williams)
[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five (sixteen) (eighteen),
fifteen (two) (twenty-five), sixteen (one) (seven), sixteen
(twenty-nine-b) (eight), seventeen-a (two) (nine), seventeen-
d (two-a) (eight), nineteen (twenty-three) (six), twenty (five-
a) (three), twenty (five-e) (six), twenty (five-e) (seven),
twenty (six) (two) and thirty-two (four) (four hundred
twelve), article two, chapter sixty-four of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to further amend said article two by adding
thereto twenty-nine new sections, designated sections five
(sixteen) (five), eleven (one-a) (one), eleven (ten) (five),
sixteen (five-b) (one), sixteen (twenty-nine-b) (twenty-
three), seventeen (two-a) (eight), seventeen (four) (nineteen),
nineteen (one) (four), nineteen (two) (two), nineteen (nine)
(two), nineteen (nine-a) (seven), nineteen (twelve-d) (four),
nineteen (sixteen-b) (four), nineteen (twenty) (four), twenty (one) (seven), twenty (two) (forty-b), twenty (five-c) (six), twenty (six) (seven), twenty (six) (forty-three), twenty-one (five) (five-c), twenty-three (one) (thirteen), twenty-three (one) (fifteen), twenty-nine (one) (six), twenty-nine (five-a) (twenty-four), thirty (five) (nineteen), thirty (six) (three), thirty (twenty-one) (six), forty-six-a (six-a) (eight) and sixty-one (eleven-a) (six), all relating generally to the legislative mandate or authorization for the promulgation of certain legislative rules by various executive agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that such rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five; authorizing the public employees insurance board to promulgate certain legislative rules relating to late enrollment in the public employees insurance program, with certain amendments thereto and relating generally to the public employees insurance plan, with certain amendments thereto; directing the state tax commissioner to promulgate certain legislative rules which were filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred eighty-five, relating to the identification and appraisal of farmland subsequent to the base year of statewide reappraisal for ad valorem tax purposes as amended by the Legislature; authorizing the state tax commissioner to promulgate certain legislative rules relating to estimated personal income tax, with certain amendments and certain rules relating to estimated corporation net income tax, with certain amendments; authorizing the department of public safety to promulgate certain legislative rules relating to general orders, with certain amendments; authorizing the state board of health to promulgate certain legislative rules relating to trauma center or facility designation, to promulgate certain
legislative rules relating to reportable diseases, to promulgate certain legislative rules relating to retail food store sanitation and to promulgate certain legislative rules relating to the licensure of medical adult day care centers; authorizing the health care cost review authority to promulgate certain legislative rules relating to hospital cost containment methodology and to promulgate certain legislative rules relating to the implementation of the utilization review and quality assurance program; authorizing the commissioner of highways to promulgate certain legislative rules relating to construction and reconstruction of state roads, with certain amendments, to promulgate certain legislative rules relating to disqualification and suspension of prequalified contractors and to promulgate certain legislative rules relating to the transportation of hazardous waste by highway transporters, with certain amendments; authorizing the commissioner of motor vehicles to promulgate certain legislative rules relating to titling of vehicles and to promulgate certain legislative rules relating to compulsory motor vehicle liability insurance; authorizing the commissioner of agriculture to promulgate certain legislative rules relating to conducting of beef industry self-improvement assessment program referendum, to promulgate certain legislative rules relating to public markets, to promulgate certain legislative rules relating to animal disease control, to promulgate certain legislative rules relating to feeding untreated garbage to swine, to promulgate certain legislative rules relating to noxious weeds, to promulgate certain legislative rules relating to the use of certain picloram products and to promulgate certain legislative rules relating to registration, taxation and control of dogs; authorizing the West Virginia racing commission to promulgate certain legislative rules relating to greyhound racing and to promulgate certain legislative rules relating to thoroughbred racing; authorizing the department of natural resources to promulgate certain legislative rules relating to the public use of state parks, forests, hunting and fishing areas, to promulgate certain legislative rules relating to small arms hunting, to promulgate certain legislative rules relating to hazardous waste management, to promulgate certain legislative rules relating to surface mining reclamation, to
promulgate certain legislative rules relating to coal refuse disposal, to promulgate certain legislative rules relating to the transfer of the state national discharge elimination system program, with certain amendments; authorizing the water resources board to promulgate certain legislative rules relating to water quality standards; authorizing the water development authority to promulgate certain legislative rules relating to hardship grant funds; authorizing the department of labor to promulgate certain legislative rules relating to polygraph examination; authorizing the workers' compensation commissioner to promulgate certain legislative rules relating to time limits for the administrative proceedings of adjudications and awards, to promulgate certain legislative rules relating to self-insured employers and to promulgate certain legislative rules relating to the payment of attorney's fees; authorizing the archives and history commission to promulgate certain legislative rules relating to locally created historic landmark commissions and certified local government programs with respect thereto, with certain amendments; authorizing the state athletic commission to promulgate certain legislative rules relating to professional and amateur boxing; authorizing the board of pharmacy to promulgate certain legislative rules relating to parenteral/enteral compounding; authorizing the board of embalmers and funeral directors to promulgate certain legislative rules relating generally to apprenticeships; authorizing the board of examiners of psychologists to promulgate certain legislative rules relating to examination fees; authorizing the state auditor as securities commissioner to promulgate certain legislative rules relating to filing fees; and authorizing the attorney general to promulgate certain legislative rules relating generally to new motor vehicle warranties and to third party dispute mechanisms with respect thereto and to promulgate certain legislative rules relating to the fair treatment of crime victims and witnesses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-16(29b)(8). Health care cost review authority.
§64-2-16(29b)(23). Health care cost review authority.
§64-2-17(2a)(8). Commissioner of highways.
§64-2-17(4)(19). Commissioner of highways.
§64-2-20(1)(7). Department of natural resources.
§64-2-20(2)(40b). Department of natural resources.
§64-2-20(5a)(3). Water resources board.
§64-2-20(5c)(6). Water development authority.
§64-2-20(5e)(6). Department of natural resources.
§64-2-20(6)(2). Department of natural resources.
§64-2-20(6)(7). Department of natural resources.
§64-2-20(6)(43). Department of natural resources.
§64-2-21(5)(5c). Department of labor.
§64-2-23(1)(13). Workers' compensation commissioner.
§64-2-23(1)(15). Workers' compensation commissioner.
§64-2-29(1)(6). Archives and history commission.
§64-2-30(5)(19). Board of pharmacy.
§64-2-30(6)(3). Board of embalmers and funeral directors.
§64-2-30(21)(6). Board of examiners of psychologists.
§64-2-46a(6a)(8). Attorney general.


1 The legislative rules filed in the state register on the
twelfth day of September, one thousand nine hundred
eighty-four, relating to the public employees insurance
board (late enrollment in the public employees insurance
program) are authorized with the amendments set forth
below:

§2.01(b) shall read as follows:

"(b) 'children' shall mean unmarried children between
birth and age nineteen and shall include: (1) The employee's
natural children, (2) legally adopted children, including
children living with the employee during the period of
probation, (3) stepchildren residing in the employee's
household and (4) other children fully dependent upon the
employee for support and maintenance and residing in the
household of which the employee is head and actually being
supported by the employee. Children may be included after
the attainment of age nineteen, but not beyond the
attainment of age twenty-five, if they are enrolled as full-
time students, are unmarried, and are dependent upon the
employee for support. Children may also be included after
the attainment of age nineteen while incapable of self-
support because of mental illness, mental retardation or a
permanent physical disability, if the child was dependent
upon the employee for support and maintenance at the
onset of the mental illness, mental retardation or
permanent physical disability. For the purpose of this
section, mental illness includes addiction as defined in Code
27-1-11 as is defined as a manifestation in a person of
significantly impaired capacity to maintain acceptable
levels of functioning in the areas of intellect, emotion and
physical well-being, only if such impairment renders the
person dangerous to himself or others or such person is
substantially unable to protect himself from significant
hazard: Provided, That children included because of
addiction as hereinbefore defined shall not be included
beyond the attainment of age twenty-five."
On page six, at 4.01(g) (2) shall read as follows:
The end of any 12 month period after enrollment during
which no diagnosis or treatment is received, and no
expenses are incurred for care of the injury, illness or
related conditions.
Also, insert a new section, designated section 5.07, to read
as follows:
"5.07.—Coverage for dependents shall terminate at the
end of the month in which they no longer meet the definition
of 'dependent' as set forth in section 2.01 of these rules."

(a) The legislative rules filed in the state register on the
sixteenth day of May, one thousand nine hundred eighty-
three, relating to the public employees insurance board
(public employees insurance plan) are authorized with the
amendments set forth below:
§6.03.—In the second sentence delete the words
"Executive Secretary" and insert the word "Board."
(b) The legislative rules filed in the state register on the
twenty-seventh day of September, one thousand nine
hundred eighty-four, modified by the public employees
insurance board to meet the objections of the legislative
rule-making review committee and refiled in the state
register on the fourth day of March, one thousand nine
hundred eighty-five, relating to the public employees
insurance board (credit for accrued sick/annual leave and
optional life insurance) are authorized.

The legislative rules filed in the state register on the
twelfth day of March, one thousand nine hundred eighty-
five, relating to the state tax commissioner (identification and appraisal of farmland subsequent to the base year of statewide reappraisal) are authorized and directed to be promulgated with the following amendments:

Title page, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon”.

Page i, Subject; following the word “Farmland,” insert the words “and of Structures Situated Thereon”.

Page i, TABLE OF CONTENTS, Section 10; following the words “Valuation of Farmland” add the words “and of Structures Situated Thereon.”

Page 10.1, Title; following the word “FARMLAND” insert the words “AND STRUCTURES SITUATED THEREON.”

Page 10.1, Section 10, Title; following the word “Farmland” add the words “and Structures Situated Thereon.”

Page 10.1, Section 10.01(b); following the word “farmland” insert the words “and structures situated thereon.”

Page 10.2, Section 10.02(a), first sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.3, Section 10.02(b), first sentence; following the word “farmland” insert the words “and structures situated thereon.” Delete the words “for purposes of the statewide reappraisal.”

Page 10.3, Section 10.02(b), last sentence; following the word “farmland” insert the words “and structures situated thereon.”

Page 10.8, Section 10.04(5)(B), last sentence; delete the period and add “or the incapability to be adapted to alternative uses.”

Page 10.9, Section 10.04(6), first sentence; following the words “land currently being used” insert the words “as part of a farming operation.”

Page 10.9, Section 10.04(6), following the last sentence; add the sentence “For the purposes of this definition, ‘contiguous tracts’ are farmlands which are in close proximity, but not necessarily adjacent: Provided, That all such contiguous tracts are operated as part of the same farm management plan.”
Page 10.10, Section 10.04(8) is amended to read in its entirety as follows:

(8) **Farm Buildings.**—The term “farm buildings” shall mean structures which directly contribute to the operation of the farm, and shall include tenant houses and quarters furnished farm employees without rent as a part of the terms of their employment.

Page 10.11, Section 10.04; delete the word “November” and insert in lieu thereof the word “September.” Delete the period following the word “valuation” and add the words “for the assessment year beginning July 1st of each year.”

Page 10.11, Section 10.04, insert the following subdivision: “(12) Application Form: The application form required to be filed with the assessor on or before September 1st of each year shall require certification that the farm complies with criteria set forth in Section 10.05(c) of these regulations, and renewal applications from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify ‘farm use’ classification for assessment purposes.” Renumber the subdivisions of Section 10.04 following the new 10.04(12), formerly 10.04(12) through 10.04(28), to 10.04(13) through 10.04(29) respectively.

Page 10.14, Section 10.04(28) (formerly 10.04(27)); following the words “woodland products” insert a comma and the words “such as nuts or fruits harvested” and add a comma following the words “human consumption” on Page 10.15.

Page 10.16, Section 10.05, subsection (a) following the words “land is used for farm purposes” by striking the period and inserting in lieu thereof a colon and the following: “Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of
lands or minerals owned by domestic or foreign corporations."

Page 10.16, Section 10.05 (b), first clause; following the words "following factors shall be" insert the words "indicative of but not conclusive" and delete the word "considered."

Page 10.16, Section 10.05 (b) (2); delete the period and add the words "such as soil conservation, farmland preservation or federal farm lending agencies."

Page 10.17, Section 10.05 (b) (7); delete the section and insert in lieu thereof the words "(7) Whether or not the farmer practices 'custom farming' on the land in question."

Page 10.17, Section 10.05 (b) (9); following the word "type" add a comma and insert the word "utility."

Page 10.17, Section 10.05 (b) (11), first sentence; following the word "sales" insert the words "for nonfarm uses."

Page 10.18, Section 10.05 (b) (12) (A); following the words "part of" insert the words "or appurtenant to."

Page 10.17, Section 10.05 (b) (12) (B); following the words "contiguous to" insert the words "or operated in common with."

Page 10.18, Section 10.05, subsection (c), the first sentence of which is amended in its entirety to read as follows: "Qualifying farmland and the structures situate thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situated, if rented."

Page 10.18, Section 10.05 (b) (12) (B); delete the semicolons and the words "it was purchased at the same time as the tract so used." Delete the period following the word "purposes" and add the words "or any nonfarm use."

Page 10.19, Section 10.05 (c) (2); following the words "Provided, That no" delete the word "reason" and insert in lieu thereof the words "individual event."

Page 10.20, Section 10.05 (c) (4) (C); following the words "(1,000) minimum production value" insert the words "or the small farm five hundred dollars ($500) minimum production and sale."

Page 10.23, Section 10.05 (d) (3) (B), third sentence; following the word "If" insert the words "timber from".
Delete the period following the word "purpose" and add the words "or is being converted to farm production uses."

Page 10.26, Section 10.05 (f) (2) is amended in its entirety to read as follows:

"(2) Farm Buildings.—Rental value of farm buildings and other improvements on the farmland shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations shall be made in accordance with the Tax Department's real property appraisal manual as filed in the State Register in accordance with Chapter 29A of the Code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation bases on the highest class of farmland present on the farm.

Page 10.28, Section 10.05 (f)(3)(B)(1); following the words "or more of the" insert the word "usual".

Page 10.28, Section 10.05 (f)(3)(B)(2); following the words "(50%) of the" insert the word "usual".

Page 10.29, Section 10.05 (f)(3)(C)(1)(a); following the words "(50%) or more of the" insert the word "usual".

Page 10.29, Section 10.05 (f)(3)(C)(1)(b); following the words "(50%) of the" insert the word "usual".

Page 10.31, Section 10.05 (f)(3)(C)(2)(b); following the last sentence insert the sentence "An individual employed other than in farming is not an unincorporated business."

Page 10.35, Section 10.07, Title; following the word "Farmland" insert the words "and Structures Situated Thereon."

Page 10.35, Section 10.07 (a), first sentence; following the word "farmland" insert the words "and structures situated thereon."

Page 10.46, Subject; following the word "Farmland" insert the words "and Structures Situated Thereon."

§64-2-11 (10) (5). State tax commissioner.

(a) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, relating to the state tax commissioner
(estimated personal income tax) are authorized with the amendments set forth below:
55.02 (a) (2) (on page 182.2) line 18, after the word “profession” strike the words “on his own account” and the comma (,).
55.12 (b) (1) (page 182.35) at end of the section, change the period to a comma, and add the following language: and in the case of a court appointed agent, a copy of the court order of appointment is sufficient.
55.12 (c) (page 182.36) after the word “for”, strike the word “erroneous”.
(b) The legislative rules filed in the state register on the twenty-eighth day of September, one thousand nine hundred eighty-four, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of November, one thousand nine hundred eighty-four, and on the twenty-first day of March, one thousand nine hundred eighty-five, relating to the state tax commissioner (estimated corporation net income tax are authorized.
(a) The legislative rules filed in the state register on the twenty-third day of September, one thousand nine hundred eighty-three, relating to the department of public safety (general orders) are authorized with the amendment set forth below:
Page 23, §9.10 remove the period at the end of the sentence and add the words “or municipalities.”
(b) The legislative rules filed in the state register on the twenty-second day of June, one thousand nine hundred eighty-four, modified by the department of public safety to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the department of public safety (commission on drunk driving) are authorized.
(a) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (waste water treatment works operations) are authorized.
(b) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (laboratory reporting of syphilis and gonorrhea) are authorized.

(c) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (public water supply operators) with the modification of §11.02 as presented to the legislative rule-making review committee on the ninth day of November, one thousand nine hundred eighty-two, are authorized.

(d) The legislative rules filed in the state register on the twenty-second day of October, one thousand nine hundred eighty-two, relating to the state board of health (sewage systems) with the modification presented to the legislative rule-making review committee on the sixth day of December, one thousand nine hundred eighty-two, are authorized except lines ten through seventeen, page eight of the rules shall be stricken in their entirety and the remaining paragraphs renumbered. These rules were proposed by the state board of health pursuant to sections seven and nine, article one, chapter sixteen of this code.

(e) The legislative rules filed in the state register on the second day of June, one thousand nine hundred eighty-two, relating to the state board of health (approval of laboratories) are authorized. These rules were proposed by the state board of health pursuant to section one, article seven, chapter sixteen and section six-a, article one, chapter forty-eight of this code.

(f) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred eighty-two, and filed with amendments on the eleventh day of January, one thousand nine hundred eighty-three, relating to the state board of health (nursing home licensure) are authorized with the amendment of §5.15.02 of those rules as set forth below:

By striking the word “and” at the end of subdivision (f), by changing the period at the end of subdivision (g) to a semicolon, and by adding the following after subdivision (g): “(h) one (1) member who represents social work services.”

These rules were proposed by the state board of health
pursuant to section seven, article one, chapter sixteen and
section three, article five-c, chapter sixteen of this code.

(g) The legislative rules filed in the state register on the
third day of October, one thousand nine hundred eighty-
four, relating to the state board of health (trauma center or
facility designation) are authorized.

(h) The legislative rules filed in the state register on the
seventh day of September, one thousand nine hundred
eighty-three, relating to the state board of health (well
water regulations) are authorized with the amendments set
forth below:

§4.1. In the first sentence delete the word "obtaining"
and insert in lieu thereof the words "applying for." In the
second sentence after "4.3" add "and 4.5."

§4.2. At the end of the second sentence, strike the period
and add the words "unless emergency conditions prevail as
noted under §4.3."

With the balance of §4.2 and create a new §4.3 with the
following changes: In the first sentence delete the word
"deadline" and insert in lieu thereof the word
"requirements." Add after the first sentence the sentence,
"Emergency conditions and unavoidable circumstances are
those conditions involving acts of God, water outages or
disruption of water service, unsatisfactory water quality or
quantity or public health threats." In the third sentence
delete the word "exceed" and insert in lieu thereof the
words "be made in excess of."

Renumber §4.3 as §4.4 and add the following two
sentences at the end of the section: "Such standards shall
constitute the minimum standards for the installation, the
alteration or the deepening of water wells. Any plans
approved by the director pursuant to these regulations shall
be in substantial compliance with the heretofore mentioned
standards."

Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7 as
§4.8 and §4.8 as §4.9.

§5.2. Delete the words "four (4)" and insert in lieu thereof
the words "two (2)" and delete the words "active, continuous."

(i) The legislative rules filed in the state register on the
nineteenth day of December, one thousand nine hundred
eighty-three, relating to the state board of health
(procedures for recovery of corneal tissue for transplant) are authorized.

(j) The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (reportable diseases) are authorized.

(k) The legislative rules filed in the state register on the third day of October, one thousand nine hundred eighty-four, relating to the state board of health (retail food store sanitation) are authorized.


The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the state board of health (licensure of medical adult day care centers) are authorized.

§64-2-16(29b)(8). Health care cost review authority.

(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the health care cost review authority (limitation on hospital gross patient revenue) are authorized.

(b) The legislative rules filed in the state register on the nineteenth day of December, one thousand nine hundred eighty-three, relating to the health care cost review authority (freeze on hospital rates and granting temporary rate increases) are authorized.

(c) The legislative rules filed in the state register on the fifteenth day of August, one thousand nine hundred eighty-four, relating to the health care cost review authority (hospital cost containment methodology), are authorized.

§64-2-16(29b)(23). Health care cost review authority.

The legislative rules filed in the state register on the twenty-first day of December, one thousand nine hundred eighty-four, relating to the health care cost review authority (implementation of the utilization review and quality assurance program) are authorized.

§64-2-17(2a)(8). Commissioner of highways.

The legislative rules filed in the state register on the tenth day of August, one thousand nine hundred eighty-four, relating to the commissioner of highways (construction and
reconstruction of state roads), are authorized with the
amendments set forth below:

Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
after the word “all” the following language: “reasonable
and necessary” and after the word “project” inserting the
following language: “by the Railroad”.

Page 16, Sec. 8.08, line 22, (unnumbered), after the word
“the” by striking the words “Railroad's Chief”.

Page 19, Sec. 8.08, line 25, (unnumbered), by striking
“Railroad’s Chief” and adding the following new
language:

Any approval by the Department of any activity by the
Contractor upon the right-of-way or premises of any
Railroad which is provided for in this Section (8.08)
(including, but not limited to, approval of work, methods, or
procedures of work to be done, and the condition of
premises after completion of work by the Contractor) shall
in no way create any liability by the Department to the
Railroad except to the extent provided otherwise by law
and the Contractor shall, during all periods of construction
and thereafter, indemnify and save harmless the department
from any and all liability to the Railroad or any third parties
for any damages as a result of the work of the Contractor,
the methods and procedures for performing work, the
failure of the Contractor to properly remove equipment,
surplus material and other debris upon the Railroad
premises, or the condition of the premises of the Railroad
during construction or after completion of construction by
the Contractor as approved by the Department or
otherwise.

Page 18, Sec. 8.08, Subdivision (a), line 22, (unnumbered),
by striking the words “single limit” and inserting in lieu
thereof the following language: “per occurrence”.

Page 19, Sec. 8.08, Subdivision (b), line 8, (unnumbered),
by striking the words “single limit” and inserting in lieu
thereof the following language: “per occurrence”.

Page 19, Sec. 8.08 (c), line 18, (unnumbered), by inserting
after the word “occurrence” the following language: “of”;
and after the word “injury” insert a comma and strike the
word “or”.

§64-2-17(4)(19). Commissioner of highways.

The legislative rules filed in the state register on the
2 fourteenth day of August, one thousand nine hundred
3 eighty-four, modified by the commissioner of highways to
4 meet the objections of the legislative rule-making review
5 committee and refiled in the state register on the fifth day of
6 October, one thousand nine hundred eighty-four, relating
7 to the commissioner of highways (disqualification and
8 suspension of prequalified contractors) are authorized.

1 (a) The legislative rules filed in the state register on the
2 second day of December, one thousand nine hundred
3 eighty-two, relating to the commissioner of motor vehicles
4 (denial of driving privileges), are authorized with the
5 amendments set forth below:
6 By inserting the words "licensed in the United States"
7 after the phrase "physician of the applicant's choice," on
8 page five, line two, and page seven, line one; and by striking
9 out the words "licensed vision specialist" and inserting in
10 lieu thereof the words "an optometrist or ophthalmologist
11 licensed in the United States," on page five, line three, and
12 on page seven, line two.
13 These rules were proposed by the commissioner pursuant
14 to section nine, article two, chapter seventeen-a and section
15 six, article three-c, chapter seventeen-b of this code.
16 (b) The legislative rules filed in the state register on the
17 twentieth day of November, one thousand nine hundred
18 eighty-four, relating to the commissioner of motor vehicles
19 (titling a vehicle) are authorized.

1 (a) The legislative rules filed in the state register on the
2 sixteenth day of June, one thousand nine hundred eighty-
3 three, relating to the commissioner of motor vehicles
4 (compulsory insurance) are authorized.
5 (b) The legislative rules filed in the state register on the
6 tenth day of September, one thousand nine hundred eighty-
7 four, modified by the commissioner of motor vehicles to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the fifth day of
10 October, one thousand nine hundred eighty-four, relating
11 to the commissioner of motor vehicles (compulsory motor
12 vehicle liability insurance) are authorized.
1 The legislative rules filed in the state register on the
eighth day of February, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (conduct of
beef industry self-improvement assessment program
referendum) are authorized.

1 The legislative rules filed in the state register on the first
day of November, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (public markets)
are authorized.

1 The legislative rules filed in the state register on the
fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (animal disease
control) are authorized.

1 The legislative rules filed in the state register on the
fourth day of June, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (feeding
untreated garbage to swine) are authorized.

1 The legislative rules filed in the state register on the
tenth day of September, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (noxious weed
rules) are authorized.

1 The legislative rules filed in the state register on the fifth
day of January, one thousand nine hundred eighty-four, relating to the commissioner of agriculture (use of certain
picloram products) are authorized.

1 The legislative rules filed in the state register on the
fourth day of June, one thousand nine hundred eighty-four,

(a) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 795), are authorized.

(b) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-two, relating to the West Virginia racing commission (Rule 107), are authorized.

(c) The legislative rules filed with the legislative rule-making review committee on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 471), are authorized.

(d) The legislative rules filed in the state register on the tenth day of January, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 526), are authorized.

(e) The legislative rules filed in the state register on the twenty-third day of April, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 819), are authorized.

(f) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 107) greyhound racing, are authorized.

(g) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) greyhound racing are authorized with the amendment set forth below:

Following the word "Association" insert a period and strike the remainder of the sentence.

(h) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 108) thoroughbred racing are authorized with the amendment set forth below:

Following the word "Association" insert a period and strike the remainder of the sentence.
(i) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 392) greyhound racing, are authorized.

(j) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 455) greyhound racing are authorized.

(k) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 609A) greyhound racing are authorized.

(l) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-three, relating to the West Virginia racing commission (Rule 627) greyhound racing are authorized.

(m) The legislative rules filed in the state register on the twentieth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 628), are authorized.

(n) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 672) are authorized.

(o) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 672) are authorized.

(p) The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 808), are authorized.

(q) The legislative rules filed in the state register on the twenty-fifth day of September, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (thoroughbred racing — Rule 843), are authorized.

(r) The legislative rules filed in the state register on the sixth day of August, one thousand nine hundred eighty-four, relating to the West Virginia racing commission (greyhound racing — Rule 845-I) are authorized.
§64-2-20(1)(7). Department of natural resources.

1 The legislative rules filed in the state register on the
twenty-sixth day of September, one thousand nine hundred
eighty-four, relating to the department of natural resources
(public use of state parks, forests, hunting and fishing
areas) are authorized.

§64-2-20(2)(40b). Department of natural resources.

1 The legislative rules filed in the state register on the
twenty-eighth day of August, one thousand nine hundred
eighty-four, relating to the department of natural resources
(small arms hunting) are authorized.

§64-2-20(5a)(3). Water resources board.

1 (a) The legislative rules filed in the state register on the
sixth day of January, one thousand nine hundred eighty-
three, relating to the state water resources board
(underground injection control program), are authorized.
(b) The legislative rules filed in the state register on the
fifteenth day of November, one thousand nine hundred
eighty-three, relating to the state water resources board
(special regulations), are authorized.
(c) The legislative rules filed in the state register on the
third day of August, one thousand nine hundred eighty-
three, relating to the state water resources board
(groundwater protection standards), are authorized.
(d) The legislative rules filed in the state register on the
fifteenth day of November, one thousand nine hundred
eighty-three, relating to the state water resources board
(state national pollutant discharge elimination system
(NPDES) program), are authorized.
(e) The Legislature hereby authorizes and directs the
water resources board to promulgate rules relating to water
quality standards in exact conformity with the rules
relating to water quality standards tendered to the
secretary of state on the seventh day of March, one thousand
nine hundred eighty-four, by the executive secretary of the
state water resources board, to be received and filed for
inclusion in the state register by the secretary of state.
(f) The legislative rules filed in the state register on the
seventh day of January, one thousand nine hundred eighty-
five, modified by the water resources board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the water resources board (water quality standards), are authorized.

§64-2-20(5c)(6). Water development authority.

The legislative rules filed in the state register on the thirtieth day of August, one thousand nine hundred eighty-four, relating to the water development authority (hardship grant funds) are authorized.

§64-2-20(5e)(6). Department of natural resources.

(a) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the department of natural resources (hazardous waste management) are authorized.

(b) The legislative rules filed in the state register on the sixth day of January, one thousand nine hundred eighty-four, relating to the air pollution control commission (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities) (series XXV) are authorized with the amendments set forth below:

Page 3, §1.06, change the §title from "Enforcement" to "Procedure"; place an "(a)" in front of the existing paragraph and add the following:

"(b) Permit applications filed pursuant to this regulation shall be processed in accordance with the permitting procedures as set forth in code §20-5E of this regulation. Permit procedures set forth in code §16-20 and any other regulation of this commission are not applicable to any permit application filed pursuant to this regulation."

Such rules shall also include a section which shall read as follows:

"The commission shall report to the legislative rule-making review committee as required by that committee, but in no event later than the first day of the regular session of the Legislature in the year one thousand nine hundred eighty-five. Such report shall include information regarding the commission's data gathering efforts, the development of compliance programs, the progress in
implementation, and such other matters as the committee may require, pertaining to the regulations hereby authorized."

(c) The legislative rules filed in the state register on the third day of December, one thousand nine hundred eighty-four, modified by the department of natural resources to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirteenth day of February, one thousand nine hundred eighty-five, relating to the department of natural resources (hazardous waste management), are authorized.


(a) The legislative rules filed in the state register on the twenty-first day of October, one thousand nine hundred eighty-three, relating to the commissioner of highways (transportation of hazardous waste by highway transporters) are authorized with the amendments set forth below:

1 Pages 3 and 7, after "40CFR part 262" add the words "as amended through February 20, 1984,"
2 Page 7, after "49CFR parts 171-179" add the words "as amended through February 20, 1984,"
3 Page 11, after "49CFR part 171.16" add the words "as amended through February 20, 1984."

(b) The legislative rules filed in the state register on the seventh day of September, one thousand nine hundred eighty-four, modified by the commissioner of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of October, one thousand nine hundred eighty-four, relating to the commissioner of highways (transportation of hazardous waste) are authorized with the amendment set forth below:

1 Page 5, by amending §3.01 by adding thereto a new subsection, designated subsection (4), to read as follows: "(4) Before accepting hazardous waste from a rail transporter, a highway transporter must sign and date the manifest and provide a copy to the rail transporter."

§64-2-20 (6) (2). Department of natural resources.

(a) The legislative rules filed in the state register on the
eighteenth day of December, one thousand nine hundred eighty-three, relating to the department of natural resources (surface mining) are authorized with the amendments set forth below:

Page 3-4, section 3E.01 by adding after the word “engineer” the words “or licensed land surveyor.”

Page 3-5, section 3E.02, subsection (a), by adding after the word “mining” the words “or civil.”

Page 3-5, section 3E.02, subsection (b), by adding after the first sentence—“Those persons who have been approved to date need not make said demonstration.”

(b) The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (surface mining reclamation) are authorized.

§64-2-20 (6) (7). Department of natural resources.

The legislative rules filed in the state register on the seventh day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (coal refuse disposal) are authorized.

§64-2-20 (6) (43). Department of natural resources.

The legislative rules filed in the state register on the ninth day of November, one thousand nine hundred eighty-four, relating to the department of natural resources (transfer of the state national pollutant discharge elimination system program), are authorized with the amendments set forth below:

Page 10-5, by striking §10B.19 and inserting in lieu thereof a new §10B.19, to read as follows: “ ‘Effluent limitations guidelines’ means a regulation published by the Administrator under Section 304(b) or Section 301 (b) (1) (B) of the CWA to adopt or revise effluent limitations or levels of effluent quality attainable through the application of secondary or equivalent treatment. For the coal industry these regulations are published at 40 C.F.R. Parts 434 and 133. (See: Appendix G and H)”

§64-2-21 (5) (5c). Department of labor.

The legislative rules filed in the state register on the second day of February, one thousand nine hundred eighty-
four, relating to the department of labor (polygraph examinations) are authorized.

§64-2-23 (1) (13). Workers’ compensation commissioner.

1 The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, relating to the workers’ compensation commissioner (time limits for the administrative proceedings of adjudications and awards) are authorized.

§64-2-23 (1) (15). Workers’ compensation commissioner.

1 (a) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers’ compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the workers’ compensation commissioner (self-insured employers) are authorized.

1 (b) The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred eighty-four, modified by the workers’ compensation commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, one thousand nine hundred eighty-four, relating to the workers’ compensation commissioner (payment of attorney’s fees) are authorized.

§64-2-29 (1) (6). Archives and history commission.

1 The legislative rules filed in the state register on the fourteenth day of September, one thousand nine hundred eighty-four, relating to the archives and history commission (certified local government program) are authorized with the following amendments;

§4.02, subsections a, b, c, d, e and i are amended in their entirety to read as follows:

"a. The local government shall have created a historic landmark commission or commission, consisting of five (5) members, to carry out the provisions of the ordinance or order."

"b. HLC or commission membership shall be drawn from among persons with demonstrated interest,
competence, or knowledge in historic preservation and local history. To the extent available in the community, members of the HLC shall be preservation-related professionals (including the professions of history, architecture, architectural history, planning, real estate, American studies, geography, landscape architecture, law, engineering, or archaeology)."

"c. The local government, be certified without the minimum number or types of professional disciplines, must report to the SHPO's satisfaction that it has made a reasonable effort to fill those positions."

d. Commission meetings shall be held at regular intervals at least four times each year, advertised in advance, and open to the public. The Commission shall establish rules of procedure or bylaws including a code of conduct."

e. The Commission shall transmit an annual report of its activities to the State Historic Preservation Officer. Such reports shall include, at a minimum, new designations made, progress on survey activities, and attendance records. Reports shall be submitted within sixty days after the end of the fiscal year for the local government or portion of the fiscal year in the first year of the establishment of the commission. These reports will be reviewed and evaluated by the SHPO to ensure that the Commission's activities are consistent with the State Historic Preservation Plan."

i. Commission responsibilities must be complementary to and carried out in coordination with those of the State Historic Preservation Office as outlined in 36 CFR 61.4 (b)."

§5.01, subsections a and d are amended to read in their entirety as follows:

"a. A written assurance by the chief elected official that the local government does fulfill all the standards for certification outlined above."

d. Resumes of each of the members of the historic landmark commission including credentials of member expertise in fields related to historic preservation. Where no professional members have been appointed an explanation and information demonstrating good faith efforts to obtain such members shall be included."

§5.03 is amended in its entirety to read as follows:
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56 “5.03—Determination that Local Government Fulfills Requirements for Certification—if the State Historic Preservation Officer determines that the local government fulfills the requirements for certification, the State Historic Preservation Officer will prepare a written certification agreement with the local government that lists the specific responsibilities of the local government where certified. These responsibilities will include those powers and duties as stated in 4.02. The SHPO will notify the United States Secretary of the Interior, or designee and furnish a copy of the approved request and the certification agreement and shall respond to the local government within fifteen days of the Secretary’s response."

69 The fourth line of §5.04 is amended to read as follows: “Secretary of the Interior within 15 working days. The certification”

72 The last line of Section 6 is amended to read as follows: “(National Historic Preservation Act, Section 101(c)(2))”

74 The section heading to §6.01 is amended in its entirety to read as follows: “6.01 Notification of Commission by SHPO of National Register Nomination of Property Within Local Government Jurisdiction—”

78 The last three lines of §6.01 are amended in their entirety to read as follows: “101(a) of the National Historic Preservation Act, as amended. The State may expedite such process with the concurrence of the certified local government.”

83 The first line after the section heading of §6.02 is amended to read as follows: “(National Historic Preservation Act, Sec. 101(c)(2)(b). If” and the third sentence of said §6.02 is amended in its entirety to read as follows: “If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to established procedures (section 101(a) of the Act).”

90 The second sentence of §6.03 is amended in its entirety to read as follows: “If an HLC or commission does not have a professional member with the necessary federal qualifications in the area, the HLC can obtain the opinion of a qualified professional in the area and consider their opinion in their recommendation.”

96 §6.04 is amended in its entirety to read as follows: “6.04—Commission Qualifications for Federal Pass
§7.01 is amended in its entirety to read as follows:

"7.01—Performance Review of Certified Local Government by SHPO—The SHPO will review the commission's annual report to ensure that the performance of the local government is consistent with the State Historic Preservation Plan. If the SHPO determines that the performance of a certified local government is not in conformance with the certification agreement and the State Historic Preservation Plan the State Historic Preservation Officer shall document that determination and recommend to the certified local government steps which may be taken to improve their performance."

The last sentence of §7.03 is amended in its entirety to read as follows: "This closeout will follow procedures specified in National Register Programs Guidelines."

The first sentence of §8.01 is amended in its entirety to read as follows: "A minimum of 10% of the state's annual apportionment from the Historic Preservation Fund of the Department of the Interior will be set aside for transfer to qualified CLG's in accordance with the National Historic Preservation Act as amended."

The third line of the first sentence of §8.04 is amended in its entirety to read as follows: "consistent with 35(FR 61.7(f)(1), which states that the amount awarded to."

§8.05 is amended in its entirety to read as follows:

"8.05—Application and Selection Criteria—Project application forms and selection criteria will be made available through individual notification and public advertisement from the SHPO of the West Virginia Department of Culture and History in June of each year. The criteria will be coordinated with those used to select survey and planning grants during that fiscal year. Funds must be applied for by August 30 of each year. Funding in any prior year does not guarantee continued funding. The project schedule and deadlines may vary from year to year and is dependent upon the time frame in which the Secretary of the Interior notifies the state of its
apportionment from the annual Historic Preservation Fund."

The third sentence of §8.06 is amended in its entirety to read as follows: "The SHPO is responsible for proper accounting of Historic Preservation Fund grants to CLG's in accordance with Office Management and Budget Circular A-102, Attachment P Audit Requirements."


1 The legislative rules filed in the state register on the twentieth day of February, one thousand nine hundred eighty-five, relating to the state athletic commission (professional and amateur boxing) are authorized.

§64-2-30(5)(19). Board of pharmacy.

1 The legislative rules filed in the state register on the second day of October, one thousand nine hundred eighty-four, modified by the board of pharmacy to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of pharmacy (parenteral/enteral compounding) are authorized.

§64-2-30(6)(3). Board of embalmers and funeral directors.

1 The legislative rules filed in the state register on the twenty-seventh day of July, one thousand nine hundred eighty-four, modified by the board of embalmers and funeral directors to meet the objections of the legislative rule-making review committee and refiled in the state register on the ninth day of January, one thousand nine hundred eighty-five, relating to the board of embalmers and funeral directors (apprenticeship), are authorized.

§64-2-30(21)(6). Board of examiners of psychologists.

1 The legislative rules filed in the state register on the twentieth day of December, one thousand nine hundred eighty-four, relating to the board of examiners of psychologists (examination fee) are authorized.


1 (a) The legislative rules authorized by the Legislature in
2 section thirty-two (four) (four hundred two) of this article
3 were also proposed by the state auditor, securities
4 commissioner pursuant to section four hundred twelve,
5 article four, chapter thirty-two of this code.
6 (b) The legislative rules filed in the state register on the
7 eighteenth day of January, one thousand nine hundred
8 eighty-five, relating to the state auditor, securities
9 commissioner (filing fee) are authorized.

§64-2-46a(6a)(8). Attorney general.

1 The legislative rules filed in the state register on the sixth
2 day of December, one thousand nine hundred eighty-four,
3 relating to the attorney general (third party dispute
4 mechanisms) are authorized.


1 The legislative rules filed in the state register on the ninth
2 day of January, one thousand nine hundred eighty-five,
3 relating to the attorney general (fair treatment of crime
4 victims and witnesses) are authorized.

CHAPTER 155

(Com. Sub. for H. B. 1588—By Delegate Mastrantoni and Delegate Blatnik)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article one, chapter seven of the code of West
Virginia, one thousand nine hundred thirty-one, as amended,
by adding thereto a new section, designated section three-bb,
relating to the authority of county commissions to levy for,
to erect, maintain and operate sheltered workshops in the
county and to render financial aid to sheltered workshops in
the county; definitions.

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-bb, to read
as follows:
ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3bb. Levy for, establishment and operation of sheltered workshops; financial aid.

(a) The county commission in any county is authorized, without limiting any other levying authority the counties may have, to levy for and may erect, maintain and operate sheltered workshops in the county and may render financial aid to any one or more sheltered workshop facilities operating in the county.

(b) As used in this section:

(1) “Sheltered workshop” means a particular type of vocational rehabilitation facility where any manufacture or handiwork is carried on and which is operated by a public agency or by a private corporation or association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, or by a cooperative, for the primary purpose of providing remunerative employment to disabled persons (a) as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or (b) during such time as employment opportunities for them in the competitive labor market do not exist; or (c) for providing vocational evaluation and work adjustment services for disadvantaged persons.

(2) “Vocational rehabilitation facility” means a facility which is operated for the primary purpose of providing vocational rehabilitation services to, or gainful employment for, handicapped individuals, or, for providing evaluation and work adjustment services for disadvantaged individuals, and which provides singly or in combination one or more of the following services for handicapped individuals: (a) Comprehensive rehabilitation services which shall include, under one management, medical, psychological, social and vocational services; (b) testing, fitting or training in the use of prosthetic and orthopedic devices; (c) prevocational conditioning or recreational therapy; (d) physical and occupational therapy; (e) therapy for speech and hearing pathology; (f) psychological and social services; (g) evaluation; (h) personal and work adjustment; (i) vocational training (in combination with other rehabilitation services); (j) evaluation or control of special
disabilities; and (k) extended employment for the severely handicapped who cannot be readily absorbed in the competitive labor market; but all medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to practice medicine or surgery in the state.

CHAPTER 156
(S. B. 349—By Senator Stacy)

[Passed April 10, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-a, relating to advance payments to sheltered workshops; and providing certain restrictions and requirements in regard to such payments.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10B. VOCATIONAL REHABILITATION FACILITIES.

§18-10B-2a. Advance payment to facilities.

Notwithstanding section ten, article three, chapter twelve of this code, the director of the division of vocational rehabilitation is authorized to make advance payments to public and private nonprofit sheltered workshops when it has been determined by the director after serious consideration to be necessary for the initiation or continuation of such workshops. Such advance payments shall be for a period no greater than ninety days in advance of rendition or continuation of rehabilitation services provided by the public or private nonprofit sheltered workshop.
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 rescheduling the termination date of certain governmental entities or programs; changing certain names.

Be it enacted by the Legislature of 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:

   (1) On the first day of July, one thousand nine hundred eighty-one: Judicial council of West Virginia; geological and economic survey commission; motor vehicle certificate appeal board; child welfare licensing board.

   (2) On the first day of July, one thousand nine hundred eighty-two: Ohio River basin commission; commission on postmortem examination; state commission on manpower, training and technology.

   (3) On the first day of July, one thousand nine hundred eighty-three: Anatomical board; economic opportunity advisory committee; community development authority board.

   (4) On the first day of July, one thousand nine hundred eighty-four: The following programs of the department of natural resources: Rabies control, work incentive program;
West Virginia alcoholic beverage control licensing advisory board.

(5) On the first day of July, one thousand nine hundred eighty-five; beautification commission; labor management advisory council.

(6) On the first day of July, one thousand nine hundred eighty-six: Board of regents; water resources board; water resources division of the department of natural resources; division of archives and history; state board of risk and insurance management; interstate commission on the Potomac River basin; health resources advisory council; welfare advisory council; board of banking and financial institutions; public service commission: Provided, That in the case of the public service commission, the study by the committee required by this article shall be completed on or before the first day of July, one thousand nine hundred eighty-five, and shall be by such date transmitted to the joint committee on government and finance for review by the joint committee or its subcommittee designated pursuant to section one, article one, chapter twenty-four of this code for review, examination and study of the operations of the public service commission; state building commission; capitol building commission; public employees insurance board.

(7) On the first day of July, one thousand nine hundred eighty-seven: The geological and economic survey; the commission on uniform state laws; department of labor; civil service commission advisory board; council of finance and administration; motorcycle safety standards and specifications board; oil and gas inspectors' examining board.

(8) On the first day of July, one thousand nine hundred eighty-eight: Information system advisory commission; veteran's council; labor management relations board; board of investments; records management and preservation advisory committee; minimum wage rate board; Ohio River valley water sanitation commission; southern regional education board; department of corrections.

(9) On the first day of July, one thousand nine hundred eighty-nine: Mental retardation advisory committee; interagency committee on pesticides; commission on charitable organizations; board of school finance; veteran's affairs
61 advisory council; emergency medical services advisory council;
62 pesticides board of review; reclamation commission; West
63 Virginia health care cost review authority.

(10) On the first day of July, one thousand nine hundred
64 ninety: Consumer affairs advisory council; savings and loan
65 association; forest industries industrial foundation; U.S.
66 geological survey program within the department of natural
67 resources; drivers' license advisory board; the following
69 divisions or programs of the department of agriculture: Soil
70 conservation committee, rural resource division, meat
71 inspection program; women's commission; office of workers'
72 compensation commissioner.

(11) On the first day of July, one thousand nine hundred
73 ninety-one: State advisory council of the department of
74 employment security; department of human services; oil and
76 gas conservation commission.

CHAPTER 158

(Com. Sub. for S. B. 609—By Senators Tucker and Spears)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and twenty-seven,
article three, chapter eleven of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, relating
60 to property exempt from taxation; allowing a taxpayer
to obtain relief from overpayment of taxes due to a clerical
error or other mistake within one year after the mistake
is discovered; notice to taxpayer; providing that such re-
lief from overpayment discovered after one year be in the
form of a credit against tax.

Be it enacted by the Legislature of West Virginia:

That sections nine and twenty-seven, article three, chapter
eleven of the code of West Virginia, one thousand nine hun-
dred thirty-one, as amended, be amended and reenacted to read
as follows:
ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exemption from taxation.

§11-3-27. Relief in county commission from erroneous assessments.

§11-3-9. Property exempt from taxation.

1 All property, real and personal, described in this section, and to the extent herein limited, shall be exempt from taxation, that is to say: Property belonging to the United States, other than property permitted by the United States to be taxed under state law; property belonging exclusively to the state; property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes; property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes; property used exclusively for divine worship; parsonages, and the household goods and furniture pertaining thereto; mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon; cemeteries; property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture; public and family libraries; property used for charitable purposes, and not held or leased out for profit; property used for the public purposes of distributing water or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit; property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit; all real estate not exceeding one-half acre in extent, and the buildings thereon, and used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not leased or otherwise used with a view to profit; all property belonging to benevolent associations, not conducted for private profit; property belonging to
any public institution for the education of the deaf, dumb
or blind, or any hospital not held or leased out for profit;
house of refuge, lunatic or orphan asylum; homes for
children or for the aged, friendless or infirm, not conduct-
ed for private profit; fire engines and implements for
extinguishing fires, and property used exclusively for the
safekeeping thereof, and for the meeting of fire com-
panies; and all property on hand to be used in the sub-
sistence of livestock on hand at the commencement of the
assessment year; household goods to the value of two
hundred dollars, whether or not held or used for profit;
bank deposits and money; household goods (which term
is deemed for purposes of this section to mean only
personal property and household goods commonly found
within the house and items used to care for the house and
its surrounding property) when not held or used for
profit, and personal effects (which term is deemed for
purposes of this section to mean only articles and items
of personal property commonly worn on or about the
human body, or carried by a person and normally thought
to be associated with the person) when not held or used
for profit; dead victuals laid away for family use and any
other property or security exempted by any other provi-
sion of law; but no property shall be exempt from taxa-
tion which shall have been purchased or procured for the
purpose of evading taxation, whether temporarily holding
the same over the first day of the assessment year or
otherwise: Provided, That real property which is exempt
from taxation by this section shall be entered upon the
assessor's books, together with the true and actual value
thereof, but no taxes shall be levied upon the same or
extended upon the assessor's books.

Notwithstanding any other provisions of this section,
however, no language herein shall be construed to exempt
from taxation any property owned by, or held in trust
for, educational, literary, scientific, religious or other
charitable corporations or organizations, unless such
property is used primarily and immediately for the pur-
poses of such corporations or organizations.

The tax commissioner shall, by issuance of regulations,
provide each assessor with guidelines to ensure uniform
assessment practices statewide to effect the intent of this
section.

§11-3-27. Relief in county commission from erroneous assess-
ments.

1 Any taxpayer, or the prosecuting attorney or tax com-
missioner, upon behalf of the state, county and districts,
claiming to be aggrieved by any entry in the property
books of the county, including entries with respect to
classification and taxability of property, resulting from a
clerical error, or a mistake occasioned by an uninten-}
tional or inadvertent act as distinguished from a mistake
growing out of negligence or the exercise of poor judg-
ment, may, within one year from the time the property
books are delivered to the sheriff or within one year from
the time such clerical error or mistake is discovered or
reasonably could have been discovered, apply for relief

1 to the county commission of the county in which such
books are made out: Provided, That upon the discovery
of any such clerical error or mistake by the sheriff or the
assessor, or either officer having knowledge thereof, the
sheriff or assessor shall cause notice to be sent to any
taxpayer affected by the clerical error or mistake by first-
class United States mail advising the taxpayer of the
right to make application from relief from the erroneous
assessment. Before the application is heard, the taxpayer
shall give notice to the prosecuting attorney of the
county, or the state shall give notice to the taxpayer, as
the case may be. The application, whether by the tax-
payer or the state, shall have precedence over all other
business before the court; but any order or judgment
shall show that either the prosecuting attorney or the tax
commissioner was present defending the interests of the
state, county and districts: Provided, however, That the
provisions of this section shall not be construed as giving
counties commissions jurisdiction to consider any question
involving the classification or taxability of property which
has been the subject matter of an appeal under the pro-
visions of section twenty-four-a of this article; and any
other such clerical error or mistake involving the classification or taxability of property, may be corrected by
the county commission under the provisions of this section only when approved, in writing, by the county
assessor.
In the event it is ascertained that the applicant is entitled to relief, any excess taxes already paid shall be
refunded and, if charged but not paid, the applicant shall be released from the payment of such excess: Provided,
That in the event a mistake or error is discovered more than one year after the property books for the year or
years in question are delivered to the sheriff, any relief granted to the applicant shall be in the form of a credit
against taxes owing for the following year or years until the debt is paid. Whenever any correction is made
by the county commission, the clerk shall certify copies of the order to the auditor, to the sheriff and to the
assessor, and in the case of real estate, the assessor shall thereupon make a correction in accordance with the order
in his landbook for the next year. Any such order delivered to the sheriff or other collecting officer shall restrain
him from collecting so much as is erroneously charged against the taxpayer, and, if already collected, shall compel
him to refund the money if such officer has not already paid it into the treasury. In either case, when indorsed by the person exonerated, it shall be sufficient voucher to entitle the officer to a credit for so much in his settlement which he is required to make. If the applicant be the state, the order certified to the sheriff shall show the correct amount of taxes due the state, county
and districts and shall be sufficient to authorize collection in the same manner as for other state, county and district
taxes.

CHAPTER 159
(S. B. 538—By Senators Spears and R. Williams)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, four, five,
seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-e, thirteen-f, thirteen-g, thirteen-h, thirteen-i and thirteen-j, all relating generally to assessment of public service businesses for ad valorem property taxes; changing title of article; transferring to tax commissioner duty of making such assessments; providing form and manner of making return of property; imposing criminal penalty for failure to make such return; permitting tax commissioner to compel furnishing of information by public service business by issuance of subpoena or subpoena duces tecum; providing for service and enforcement of subpoena and subpoena duces tecum; requiring issuance of tentative assessments; providing for administrative hearing if petition for reassessment is timely filed; making tentative assessment prima facie evidence of assessed value; providing for service of notice of tentative assessments and assessments; providing rules for timely filing of returns and other documents; providing for issuance of assessments; permitting appeal of assessment where tentative assessment was protested and administrative hearing held; providing procedures for administrative hearing and appeals to court; specifying time periods within which petitions for reassessment and petitions for appeal must be filed; providing for assessment to be prima facie evidence of assessed value; providing for apportionment of value among counties, school districts and municipalities by tax commissioner; and providing for auditor to enter assessments against public service business.

Be it enacted by the Legislature of West Virginia:

That sections one, three, four, five, seven, eight, nine, ten, eleven, twelve, thirteen and sixteen, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto fifteen new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e, thirteen-a, thirteen-b, thirteen-c, thirteen-d, thirteen-
Article 6. Assessment of Public Service Businesses.

§ 11-6-1. Returns of property to tax commissioner.

(a) On or before the first day of May in each year a return in writing shall be filed with the tax commissioner: (1) By the owner or operator of every railroad, wholly or in part within this state; (2) by the owner or operator of every railroad bridge upon which a separate toll or fare is charged; (3) by the owner or operator of every car or line of cars used upon any railroad within the state for transportation or accommodation of freight or passengers, other than such owners or operators as may own or operate a railroad within the state; (4) by the owner or operator of...
every express company or express line, wholly or in part
within this state, used for the transportation by steam or
otherwise of freight and other articles of commerce; (5) by
the owner or operator of every pipeline, wholly or in part
within this state, used for the transportation of oil or gas or
water, whether such oil or gas or water be owned by such
owner or operator or not, or for the transmission of
electrical or other power, or the transmission of steam or
heat and power or of articles by pneumatic or other power;
(6) by the owner or operator of every telegraph or telephone
line, wholly or in part within this state, except private lines
not operated for compensation; (7) by the owner and
operator of every gas company and electric lighting
company furnishing gas or electricity for lighting, heating
or power purposes; (8) by the owner or operator of
hydroelectric companies for the generation and
transmission of light, heat or power; (9) by the owner or
operator of water companies furnishing or distributing
water; and (10) by the owner or operator of all other public
service corporations or persons engaged in public service
business whose property is located wholly or in part within
this state.

(b) The words "owner or operator," as applied herein to
railroad companies, shall include every railroad company
incorporated by or under the laws of this state for the
purpose of constructing and operating a railroad, or of
operating part of a railroad within this state, whether such
railroad or any part of it be in operation or not; and shall
also include every other railroad company, or persons or
associations of persons, owning or operating a railroad or
part of a railroad in this state on which freight or
passengers, or both, are carried for compensation. The word
"railroad," as used herein includes every street, city,
suburban or electric or other railroad or railway.

(c) The words "owner or operator," as applied herein to
express companies, shall include every express company
incorporated by or under the laws of this state, or doing
business in this state, whether incorporated or not, and any
person or association of persons, owning or operating any
express company or express line upon any railroad or
otherwise, doing business partly or wholly within this state.

(d) Such return shall be signed and sworn to by such
53 owner or operator if a natural person, or, if such owner or
54 operator shall be a corporation, shall be signed and sworn to
55 by its president, vice president, secretary or principal
56 accounting officer.
57 (e) The return required by this section of every such
58 owner or operator shall cover the year ending on the thirty-
59 first day of December, next preceding, and shall be made on
60 forms prescribed by the tax commissioner, who is hereby
61 invested with full power and authority and it is hereby
62 made his duty to prescribe such forms as will require from
63 any owner or operator herein mentioned such information
64 as in the judgment of the tax commissioner may be of use to
65 him in determining the true and actual value of the
66 properties of such owners or operators.

§11-6-3. Same—Toll bridges.
1 In the case of any bridge upon which a separate toll or fare
2 is charged, such return shall show: (a) The location of the
3 same; (b) for what used; and, if used by a railroad, what
4 railroad uses it; (c) the length of such bridge; and, if used by
5 a railroad, the number of tracks on it; (d) all other property
6 owned by such owner or operator and used in connection
7 with such bridge; (e) the capital actually invested; the
8 amount of capital stock authorized and issued, the par
9 value and the market value of the shares into which the
10 capital stock is divided, and the amount of dividends
11 declared on the capital stock within the twelve months
12 preceding the first day of the current assessment year; the
13 total amount of bonded indebtedness and of indebtedness
14 not bonded; gross earnings for the year from all sources; (f)
15 gross expenditures for the year, giving a detailed statement
16 thereof under each class or head of expenditure; and (g) any
17 other information requested by the tax commissioner which
18 the tax commissioner deems may be of use to him in
19 determining the actual value of such bridge or bridges.

§11-6-4. Same—Car line companies.
1 In the case of car lines used for the transportation or
2 accommodation of passengers or freight by owners or
3 operators, other than railroad companies making their
4 return under this law, such return shall show for every such
5 owner or operator: (a) All cars and other rolling stock,
6 giving a detailed statement of the number of cars, including
passenger, mail, express, baggage, freight, sleeping, dining,
parlor, refrigerator, stock or other cars of every description,
and the true and actual value of all such cars used wholly or
in part in this state, distinguishing between those used
wholly in this state and those used partly within and partly
without the state, and the true and actual value of those
used wholly within the state and those used partly within
and partly without the state, and the proportional value of
such cars used partly within and partly without the state,
according to the time used and the number of miles run by
such cars in and out of the state, the railroad over which
they were run, and the proportional value in each county
within this state within which such cars were run; but in
any case where it may appear to the tax commissioner that
from the nature of the employment of such cars, or
otherwise, it is not practicable to show the matters
hereinbefore required in this section as to the cars used in
this state, and the proportional value of the cars used partly
within and partly without this state and each county
thereof, the tax commissioner may, as to such matters,
accept such other information as it may be practicable to
obtain, or in its discretion the tax commissioner may
dispense with such showing as to any such matter; (b) real
and personal property of every kind, whatever, including
money, credits and investments and the amount thereof,
wholly held or used in this state, showing the amount and
the true and actual value in each county; and (c) the actual
capital employed in the business of such owner or operator,
the total amount of bonded indebtedness with respect to
such line, and of indebtedness not bonded; the whole length
of the several lines of railroad over which such cars run,
including branches and connecting lines in and out of the
state; and, if such owner or operator be a corporation, its
actual capital stock and the number, character, amount and
market value of the shares thereof, and the amount of
capital stock actually paid in; its bonded indebtedness and
its indebtedness not bonded. The tax commissioner shall
have the right to require any such owner or operator to
furnish such other and further information as, in the
judgment of the tax commissioner, may be of use to him in
determining the true and actual value of the property to be
assessed to such owner or operator.
§11-6-5. Same — Pipeline companies.

1 In the case of a pipeline, such return shall show for each owner or operator: (a) The number of miles of pipeline owned, leased or operated within this state, the size or sizes of the pipe composing such line, and the material of which such pipe is made; (b) if such pipeline be partly within and partly without this state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of the state; (c) the length, size and true and actual value of such pipelines in each county of this state, including in such valuation the main line, branches and connecting lines, and stating the different values of the pipe separately; (d) its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, together with all real estate, other than its pipeline, owned or used by it in connection with its pipeline, including telegraph and telephone lines, and the true and actual value of all such buildings, structures, machinery and appendages and of each parcel of such real estate, including such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amount thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of such owner or operator with respect to such line, and of indebtedness not bonded; and, if such owner or operator be a corporation, its capital stock, the character, number and amount and the market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The tax commissioner shall have the right to require such owner or operator to furnish such other and further information as, in the judgment of the tax commissioner may be of use in determining the true
§11-6-7. Same — Telegraph and telephone companies.

In the case of a telegraph or telephone line, such report shall show for every such owner or operator: (a) The number of miles of lines owned, leased or operated within this state, the guage of the wire, the number of strands of wire, the material of which it is made, and, as accurately as may be, the time when the line or any material part thereof was constructed or last replaced; (b) if such lines be partly within and partly without the state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of the state; (c) the true and actual value per mile of such line in each county of this state; (d) its stations, shops and machinery therein, and all buildings, structures and appendages connected or used therewith, together with all real estate, other than its telegraph or telephone line, owned or used by it in connection with its line, and of each parcel of such real estate and the true and actual value thereof in each county in which it is located; (e) its personal property of every kind whatsoever, including money, credits and investments, and the amounts thereof wholly held or used in this state, showing the amount and value thereof in each county; (f) an itemized list of all other real property within this state, with the location thereof; and (g) the actual capital employed in the business of such owner or operator, the total amount of the bonded indebtedness of such owner or operator, with respect to such line, and of all indebtedness not bonded; and, if such owner or operator be a corporation, its capital stock, the character, number, amount and the market value of the shares thereof, and the amount of capital stock actually paid in; its bonded indebtedness and its indebtedness not bonded. The tax commissioner shall have the right to require any such owner or operator to furnish such other and further information as, in the judgment of the tax commissioner, may be of use to him in determining the true and actual value of the property to be assessed to such owner or operator.
§11-6-8. Form and manner of making return; failure to make return; criminal penalty.

1 All returns to be made to the tax commissioner, under this chapter, shall be made in conformity with any reasonable requirement of the tax commissioner of which the person making the return shall have had notice, and shall be made upon forms which may be furnished by the tax commissioner, and according to instructions which the tax commissioner may give relating thereto, and to the description and itemizing of the property. Such owner or operator, whether a natural person, or a corporation or company, failing to make such return as herein required shall be guilty of a misdemeanor, and fined one thousand dollars for each month such failure continues.

§11-6-9. Compelling such return; procuring information and tentative assessments by tax commissioner.

1 (a) If any owner or operator fails to make such return within the time required by section one of this article, it shall be the duty of the tax commissioner to take such steps as may be necessary to compel such compliance, and to enforce any and all penalties imposed by law for such failure.

2 (b) The return delivered to the tax commissioner shall be examined by him, and if it be found insufficient in form or in any respect defective, imperfect or not in compliance with law, he shall compel the person required to make it to do so in proper and sufficient form, and in all respects as required by law.

3 (c) If any such owner or operator fails to make such return, the tax commissioner shall proceed, in such manner as to him may seem best, to obtain the facts and information required to be furnished by such returns.

4 (d) The tax commissioner may send for persons and papers, and may compel the attendance of any person and the production of any paper necessary, in the opinion of said tax commissioner, to enable him to obtain the information required for the proper discharge of his duties under this section. Service of a subpoena or subpoena duces tecum, and enforcement of compliance with such subpoena or subpoena duces tecum, shall be in conformity with the
provisions of section one, article five, chapter twenty-nine-a of this code.

(e) The tax commissioner shall arrange, collate and tabulate such returns and all pertinent information and data contained therein, such further evidence or information as may be required by the tax commissioner of such owner or operator, and all other pertinent evidence, information and data he has been able to procure, upon suitable work sheets, so that they may be conveniently considered. The tax commissioner shall retain in his office true copies of such work sheets which shall be available for inspection by any such owner or operator or his duly authorized representative.

(f) On or before the first day of September in each year beginning with the current calendar year, the tax commissioner shall make a tentative assessment of the true and actual value of all property owned or operated by each public service business whose property is located in whole or in part within this state.

§11-6-10. Failure to give information required by tax commissioner; criminal penalty.

If any person shall refuse to appear before the tax commissioner when required to do so, as aforesaid, or shall refuse to testify before the tax commissioner in regard to any matter as to which the tax commissioner may require him to testify, or if any person shall refuse to produce any paper in his possession or under his control, which the tax commissioner may require him to produce, every such person shall be guilty of a misdemeanor and fined five hundred dollars, and may be imprisoned not less than one nor more than six months, at the discretion of the court.

§11-6-11. Valuation of property by tax commissioner.

(a) In ascertaining the true and actual value of all property of such owner or operator hereinbefore required to be returned, the tax commissioner shall consider the return, if any, made by the owner or operator, and any return which may have been previously made by such owner or operator, the work sheets prepared by the tax commissioner, such evidence or information as may be offered by such owner or operator, such further evidence or information as may be
required by the tax commissioner of such owner or operator, and any other pertinent evidence, information and data. Any and all evidence, information and data considered by the tax commissioner shall be available for inspection by any such owner or operator or his duly authorized representative, and an opportunity given to be heard thereon as provided in this section.

(b) Nothing in this chapter contained shall be construed to require the assessment by the tax commissioner of any part of a railroad, telegraph, telephone or pipeline until such part is so far completed as to be fit for use. But material held by any railroad, telegraph, telephone or pipeline company shall be returned to the tax commissioner for assessment as personal property.

(c) The proportionate share of the value of the intangible property of such public service businesses as do business in this and other states, growing out of the use of their tangible property in this state under their franchises, privileges and contracts, shall have its situs in this state and in the several counties and municipalities thereof in which they exercise their rights: Provided, That property of any such owner located outside of this state which is not directly used in the business to which the property in this state is devoted, shall not enter into the value of the property within this state to be assessed.

§11-6-11a. Notice of tentative assessment; petition for reassessment.

(a) The tax commissioner shall give the owner or operator of the public service business written notice of the amount of any tentative assessment made pursuant to this article.

(b) Unless the owner or operator to whom a notice of assessment is given files, within thirty days after date of issuance thereof, either personally or by certified mail, with the tax commissioner a petition in writing, verified under oath by the owner or operator, or his duly authorized agent having knowledge of the facts, setting forth with particularity: (1) The items of the tentative assessment objected to, together with (2) the reasons for the objections, the tentative assessment shall become final and not subject to administrative or judicial review.
§11-6-11b. Administrative hearing; procedures.

(a) When a petition for reassessment is filed in the form and within the time prescribed in section eleven-a of this article, the tax commissioner shall assign a time and place for a hearing upon the same. Written notice of the hearing shall be given to the petitioner at least ten days in advance thereof. At the same time that notice is given to the petitioner, notice of the hearing shall also be filed in the state register created in the office of the secretary of state by section two, article two, chapter twenty-nine-a of this code.

(b) Any hearing may be continued by the tax commissioner upon his own motion, agreement of the parties, or motion of the petitioner setting forth good cause. Notice of such continuance shall promptly be given to all parties and filed in the state register.

(c) A hearing on a petition for reassessment shall be a contested case, as defined in section two, article one, chapter twenty-nine-a of this code, and shall be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code, that are not inconsistent with this article, notwithstanding the provisions of section five, article five of chapter twenty-nine-a, which exempts the state tax commissioner from the provisions of said article five. A copy of the notice of tentative assessment shall be admissible and shall constitute prima facie evidence of the assessed value of the property of the public service business under the provisions of this article.

§11-6-11c. Service of notice.

(a) Notices of tentative assessments and assessments shall be served upon the owner or operator of a public service business, or his designated agent, by personal service, or by regular or certified mail.

(b) If served by regular or certified mail, the notice shall be deposited in the United States mail, postage prepaid, in an envelope addressed to such owner or operator, or his designated agent, at the principal office or place of business of such owner or operator, or his designated agent. Service shall be complete upon deposit of the notice in the United States mail in conformity with this subsection.

(c) Proof of the giving of notice in conformity with this
section may be made by the affidavit of any person over eighteen years of age, naming the owner or operator, or his designated agent, to whom such notice was given and specifying the time, place and manner of the giving thereof. If service was by certified mail, proof of service may be made by affidavit as aforesaid, or by the certified mail return receipt card. The affidavit or certified mail return receipt card shall be prima facie evidence of service under this section.

§11-6-11d. Timely filing.

(a) Delivery in person.—If any return, claim, statement or other document required to be filed, within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, it shall be timely filed.

(b) Timely mailing.—If any return, claim, statement or other document required to be filed, within a prescribed period or on or before a prescribed date under authority of any provision of this article, is after such period or such date, delivered by United States mail to the tax commissioner or the state tax department, the date of the United States postmark stamped on the cover in which such return, claim, statement or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

1. The postmark date falls within the prescribed period or on or before the prescribed date for filing (including any extension granted for such filing), of the return, claim, statement or other document or for making the payment (including any extension granted for such payment), and

2. The return, claim, statement, other document or payment was, within the time prescribed in subsection (a) of this section, deposited in the mail in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the tax commissioner or the state tax department.

(c) Postmarks.—This section applies in the case of postmarks not made by the United States post office only if
and to the extent provided by rules or regulations prescribed by the tax commissioner.

(d) Registered and certified mailing.—For purposes of this section, if any return, claim, statement or other document or payment is sent by United States registered or certified mail, the date of registration or certification shall be deemed the postmark date.

(e) Last date for filing or payment.—The last date for timely filing or timely making payment shall include any extension of time authorized by law or regulation and any extension of time granted in writing by the tax commissioner.

§11-6-11e. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

1 When the last day prescribed under authority of any article of this chapter imposing any tax administered under this article for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term “legal holiday” means a legal holiday in this state.

§11-6-12. Appeal from valuation by tax commissioner.

1 (a) If the owner or operator of a public service business does not file a petition for reassessment with the tax commissioner within the time prescribed in section eleven-a of this article, the amount of the tentative assessment shall be assessed, and notice of the assessment given to the owner or operator, or his designated agent.

(b) If the owner or operator of a public service business timely files a petition for reassessment under section eleven-a of this article, the tax commissioner shall review the petition and any evidence or information as may be offered by the owner or operator, or his duly authorized agent, along with the return, if any, made by the owner or operator, any return which may have been previously made by such owner or operator, the tentative assessment and the work sheets. If after his review the tax commissioner
determines that his tentative assessment is too high or low, he shall, if the petitioner be in agreement, correct his tentative assessment and issue an assessment.

(1) This agreement shall be in writing, and shall be signed by the tax commissioner and the petitioner. Such agreement shall be final and conclusive of the assessed value of the property, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, shall not be subject to administrative or judicial review.

(2) Whenever an agreement is made under this subsection, there shall be placed on file in the office of the tax commissioner, the amount of the tentative assessment, the amount of the assessment and the reason or reasons for the difference.

(c) If the owner or operator of a public service business timely files a petition for reassessment under section eleven-a of this article, and if an agreement cannot be reached under subsection (b) of this section, an administrative hearing shall be held as provided in section eleven-b of this article, and a final order or decision issued. An assessment shall be made for the amount of the final order or decision and notice of this assessment shall be served on the petitioner along with a copy of the final order or decision. Such decision and assessment shall become final and not subject to judicial or administrative review unless a petition for appeal is filed within thirty days after date the decision and assessment are issued.

(d) Any owner or operator claiming to be aggrieved by any such decision may, within the time aforesaid, apply by petition in writing, duly verified, to the circuit court of the county in which the property so assessed is situated, or if such property be situated in more than one county then in the county in which the largest assessment of such owner or operator was made in the next preceding year, for an appeal from the assessment and valuation so made of all such property, and jurisdiction is hereby conferred upon and declared to exist in the court, in which such application is filed, to grant, docket and hear such appeal; and such appeal, as to all of the property so assessed, as well as that situated in the county of the court so applied to, as that situated in the several other counties, shall forthwith be allowed by such court so applied to, and be heard by such
court as to all of such property as soon as possible after the
appeal is docketed. Except as specifically provided in this
subsection (d), judicial review of the final order or decision
shall be in accordance with the provisions of section four,
article five, chapter twenty-nine-a of this code. A certified
copy of the assessment and administrative decision of the
tax commissioner shall be admissible and shall constitute
prima facie evidence of the assessed value of the property of
the public service business under the provisions of this
article. An appeal may be taken by either party to the
supreme court of appeals, as provided in section one, article
six, chapter twenty-nine-a of this code, if the assessed value
of the property be fifty thousand dollars or more.
(e) Assessments under this section must be made on or
before the fifteenth day of January succeeding the date of
the tentative assessment.
§11-6-13. Apportionment of value among counties, districts
and municipalities.

1 (a) Upon assessment of the property of such owner or
operator as aforesaid, the tax commissioner shall
immediately apportion to each county, both as to the fixed
situs property and the nonfixed but distributable and
apportionable operating property, the relative value of such
operating property within each county to the value of the
total operating property within the state, to be determined
upon such factors as the tax commissioner shall deem
proper and in respect to the value of property of every such
owner or operator as valued or assessed as aforesaid; and
further shall apportion such value as aforesaid among the
several districts, school districts and independent school
districts therein, according to the value thereof, as near as
may be and forthwith shall certify to the auditor and to the
county commission of such county the values so
apportioned. The clerk of the county commission shall
forthwith certify such values to the school district and to
the several municipalities, respectively, in such county.
(b) The assessed value of operating property owned,
leased or used by the various public service businesses shall
be apportioned to each tax district as provided in sections
thirteen-a through thirteen-j of this article: Provided, That
the tax commissioner may also consider any other factors
that will help determine the fair apportionment of indefinite-situs distributable operating property to each tax district. For purposes of apportionment, operating property is classified as definite-situs distributable operating property or as indefinite-situs distributable operating property. Definite-situs distributable operating property as defined in sections thirteen-a through thirteen-j of this article shall be apportioned to the tax district wherein such property is located. Indefinite-situs distributable operating property is any operating property that is not definite-situs distributable operating property, and its assessed value shall be apportioned among the several tax districts as provided in sections thirteen-a through thirteen-j of this article. For purposes of apportionment, the term tax district means and includes the state and local levying bodies, including the county commission, school districts and municipalities of this state.

§11-6-13a. Bridge companies; apportionment of assessed valuation.

(a) A bridge company's definite-situs distributable operating property consists of: (1) Bridges; (2) land on which bridge heads are located; and (3) the company's rights-of-way.

(b) A bridge company's operating property which is not described in subsection (a) of this section is indefinite-situs distributable operating property. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company has property that is described in subsection (a) of this section. The amount which shall be distributed to a taxing district equals the product of (1) the total assessed valuation of the bridge company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the book value of the company's operating property which is located in the taxing district and which is described in subsection (a) of this section, and the denominator of which is the book value of the company's operating property which is located in this state and which is described in subsection (a) of this section.
§11-6-13b. Bus companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a bus company consists of real property and tangible personal property which is located within or on the real property.

(b) A bus company's operating property which is not described in subsection (b) of this section is indefinite-situs distributable operating property. This property includes, but is not limited to, buses and other mobile equipment. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in or through which the company operates its system. The amount which shall be distributed to a taxing district equals the product of (1) the total assessed valuation of the bus company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the company's average regularly scheduled passenger vehicle route miles in the taxing district, and the denominator of which is the company's average daily regularly scheduled passenger vehicle route miles in this state.

§11-6-13c. Express companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of an express company consists of real property and tangible personal property which has a definite-situs. The remainder of the express company's property is indefinite-situs distributable operating property.

(b) The tax commissioner shall apportion and distribute the assessed valuation of an express company's indefinite-situs distributable operating property among the taxing districts in which the definite-situs distributable operating property of the company is located. The amount which shall be distributed to a taxing district equals the product of (1) the total assessed valuation of the express company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the book value of the company's definite-situs distributable operating property which is located in the taxing district,
and the denominator of which is the book value of the company's definite-situs distributable operating property which is located in this state.

§11-6-13d. Light, heat or power companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a light, heat or power company consists of: (1) Office furniture and fixtures; (2) other tangible personal property which is not used as part of the company's production plant, transmission system or distribution system; and (3) real property which is not part of the company's rights-of-way, transmission system or distribution system.

(b) A light, heat or power company's property which is not described as definite-situs distributable operating property in subsection (a) of this section is indefinite-situs distributable operating property. This property includes, but is not limited to, turbogenerators, boilers, transformers, transmission lines, distribution lines and pipelines. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company's transmission lines, distribution lines and pipelines are located. The amount which shall be distributed to a taxing district equals the product of (1) the total assessed valuation of the company's indefinite-situs distributable operating property multiplied by (2) a fraction, the numerator of which is the length of the company's transmission lines, distribution lines and pipelines, weighted by the capacity of such lines which are located in the taxing district, and the denominator of which is the length of the company's lines weighted by the capacity of such lines which are located in this state.

§11-6-13e. Pipeline companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a pipeline company consists of: (1) Real property which is not part of a pipeline or right-of-way of the company; and (2) tangible personal property which is not part of the company's transmission system.

(b) A pipeline company's property which is not described in subsection (a) of this section is indefinite-situs
distributable operating property. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company's pipelines are located. The amount which shall be distributed to a taxing district equals the product of (1) the total assessed valuation of the pipeline company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the length of the company's pipelines weighted by the capacity of such lines in the taxing district, and the denominator of which is the length of the company's pipelines weighted by the capacity of such lines in this state.

§11-6-13f. Railroad companies; apportionment of assessed valuation.

(a) A railroad company's definite-situs distributable operating property consists of the company's: (1) Rights-of-way and road beds; (2) station and depot grounds; (3) yards, yard sites, superstructures, turntables and turnouts; (4) tracks; (5) telegraph poles, wires, instruments and other appliances, which are located on the rights-of-way; and (6) any other buildings or definite-situs personal property used in the operation of the railroad.

(b) A railroad company's operating property which is not described in subsection (a) of this section is indefinite-situs distributable operating property. This property includes, but is not limited to, rolling stock. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the railroad company operates its system. The amount which the tax commissioner shall distribute to a taxing district equals the product of (1) the total assessed valuation of the railroad company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the main line and second main line track mileage, including such lines and tracks as are leased, which are located in the taxing district, and the denominator of which is the main line and second main line track mileage including such lines and tracks, as are leased, which are located in this state.
§11-6-13g. Railroad car companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a railroad car company consists of real property and tangible personal property which has a definite-situs. The remainder of the railroad car company's operating property is indefinite-situs distributable property.

(b) The tax commissioner shall apportion and distribute a railroad car company's indefinite-situs distributable operating property apportioned to this state on the basis of the number of miles traveled on each railroad company's trackage located in the state weighted by the number of main line and second main line track miles of such railroad in each taxing district. The amount distributable to each taxing district equals the product of: (1) The total assessed valuation of the railroad carline company's indefinite-situs distributable operating property multiplied by (2) a fraction, the numerator of which is the number of miles traveled on each railroad operating in the state, and the denominator of which is the quotient of the number of main line and second main line track miles of the railroad located in each taxing district divided by the number of main line and second main line track miles of railroad located in the state.

§11-6-13h. Telephone and telegraph companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a telephone or telegraph company consists of: (1) Tangible personal property which is not used as part of the distribution system of the company; and (2) real property which is not part of the company's rights-of-way or distribution system.

(b) A telephone or telegraph company's property which is not described under subsection (a) of this section is indefinite-situs distributable operating property. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company's lines or cables, including laterals, are located. The amount which the tax commissioner shall distribute to a taxing district equals the product of: (1) The
15 total assessed valuation of the telephone or telegraph company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the length of the company's lines and cables, (including lateral lines and cables), weighted by the capacity of such lines and cables, which are located in the taxing district, and the denominator of which is the length of the company's lines and cables, (including lateral lines and cables), weighted by the capacity of such lines and cables, which are located in this state.

§11-6-13i. Water distribution companies; apportionment of assessed valuation.

(a) The definite-situs distributable operating property of a water distribution company consists of: (1) Tangible personal property which is not used as part of the company's distribution system; and (2) real property which is not part of the company's rights-of-way or distribution system. A well, settling basin or reservoir (except an impounding reservoir) is not definite-situs distributable operating property of a water distribution company if it is used to store treated water or water in the process of treatment.

(b) A water distribution company's property which is not described as definite-situs distributable operating property under subsection (a) of this section is indefinite-situs distributable operating property. The tax commissioner shall apportion and distribute the assessed valuation of this property among the taxing districts in which the company's water mains, including feeder and distribution mains, are located. The amount which the tax commissioner shall distribute to a taxing district equals the product of: (1) The total assessed valuation of the water distribution company's indefinite-situs distributable operating property, multiplied by (2) a fraction, the numerator of which is the length of the company's water mains, including feeder and distribution mains, weighted by the capacity of all such mains, which are located in the taxing district, and the denominator of which is the length of the company's water mains, including feeder and distribution mains, weighted by the capacity of all such mains, which are located in this state.
§11-6-13j. Other companies; apportionment of assessed valuation.

1 For a public service business which is not within one of the classes of business companies whose property is described in section thirteen-a through thirteen-i of this article, the definite-situs distributable operating property of the company consists of real property and tangible personal property which has a permanent situs. The remainder of the company's property is indefinite-situs distributable operating property. The tax commissioner shall, in a manner which he considers fair, apportion and distribute the assessed valuation of the company's indefinite-situs distributable operating property among the taxing districts in which the public service business operates.

§11-6-16. Entry of assessment by auditor of property of such public service businesses.

1 As soon as possible after the valuation of the property of such owner or operator is fixed by the tax commissioner or by the circuit court on appeal as aforesaid, and after he shall have obtained the information herein provided for to enable him to do so, the auditor shall assess and charge each class of property of every such owner or operator with the taxes properly chargeable thereon, in a book to be kept by him for that purpose, as follows: (a) With the whole amount of taxes upon such property for state and state school purposes, if any such taxes are levied; (b) with the whole amount of taxes on such property in each county for county purposes; (c) with the whole amount of taxes on such property in each school district for free school and building purposes; and (d) with the whole amount of taxes on such property in each municipal corporation for each and all of the purposes for which a levy therein was made by the municipal authorities of such corporation.

CHAPTER 160

(H. B. 1018—By Delegate Phillips and Delegate Hutchinson)

[Passed April 13, 1985; in effect July 1, 1985. Approved by the Governor.]
AN ACT to repeal article ten-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the multistate tax compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10A. MULTISTATE TAX COMPACT.

§1. Repeal of article ratifying multistate tax compact.

1 Article ten-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 161
(Com. Sub. for S. B. 73—By Senator Loehr and Mr. Tonkovitch, Mr. President)

[Passed April 12, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to repeal article eleven, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article nine, and section three, article ten, both of said chapter eleven; to amend said chapter eleven by adding thereto a new article, designated article eleven; and to amend and reenact section one, article eleven-a of said chapter, all relating generally to death taxes imposed by this state; abolishing inheritance and transfer taxes for persons dying after June thirtieth, one thousand nine hundred eighty-five, but fully preserving such taxes for persons dying on or before such date; imposing estate taxes for persons dying after June thirtieth, one thousand nine hundred eighty-five; limiting amount of such estate tax to that for which full credit is allowed against federal estate taxes; permitting proration of such federal credit when property of decedent located in and taxed by two or more states; exempting from tax estates not required to file federal estate tax return; providing short title; defining terms; tying definitions of certain terms to definitions for federal estate tax purposes when terms used in similar context, and exceptions thereto; providing procedures for administration and collection of tax; incorporating provisions of West Virginia tax procedure and
administration act, except as specifically provided; providing for criminal penalties and adopting provisions of West Virginia tax crimes and penalties act; providing for termination of tax if credit against federal estate taxes for state taxes abolished; providing rules of construction and interpretation and for severability of provisions; and authorizing compromise of estate taxes under Uniform Act on Interstate Compromise of Death Taxes.

Be it enacted by the Legislature of West Virginia:

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

Article

10. Procedure and Administration.
11. Estate Taxes.
11A. Interstate Compromise of Inheritance and Death Taxes.

ARTICLE 9. CRIMES AND PENALTIES.

*§11-9-2. Application of this article.

1 (a) The provisions of this article shall apply to the following taxes imposed by chapter eleven: (1) The inheritance and transfer taxes and estate taxes imposed by article eleven; (2) the business franchise registration tax imposed by article twelve; (3) the annual tax on incomes of certain carriers imposed by article twelve-a; (4) the business and occupation tax imposed by article thirteen; (5) the gasoline and special fuels excise tax imposed by article fourteen; (6) the motor carrier road tax imposed by article fourteen-a; (7) the consumers sales and service tax imposed by article fifteen; (8) the use tax imposed by article fifteen-a; (9) the cigarette tax imposed by article seventeen; (10) the soft drinks tax imposed by article nineteen; (11) the personal income tax imposed by article twenty-one; and

* Clerk's Note: This section was also amended by H. B. 1693, which passed prior to this act.
(12) the corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedures and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

(a) The provisions of this article shall apply to the inheritance and transfer taxes, the estate tax, interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuels excise tax, the motor carrier road tax and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinafter.

(b) The provisions of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

ARTICLE 11. ESTATE TAXES.

§11-11-1. Short title; arrangement and classification.


§11-11-3. Imposition of tax.

§11-11-4. Tax on transfer of estate of residents; credit; property of residents defined.

§11-11-5. Tax on transfer of estate of nonresidents; property of nonresidents defined; exemption.

§11-11-6. Tax on transfer of estate of aliens.


* Clerk's Note: This section was also amended by H. B. 1693, which passed prior to this act.
§11-11-10. Amended returns.
§11-11-15. Interest.
§11-11-16. Receipts for taxes.
§11-11-17. Lien for nonpayment of tax; releases.
§11-11-18. Discharge of estate; notice of lien; limitation on lien, etc.
§11-11-20. Liability of personal representatives, etc.
§11-11-22. Duties and powers of corporate personal representatives of nonresident decedents.
§11-11-23. Proof of payment of death taxes to state of domicile.
§11-11-25. Tax due and payable from entire estate; third persons.
§11-11-26. Sale of real estate by personal representative to pay tax.
§11-11-28. Person paying tax entitled to reimbursement.
§11-11-29. Time for assessment of tax.
§11-11-30. Refund of excess tax due to overpayment of federal estate tax.
§11-11-31. Agreements as to amount of tax due.
§11-11-32. County commissions to furnish tax commissioner with names of decedents, etc.
§11-11-33. Administration of article by tax commissioner.
§11-11-34. Appointment of special appraisers.
§11-11-35. Secrecy of information.
§11-11-36. Money penalty for failure to produce records.
§11-11-37. Interpretation and construction.
§11-11-38. Estate to which article applies; former law preserved.
§11-11-39. Effectiveness of this article.
§11-11-40. General procedure and administration.
§11-11-41. Criminal penalties.
§11-11-42. Severability.

ARTICLE 11. ESTATE TAXES.

§11-11-1. Short title; arrangement and classification.

1 This article shall be known as the "West Virginia Estate Tax Act."


1 (a) General.—When used in this article, or in the administration of this article, terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.
(b) Terms defined.

(1) Alien.—The term “alien” means a decedent who at the time of his or her death, was not domiciled in this state or any other state of the United States, and was not a citizen of the United States.

(2) Decedent or transferor.—The terms “decedent” or “transferor” are used herein interchangeably and mean a deceased natural person by or from whom a transfer is made; and include any testator, intestate grantor, bargainor, vendor, assignor, donor, joint tenant or insured.

(3) Delegate.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function or functions mentioned or described in the context.

(4) Estate or property.—The terms “estate” or “property” mean the real or personal property or interest therein of a decedent or transferor, and includes all the following:

(A) All intangible personal property of a resident decedent within or without this state or subject to the jurisdiction of this state.

(B) All intangible personal property in this state belonging to a deceased nonresident of the United States, including all stock of a corporation organized under the laws of this state, or which has its principal place of business or does the major part of its business in this state, or of a federal corporation or national bank which has its principal place of business or does the major part of its business in this state, excluding, however, savings accounts and savings and loan associations operating under the authority of the state banking commissioner or the federal home loan bank board, and bank deposits, unless those deposits are held and used in connection with a business conducted or operated, in whole or in part, in this state.

(5) Federal credit.—The term “federal credit” means the maximum amount of the credit for state death taxes allowable by Section 2011, credit against federal estate tax (or Section 2102 in the case of an alien) and Section 2602,
credit against the federal tax on generation-skipping transfers of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to a decedent's taxable estate. The term "maximum amount" shall be construed so as to take full advantage of such credit as the laws of the United States may allow: Provided, That in no event shall such amount be less than the federal credit allowable by Sections 2011, 2102 and 2602 of the Internal Revenue Code, as it existed on January one, one thousand nine hundred eighty-five.

(6) *Gross estate.*—The term "gross estate" means the gross estate of the decedent as defined in Section 2031 (or Section 2103 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(7) *Includes and including.*—The words "includes" and "including" when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(8) *Intangible personal property.*—The term "intangible personal property" means incorporeal personal property including deposits in banks, negotiable instruments, mortgages, debts, receivables, shares of stock, bonds, notes, credits, evidences of an interest in personal property, evidences of debt and choses in action generally.

(9) *Internal Revenue Code.*—The term "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five, including all changes to such code enacted subsequent to such date, that are similar to or a replacement of the section cited or referred to.

(10) *Net estate.*—The term "net estate" means the net estate of the decedent as defined in Section 2051 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(11) *Nonresident.*—The term "nonresident" means a decedent who was a citizen of the United States, but was domiciled outside the state of West Virginia at the time of his or her death.
(12) Notice.—The term "notice" means a written notice sent to the last known address of the addressee and shall be effective upon mailing.

(13) Other state.—The term "other state" means any state of the fifty states in the United States (other than this state) and includes the District of Columbia and any possession or territory of the United States.

(14) Person.—The term "person" includes natural person, corporation, society, association, partnership, joint venture, syndicate, estate, trust or other entity under which business or other activities may be conducted.

(15) Person required to file.—The phrase "person required to file" means any person, including a personal representative, qualified heir, distributee or trustee required or permitted to file a federal estate tax return, or a West Virginia estate tax return, pursuant to the provisions of the Internal Revenue Code or this article.

(16) Personal representative.—The terms "personal representative" and "fiduciary" are used interchangeably and mean:

(A) The personal representative of the estate of the decedent, appointed, qualified and acting within this state; or

(B) If there is no personal representative appointed, qualified and acting within this state, then any person in actual or constructive possession of the West Virginia gross estate of the decedent. The term "personal representative" includes the executor of a will, the administrator of the estate of a deceased person, the administrator of such estate with the will annexed, the administrator de bonis non of such estate, whether there be a will or not, the sheriff or other officer lawfully charged with the administration of the estate of a deceased person, and every other curator or committee of a decedent’s estate for or against whom suits may be brought for causes of action which accrued to or against such decedent.

(17) Real property situated in this state.—The phrase "real property situated in this state" means any and all interests in real property located in this state, including leasehold interests, royalty interests, production payments and working interests in coal, oil, gas and other natural resources.
(18) Resident.—The term "resident" means a decedent who was domiciled in the state of West Virginia at the time of his or her death.

(19) State.—The term "state" means any state, territory or possession of the United States and the District of Columbia.

(20) Tangible personal property.—The term "tangible personal property" means corporeal personal property including money.

(21) Tax.—The term "tax" means the tax imposed by this article, and includes any additions to tax, penalties and interest imposed by this article or article ten of this chapter.

(22) Tax commissioner.—The term "tax commissioner" means the tax commissioner of the state of West Virginia or his delegate.

(23) Taxable estate.—The term "taxable estate" means the taxable estate of the decedent as defined in Section 2051 (or Section 2106 in the case of an alien) of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States.

(24) Taxpayer.—The term "taxpayer" means any person required to file a return for the tax imposed by this article and any person liable for payment of the tax imposed by this article.

(25) This code.—The term "this code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(26) This state.—The term "this state" means the state of West Virginia.

(27) Transfer.—The term "transfer" means "transfer" as defined in Sections 2001, 2101, 2601 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States. It includes the passage of any property, or any interest therein, or income therefrom, in possession or enjoyment, present or future, in trust or otherwise, whether by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift or appointment.

(28) Transferee.—The term "transferee" means any person to whom a transfer is made and includes any legatee, devisee, heir, next of kin, grantee, donee, vendee, assignee, successor, survivor or beneficiary.
173  (29)  United States.—The term "United States," when
174  used in a geographical sense, includes only the fifty states
175  and the District of Columbia.
176  (30)  Value.—The term "value" means the value of
177  property, the value of the gross estate or the value of the
178  taxable estate as finally determined for federal estate tax
179  purposes under the laws of the United States relating to
180  federal estate taxes.
181  (c)  Any term used in this article shall have the same
182  meaning as when used in a comparable context in the laws
183  of the United States relative to estate taxes, unless a
184  different meaning is clearly required by the provisions of
185  this article. Any reference in this article to the laws of the
186  United States relating to federal estate taxes shall mean the
187  provisions of the Internal Revenue Code of 1954, and
188  amendments thereto, and other provisions of the laws of the
189  United States relating to federal estate taxes, as the same
190  may be or become effective at any time or from time to time.

§11-11-3.  Imposition of tax.
1  Whenever a federal estate tax is payable to the United
2  States, there is hereby imposed a West Virginia estate tax
3  equal to the portion, if any, of the maximum allowable
4  amount of federal credit for state death taxes which is
5  attributable to property located in this state, or within its
6  taxing jurisdiction. In no event, however, shall the estate
7  tax hereby imposed result in a total death tax liability to
8  this state and the United States in excess of the death tax
9  liability to the United States which would result if this
10  article were not in effect.

§11-11-4.  Tax on transfer of estate of residents; credit;
property of residents defined.
1  (a)  Imposition of tax.—A tax in the amount of the
2  federal credit is imposed on the transfer of the taxable
3  estate of every resident decedent, subject, where applicable,
4  to the credit provided for in subsection (b).
5  (b)  Credit.—If property of a resident is subject to a
6  death tax imposed by another state for which a federal
7  credit is allowed, the amount due under this section shall be
8  credited with the lesser of:
9  (1)  The amount of the death tax paid to the other state,
or states, and credited against the federal estate tax and
federal tax on generation-skipping transfers; and
(2) The amount computed by multiplying the amount of
the federal credit by a fraction, the numerator of which is
the value of that part of the gross estate over which another
state (or states) has (or have) jurisdiction to the same extent
to which West Virginia would exert jurisdiction under this
article with respect to residents of such other state (or
states). The denominator of the fraction shall be the value of
the decedent's gross estate.
(c) Property of resident.—The property of a resident
includes:
1. Real property situated in this state;
2. Tangible personal property having its actual situs in
this state; and
3. Intangible personal property owned by the resident,
regardless of where it is located.
§11-11-5. Tax on transfer of estate of nonresidents; property of
nonresidents defined; exemption.
(a) Imposition of tax.—A tax in an amount computed as
provided in this section is imposed on the transfer of the
taxable estate located in West Virginia of every nonresident
decedent.
(b) Amount of tax.—The tax shall be an amount
computed by multiplying the federal credit by a fraction,
the numerator of which is the value of that part of the gross
estate over which West Virginia has jurisdiction for estate
tax purposes. The denominator shall be the value of the
decedent's gross estate.
(c) Property of nonresident.—For purposes of this
section, property included in the gross estate of a
nonresident which is taxable under this section shall
include:
1. Real property and real property interests located in
this state, including (but not limited to) mineral interests,
royalties, production payments, leasehold interests or
working interests in coal, oil, gas or any other natural
resource.
2. Tangible personal property having an actual situs in
this state.
§11-11-6. Tax on transfer of estate of aliens.

(a) Imposition of tax.—A tax in the amount computed as provided in this section is imposed on the transfer of the taxable estate located in West Virginia of every alien. Taxable transfers include:

(1) Real property situated in this state;

(2) Tangible personal property having an actual situs in this state; and

(3) Intangible personal property physically present within this state of every decedent who, at the time of his or her death, was not a citizen of the United States.

(b) Amount of tax.—The tax shall be an amount computed by multiplying the federal credit by a fraction, the numerator of which shall be the value of that part of the gross estate over which this state has jurisdiction for estate tax purposes. The denominator shall be the value of the decedent's gross, wherever situate, that is taxable by the United States.

(c) Stock of West Virginia corporations.—For purposes of this section, stock in a corporation organized under the laws of this state shall be deemed to be physically present within this state.


The personal representative, within two months after the decedent's death, or within a like period after qualifying as such, shall give written notice of the decedent's death to the tax commissioner on the form prepared and published by the tax department known as the preliminary notice and report. If a federal estate tax return is required by the applicable provisions of the federal Internal Revenue Code, then a copy of the preliminary notice filed with the federal government may be filed with the tax commissioner in lieu of such preliminary notice and report.


(a) When no return required.—No West Virginia estate tax return needs to be filed if the estate of the decedent is not subject to the tax imposed by this article.

(b) Returns by personal representative.—The personal representative of every estate subject to the tax imposed by this article, who is required by the laws of the United States
to file a federal estate tax return, shall file with the tax commissioner, on or before the date the federal estate tax return is required to be filed:
(1) A return for the tax due under this article; and
(2) An executed copy of the federal estate tax return.
(c) Returns by beneficiaries.
(1) If the personal representative fails to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein. The providing of such information shall not, in and of itself, exonerate the personal representative from any additions to tax or penalties prescribed by law for failure to file a complete return.
(2) Upon notice from the tax commissioner, a beneficiary of the estate, or other person holding a legal or beneficial interest therein, shall file a return under this article providing such information as the tax commissioner may request pertaining to the interest of the beneficiary, or other person, in the estate of the decedent.
(d) Returns due.—Returns made under this article shall be filed within nine months after the date of the decedent's death.
(e) Place of filing.—Estate tax returns shall be filed with the tax commissioner at his office in Charleston, West Virginia.

(a) Extension of time.—If the personal representative has obtained an extension of time for filing the federal estate tax return, the filing required by section eight shall be extended until the end of the time period granted in the extension of time for filing the federal estate tax return.
(b) Copy of federal extension.—Upon obtaining an extension of time for filing the federal estate tax return, the personal representative shall provide the tax commissioner with a true copy of the instrument providing for this extension within thirty days after receipt of it.
(c) Payment of tax.—An extension of the time for filing a return shall not operate to extend the time for payment of the tax.
§11-11-10. Amended returns.

1 (a) When required.—If the personal representative files an amended federal estate tax return, he shall, within sixty days thereafter, file an amended return under this article, and give such information as the tax commissioner may require. Such amended return shall include a copy of the amended federal estate tax return.

2 (b) Payment of additional tax.—Any additional tax due under this article shall be remitted when the amended return is filed.


1 (a) Authority of tax commissioner to execute return.—If any person fails to file a return at the time prescribed by law, or files (willfully or otherwise) a false or fraudulent return, the tax commissioner shall make the return from his own knowledge and from such information as he can obtain through testimony or otherwise.

2 (b) Status of returns.—A return so made and subscribed by the tax commissioner shall be prima facie good and sufficient for all legal purposes.


1 (a) Report of federal change.—If the amount of the federal taxable estate reported on federal estate tax return is changed or corrected by the United States Internal Revenue Service, or other competent authority, the personal representative shall report the change or correction within ninety days after the final determination of the change, or correction, or as otherwise required by the tax commissioner. Such report shall concede the accuracy of the change, or correction, or state whether and wherein the determination is believed to be erroneous. The imposition of an additional federal estate tax under Section 2032A of the Internal Revenue Code shall constitute a change. The tax commissioner may by regulation prescribe exceptions to the requirements of this section as he deems appropriate.

2 (b) Payment of deficiency.—If, based upon any deficiency in federal estate tax and the ground therefore, it shall appear that the amount of tax previously paid under this article is less than the amount of tax due and owing, the
difference together with interest at the rate of one percent
per month from the date the tax became delinquent under
this article shall be remitted at the time the notice required
by this section is filed.
(c) Failure to give notice.—In the event the personal
representative required to file the return and pay the tax
required by this article shall fail to give the notice required
by this section, any additional tax which may be due and
owing may be assessed by the tax commissioner at any time
notwithstanding the provisions of section fifteen, article
ten of this chapter.

(a) Payment by personal representative.—The tax
imposed by this article shall be paid by the personal
representative. Liability for payment of the tax continues
until the tax is paid.
(b) Due date.—The tax imposed by this article is due
and payable at the date of the decedent’s death.
(c) Delinquent date.—The tax imposed by this article
becomes delinquent upon the expiration of nine months
after the date on which it becomes due and payable, if not
paid within that time.

(a) General.—If an extension of time for payment of
federal estate tax has been granted and the tax
commissioner finds that payment by the due date of the tax
imposed by this article, or any part thereof, would impose
undue hardship upon the estate, the tax commissioner may
extend the time for payment of any such part, but no
extension shall be for more than one year at a time. The
aggregate of extensions with respect to any estate shall not
exceed ten years from the due date.
(b) Payment of tax where extension granted.—If an
extension of time for payment has been granted under this
section, the amount in respect of which the extension is
granted shall be paid on or before the date of the expiration
of the period of the extension, unless a further extension is
granted. If the time for payment is thus extended, there
shall be collected, as part of such amount, interest at the
rate of twelve percent per annum of the amount due, from
§11-11-15. Interest.

(a) Rate.—The tax imposed by this article does not bear interest if it is paid before the expiration of nine months after the date of death of the decedent. If that tax is paid after that date, the tax bears interest at the rate of twelve percent per annum from the date by which it should have been paid (determined without regard to any extension of time for payment) until the date it is paid.

(b) Application of payment.—Every payment of delinquent tax shall be applied, first, to any interest due on that tax, secondly, to any additions to tax or penalty imposed by article ten of this chapter, and then, if there is any balance, to the tax itself.

§11-11-16. Receipts for taxes.

(a) Receipts in triplicate.—The tax commissioner shall issue to the personal representative, upon payment of the tax imposed by this article, receipts in triplicate, any of which shall be sufficient evidence of such payment, and shall entitle the personal representative to be credited and allowed the amount thereof by any county commission or court having jurisdiction to audit or settle his accounts.

(b) Application of personal representative for receipt.—If the personal representative files a complete and correct return under this article, and there has been a final determination of the federal estate tax liability, he may make written application to the tax commissioner for determination of the amount of the tax and discharge from personal liability therefor. The tax commissioner, as soon as possible, and in any event within one year after receipt of such application, shall notify the personal representative of the amount of the tax; and upon payment thereof the personal representative shall be discharged from personal liability for any additional tax thereafter found to be due, and shall be entitled to receive from the tax commissioner a receipt in writing showing such discharge: Provided, That such discharge shall not operate to release the gross estate of the lien of any additional tax that may thereafter be found to be due nor release the personal representative if there has been negligence or fraud.
§11-11-17. Lien for nonpayment of tax; releases.

(a) Lien created.—Unless the tax imposed by this article is sooner paid in full, it shall be a lien for ten years after the death of the decedent upon all property, real or personal, of such decedent located in this state, except as provided in subsection (b).

(b) Exceptions.

(1) Such part of the property of the decedent as may at the time be subject to the lien provided for under subsection (a) shall be divested of such lien to the extent used for payment of charges against the estate or expenses of its administration allowed by the county commission or court having jurisdiction thereof.

(2) Such part of the personal property of the decedent as may at the time be subject to the lien provided for under subsection (a) shall be divested of such lien upon the conveyance or transfer of such property to a bona fide purchaser or holder of a security interest for an adequate and full consideration in money or money’s worth. Such liens shall then attach to the consideration received for such property from such purchaser or holder of a security interest.

(c) Real property.—Real property shall not be divested of such lien, except as provided in subdivision (1), subsection (b) and subsection (d) of this section.

(d) Release of lien.—When any lien under this section has attached and the tax commissioner is satisfied that no tax liability exists, or that the tax liability of the estate has been fully discharged, the tax commissioner shall issue a certificate releasing all property of such estate from the lien herein imposed. If the tax commissioner is satisfied that the tax liability of the estate has been provided for, he shall issue a certificate releasing any surplus property of such estate from the lien imposed by this section.

§11-11-18. Discharge of estate; notice of lien; limitation on lien; etc.

(a) Where no receipt for payment of the taxes, or no receipt of nonliability for taxes has been issued or recorded as provided for in this article, the property constituting the estate of the decedent in this state shall be deemed fully acquitted and discharged of all liability for estate taxes
under this article after a lapse of ten years from the date of
the filing with the tax commissioner of notice of the
decedent's death, or after a lapse of ten years from the date
of the filing with the tax commissioner of an estate tax
return, whichever date shall be earlier, unless the tax
commissioner shall make out and file and have recorded in
the office of the clerk of the county wherein any part of the
estate of the decedent may be situated in this state, a notice
of lien against the property of the estate, specifying the
amount or approximate amount of taxes claimed to be due
to the state under this article, which notice of lien shall
continue said lien in force for an additional period of five
years, or until payment is made.

(b) Notwithstanding anything to the contrary in this
section or this article, no lien for estate taxes under this
article shall continue for more than twenty years from the
date of death of the decedent, whether the decedent be a
resident or a nonresident of this state.

§11-11-19. Final accounting delayed until liability for tax
determined.

(a) No final account of a personal representative in any
probate proceeding, who is required to file a federal estate
tax return, shall be allowed and approved by the county
commission, or the clerk thereof, before whom such
proceeding is pending, unless the commission finds that the
tax imposed on the transfer of property by this article has
been paid in full, or that no such tax is due.

(b) No final account of a personal representative of an
estate shall be allowed by any county commission, or clerk
thereof, unless such account shows and the county
commission, or clerk thereof, finds that all taxes imposed
by this article upon such personal representative, which
have become payable, have been paid.

(c) The certificate of waiver and/or acquittance of the
tax commissioner of nonliability for taxes, or his receipt for
the amount of the tax herein certified, shall be conclusive in
such proceedings as to the liability or the payment of the
tax, to the extent of said certificate or waiver and/or
acquittance.

§11-11-20. Liability of personal representatives, etc.

(a) *Personal representative.*—Any personal
2 representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is personally liable for the taxes due to the extent of the value of any property that may come or that may have come into the possession of the personal representative. Security for payment of taxes due under this article shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(b) Other person.—Any person who has the control, custody or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside this state without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this article, is liable for the taxes due under this article to the extent of the value of the property delivered. Security for payment of the taxes due under this article shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside this state by such a person.

(c) Persons not having control.—For the purpose of this section, persons do not have control, custody or possession of a decedent's property, if they are not responsible for paying the tax due under this section, such as transferees, which term includes, but is not limited to, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe deposit companies and life insurance companies.

(d) Reliance upon release.—For the purposes of this section, any person who has the control, custody or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release furnished by the tax commissioner to the personal representative as evidence of compliance with the requirements of this article, and make such deliveries and transfers as the personal representative may direct without being liable for any taxes due under this article.

(e) Discharge of personal liability for federal estate taxes.—If a personal representative receives a discharge
from personal liability for federal estate taxes pursuant to
Section 2204 of the Internal Revenue Code, and if the
personal representative makes written application to the
tax commissioner for determination of the amount of the
tax due under this article and discharged from personal
liability, the tax commissioner, within two months after
receiving satisfactory evidence of the Section 2204
discharge, but not after the expiration of the period for
issuance of a deficiency assessment, shall notify the
personal representative of the amount of the tax. The
personal representative, upon payment of the amount of
which he is notified (other than any portion for which an
extension of time for payment has been granted), and upon
furnishing any bond which may be required for any amount
for which the time for payment has been extended, shall be
discharged from personal liability for any deficiency in tax
thereafter found to be due and shall be entitled to a receipt
or writing showing the discharge.

§11-11-21. Duty of resident personal representative of
nonresident decedent.

(a) General.—A resident personal representative,
holding personal property (tangible or intangible) of a
decedent nonresident subject to tax under this article, shall
not deliver such property to the personal representative of
the domiciliary estate, or to any other person, until after the
resident personal representative shall have deducted the
tax therefrom, or collected it from the personal
representative of the domiciliary estate and remitted it to
the tax commissioner.

(b) Failure of domiciliary personal representative to pay
tax.—When the transfer of personal property of a
nonresident decedent is taxable under this article and the
personal representative of the domiciliary estate neglects or
refuses to pay the tax upon demand of a resident personal
representative, or if for any reason the tax is not paid within
nine months after the decedent's death, the resident
personal representative may, upon such notice as the
circuit court of Kanawha County may direct, be
authorized to sell such property, or if the same can be
divided, such portion thereof as may be necessary, and shall
21 deduct the tax from the proceeds of such sale and shall
22 account for the balance, if any, in lieu of such property.

§11-11-22. Duties and powers of corporate personal
representatives of nonresident decedents.

1 If the personal representative of the estate of a
2 nonresident is a corporation duly authorized, qualified and
3 acting as such personal representative in the jurisdiction of
4 the domicile of the decedent, it shall be under the duties and
5 obligations as to the giving of notices and filing of returns
6 required by this article, and may bring and defend actions
7 and suits as may be authorized or permitted by this article,
8 and articles nine and ten of this chapter, to the same extent
9 as an individual personal representative, notwithstanding
10 that such corporation may be prohibited from exercising in
11 this state any powers as personal representative. Nothing
12 herein contained shall be taken or construed as authorizing
13 corporations not authorized to do business in this state to
14 qualify or act as personal representative, administrator or
15 in any other fiduciary capacity, if otherwise prohibited by
16 the laws of this state, except to the extent herein expressly
17 provided.

§11-11-23. Proof of payment of death taxes to state of domicile.

1 (a) General.—At any time before the expiration of
2 eighteen months after the qualification in this state of any
3 executor of the will of, or administrator of the estate of, any
4 nonresident decedent, such executor or administrator shall
5 file with the clerk of the county commission of the county in
6 which he qualified proof that all death taxes which are due
7 to the state of domicile of such decedent, or to any political
8 subdivision thereof, have been paid, or secured, or that no
9 such taxes are due, as the case may be, unless it appears that
10 letters of probate or administration have been issued in the
11 state of domicile.
12 (b) Form of proof.—The proof required by subsection (a)
13 may be in the form of a certificate issued by the official or
14 body charged with the administration of the death tax laws
15 of the domiciliary state.
16 (c) Notice to domiciliary state if proof not filed.—If such
17 proof is not filed within eighteen months after the
18 qualification in this state of any personal representative of
a nonresident decedent, then the clerk of the county
commission shall forthwith notify by mail the official or
body of the domiciliary state charged with the
administration of the death tax laws thereof with respect to
such estate and shall state in such notice, so far as it is
known to him:

(1) The name, date of death and last domicile of such
decedent;
(2) The name and address of each executor or
administrator;
(3) A summary of the values of the real estate, tangible
personal property and intangible personal property,
wherever situated, belonging to such decedent at the time of
his death; and
(4) The fact that such executor or administrator has not
filed, within the time prescribed by law, proof of payment of
death taxes to the state of domicile of the nonresident
decedent.

To such notice the clerk of the county commission shall
attach a plain copy of the will and codicils of such decedent,
if he died testate, or, if he died intestate, a list of his heirs
and next of kin, so far as is known to such clerk.

(d) Petition of domiciliary state.—Within sixty days
after the mailing of the notice provided in the preceding
subsection, the official or body charged with the
administration of the death tax laws of the domiciliary state
may file with the county clerk in this state a petition for an
accounting in such estate. Such official body of the
domiciliary state shall, for the purpose of this article, be a
party interested for the purpose of petitioning such county
clerk for such an accounting. If such petition be filed within
the period of sixty days, such county clerk shall order such
accounting and upon such accounting being filed and
approved, shall decree the remission of the fiduciary
appointed by the domiciliary probate court of the balance
of the intangible personal property after payment of
creditors and expenses of administration in this state.

(e) Final accounting not granted without
compliance.—Unless the provisions of either subsection (c)
or (d) of this section shall have been complied with, no such
executor or administrator shall be entitled to a final
accounting or discharge by any county commission of this
state.

(a) General.—For purposes of this article, every person shall be presumed to have died a resident and not a nonresident of this state:

(1) If such person has dwelled or lodged in this state during and for the greater part of any period of twelve consecutive months in the twenty-four months next preceding the decedent's death, notwithstanding the fact that from time to time during such twenty-four months such person may have sojourned outside of this state, and without regard to whether or not such person:

(A) May have voted in this state;
(B) May have been entitled to vote in this state; or
(C) May have been assessed for taxes in this state.

(2) If such person has been a resident of this state, sojourning outside this state.

(b) Proof of domicile.—The burden of proof in an estate tax proceeding shall be upon any person claiming exemption by reason of alleged nonresidency. Domicile shall be determined exclusively in the proceedings provided in this chapter, and orders relating to domicile previously entered in any probate proceedings shall not be conclusive for purposes of the tax imposed by this article.

§11-11-25. Tax due and payable from entire estate; third persons.

If the tax, or any part thereof, is paid or collected out of that part of the estate passing to, or in possession of, any person other than the personal representative in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed, or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been paid before distribution of the estate, or whose interest in the estate is subject to an equal or prior liability for the payment of tax, debts or other charges against the estate. It is the purpose and intent of this section that, so far as is practical and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution; but the tax commissioner shall not be charged with enforcing contribution from any person.
§11-11-26. Sale of real estate by personal representative to pay tax.

Every personal representative shall have the same right and power to take possession of or sell, convey and dispose of real estate as assets of the estate for the payment of the tax imposed by this article, as he may have for the payment of the debts of the decedent.


(a) The estate of each decedent whose property shall be subject to the laws of this state shall be deemed prima facie liable for estate taxes under this article and shall be subject to a lien therefor in such amount as may be later determined to be due and payable on such estate as provided in this article.

(b) This presumption of liability shall begin on the date of the death of the decedent and shall continue until the full settlement of all taxes which may be found to be due under this article, the settlement to be shown by receipts for all taxes due to be issued by the tax commissioner as provided for in this article.

(c) Whenever it shall be made to appear to the tax commissioner that an estate is not subject to tax under this article, the tax commissioner shall issue to the personal representative a certificate in writing to that effect, showing such nonliability to tax, which certificate of nonliability shall have the same force and effect as a receipt showing payment. This certificate of nonliability shall be subject to record and admissible in evidence in like manner as receipts showing payment of taxes.

§11-11-28. Person paying tax entitled to reimbursement.

If the tax or any part thereof is paid or collected out of that part of the estate passing to or in possession of any person other than the personal representative in his capacity as such, such person shall be entitled to a reimbursement out of any part of the estate still undistributed, or by a just and equitable contribution by the person whose interest in the estate of the decedent would have been reduced if the tax had been before the distribution of the estate, or whose interest in the estate is subject to an equal or prior liability for the payment of the
tax, debts or other charges against the estate, it being the 
purpose and intent of this section that insofar as is 
practical, and unless otherwise directed by the will of the 
decedent, the tax shall be paid out of the estate before its 
distribution: Provided, That the tax commissioner shall not 
be charged with enforcing contribution from any person or 

§11-11-29. Time for assessment of tax.

(a) General.—The amount of estate tax due under this 
article shall be assessed on or before whichever of the 
following dates occurs last:
(1) The period specified in section fifteen, article ten of 
this chapter, during which an assessment may generally be 
issued;
(2) Within a period expiring ninety days after the last 
day on which the assessment of a deficiency in federal estate 
tax may lawfully be made under applicable provisions of 
the Internal Revenue Code; or
(3) Within ninety days after receipt of notice from a 
personal representative that the federal estate tax liability 
of an estate has been changed.

(b) Exceptions.—In the case of a false or fraudulent 
return, or failure to file a return on or before the last day 
prescribed for filing, or failure of the personal 
representative to give the tax commissioner notice of a 
change in the federal estate tax liability of an estate, the tax 
may be assessed at any time.

§11-11-30. Refund of excess tax due to overpayment of federal 
estate tax.

(a) Claim for refund.—Notwithstanding the provisions 
of section fourteen, article ten of this chapter, in the event of 
a final determination by the United States Internal Revenue 
Service, or other competent authority, of an overpayment of 
the estate's federal estate tax liability, the period of 
limitation upon claiming a refund reflecting such final 
determination in the taxes due under this article shall not 
expire until six months after such determination is made by 
the United States Internal Revenue Service or other 
competent authority.

(b) When determination becomes final.—For purposes
of this section, an administrative determination shall be deemed to have become final on the date of receipt by the personal representative, or other interested party, of the final payment to be made refunding federal estate tax or upon the last date on which the personal representative, or any other interested party, shall receive notice from the United States that an overpayment of federal estate tax has been credited by the United States against any liability other than the federal estate tax of said estate. A final judicial determination shall be deemed to have occurred on the date on which any judgment entered by a court of competent jurisdiction, determining that there has been an overpayment of federal estate tax, becomes final.

§11-11-31. Agreements as to amount of tax due.

For the purpose of facilitating the settlement and distribution of estates held by personal representatives, the tax commissioner may, on behalf of the state, agree to the amount of taxes due or to become due from such personal representative under the provisions of this article. Payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

§11-11-32. County commissions to furnish tax commissioner with names of decedents, etc.

The county commission of all counties of this state, or the clerks thereof, shall, on or before the tenth day of January, April, July and October of each calendar year, notify the tax commissioner of the names of all decedents, the names and addresses of the respective executors, administrators or curators appointed and the amount of the bonds, if any, with respect to all estates of decedents whose wills have been probated or presented for probate before the county clerk, or upon which letters testamentary or upon whose estates letters of administration or curatorship have been sought or granted, during the preceding quarter. Such report shall contain any other information which the county clerk may have concerning the estates of such decedents. The county clerk shall also furnish forthwith such further information, from the records and files of the clerk’s office in regard to such estates, as the tax commissioner may from time to time require.
§11-11-33. Administration of article by tax commissioner.

(a) The tax commissioner shall administer and enforce the tax imposed by this article. He is authorized to require such facts and information to be reported as he deems necessary to enforce the provisions of this article.

(b) Rules and regulations promulgated by the tax commissioner shall follow as nearly as practicable the rules and regulations of the secretary of the treasury of the United States. The construction of this article shall further its purpose to simplify the preparation of tax returns, aid in its interpretations through use of federal precedents and improve its enforcement.

(c) The tax commissioner may prescribe the form and content of any return or other documents, including a copy of part or all of a federal return, required to be filed under the provisions of this article.

(d) Reports and returns required to be filed under this article shall be preserved for four years and thereafter until the tax commissioner orders them destroyed.

§11-11-34. Appointment of special appraisers.

The tax commissioner may employ special appraisers for the purpose of determining the value of any property which is, or is believed by the tax commissioner to be, subject to the tax imposed by this article. Such special appraisers shall be paid such compensation as the tax commissioner deems proper.

§11-11-35. Secrecy of information.

Notwithstanding the provisions of article ten of this chapter to the contrary, the tax return of an estate shall be open to inspection by or disclosure to:

1. The personal representative of the estate;
2. Any heir at law, next of kin or beneficiary under the will of the decedent, but only if the tax commissioner finds that this heir at law, next of kin or beneficiary has a material interest which will be affected by information contained in the return; or
3. The attorney for the estate or its personal representative or the attorney-in-fact duly authorized by any of the persons described in subdivision (1) or (2).
§11-11-36. Money penalty for failure to produce records.

1 If any person:
2   (1) Fails to comply with any duty imposed upon him by
3       this article; or
4   (2) Having in his possession or control any record, file or
5       paper containing or supposed to contain any information
6       concerning the estate of the decedent, or, having in his
7       possession or control any property comprising part of the
8       gross estate of the decedent, fails to exhibit the same upon
9       request to the tax commissioner or any examiner, appraiser
10      or attorney appointed pursuant to this article, who desires
11      to examine the same in the performance of his duties under
12      the article, such person shall be liable to a money penalty of
13      not less than ten nor more than five hundred dollars to be
14      recovered, with costs of suit, in a civil action in the name of
15      the state.

§11-11-37. Interpretation and construction.

1   (a) No inference, implication or presumption of
2       legislative construction or intent shall be drawn or made by
3       reason of the location or grouping of any particular section,
4       provision or portion of this article; and no legal effect shall
5       be given to any descriptive matter or heading relating to any
6       section, subsection or paragraph of this article.
7   (b) When not otherwise provided for in this article, the
8       rules of interpretation and construction applicable to the
9       estate tax laws of the United States shall apply to, and be
10      followed in, the interpretation of this article.
11   (c) The provisions of this article shall be liberally
12      construed in order to ensure that the state of domicile of any
13      decedent shall receive any death taxes, together with
14      interest and penalties thereon, due it.

§11-11-38. Estates to which article applies; former law
preserved.

1   (a) Persons dying after June 30, 1985.—Except as
2      otherwise specifically provided, the provisions of this
3      article shall apply to the estate of every person dying on or
4      after the first day of July, one thousand nine hundred
5      eighty-five.
6   (b) Persons dying before July 1, 1985.—With respect to
7      persons dying prior to the first day of July, one thousand
§11-11-39. Effectiveness of this article.

This article shall remain in force and effect until either one of the following events occurs:

1. This article is repealed by the Legislature; or
2. The government of the United States ceases to allow credit against its estate tax for payment of state death taxes.

§11-11-40. General procedure and administration.

The provisions of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were set forth in extenso in this article, except where it is expressly and specifically provided in this article that a particular provision of this article shall govern and control.

§11-11-41. Criminal penalties.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-11-42. Severability.

If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect, impair or invalidate other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.

ARTICLE 11A. INTERSTATE COMPROMISE OF INHERITANCE AND DEATH TAXES.


When the state tax commissioner claims that a decedent
was domiciled in this state at the time of his death and the
taxing authorities of another state or states make a like
claim on behalf of their state or states, the state tax
commissioner may make a written agreement of
compromise with the other taxing authorities and the
executor or administrator that a certain sum shall be
accepted in full satisfaction of any and all death taxes
imposed by this state, including any additions to tax,
interest or penalties to the date of filing the agreement. The
agreement shall also fix the amount to be accepted by the
other states in full satisfaction of death taxes. The executor
or administrator is hereby authorized to make such
agreement. Either the state tax commissioner or the
executor or administrator shall file the agreement, or a
duplicate, with the authority that would be empowered to
assess inheritance taxes for this state if there had been no
agreement; and thereupon the tax shall be deemed
conclusively fixed as therein provided. Unless the tax is
paid within thirty days after filing the agreement, additions
to tax, interest and penalties shall thereafter accrue upon
the amount fixed in the agreement but the time between the
decedent's death and the filing shall not be included in
computing the same.

CHAPTER 162

AN ACT to repeal article twelve-a, of chapter eleven of the code
of West Virginia, one thousand nine hundred thirty-one, as
amended; to repeal section seventeen-a, article twenty-four of
said chapter eleven; to amend and reenact section five, article
thirteen, chapter eight of said code; to amend and reenact
section two, article nine, chapter eleven of said code; to amend
and reenact section three, article ten, of said chapter eleven;
to further amend said article ten by adding thereto a new
section, designated section eighteen-a; to amend article twelve-
a of said chapter eleven, by adding thereto a new section,
designated section twenty-four; to amend and reenact sections
two, two-d, two-m and nine, article thirteen of said chapter eleven; to further amend said article thirteen by adding thereto two new sections, designated section twenty-eight and section twenty-nine; to amend and reenact section eight, article twenty-one of said chapter eleven; to amend and reenact sections three, four, five, six, seven, nine, thirteen and nineteen, article twenty-four of said chapter eleven; to further amend said article twenty-four by adding thereto a new section, designated section nine-a; to further amend said article twenty-four by redesignating section thirteen-a as section thirteen-b, and reenacting the same; and by adding a new section thereto, designated section thirteen-a; to further amend said chapter eleven by adding thereto three new articles, designated articles thirteen-a, thirteen-b and twenty-three, all relating generally to state tax reform of state taxes imposed on businesses; preserving the power of municipalities to continue imposing business and occupation or privilege taxes on business activity engaged in within the municipality and as to such: Prohibiting multiple taxation of the same gross income under the same classification by two or more municipalities; authorizing the tax commissioner to prescribe regulations for apportionment of gross receipts, and requiring administrative procedures for assessment and collection of tax; making “West Virginia Tax Crimes and Penalties Act” and “West Virginia Tax Procedure and Administration Act” applicable to the taxes imposed by articles thirteen-a, thirteen-b and twenty-three, chapter eleven of this code; imposing additions to tax for underpayment of estimated tax and prescribing when additions are not applicable; imposing annual business and occupation privilege tax against persons engaging in businesses and other activities in this state until the first day of July, one thousand nine hundred eighty-seven and thereafter, only on the privilege of providing public utility service and generating electric power, with certain rate changes and effective dates therefor; requiring tax commissioner to prepare certain comparative study reports in relation to the new tax structure, dates for submission thereof to governor and legislature; requiring tax year and method of accounting for purposes of business and occupation taxes conforming with methods for federal income tax purposes; providing transition rules and effective dates for changes in business and occupation tax and surtax; imposing severance tax act and as to such act, providing for: Short title, definitions, determination of tax
base, imposition of tax, rates of tax, procedures for com­putation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into severance tax act, effective dates and transition rules; and requiring filing of information return, with civil penalty for failure to file; providing for tax credit for such tax against personal income tax and effective date thereof; imposing the telecommunications tax act, and as to such act, providing for: Short title, definitions, imposition of tax, rate of tax, procedures for computation, assessment and collection of tax, incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into telecommunications tax act, effective dates and transition rules; requiring filing of information return, with civil penalty for failure to file; imposing a business franchise tax act, and as to such act, providing for: Legislative finding, short title, definitions; determination of tax base; use of four-factor apportionment formula, double-weighting the sales factor; imposition of tax; rate of tax; procedures for computation, assessment and collection of tax; incorporation of provisions of "West Virginia Tax Crimes and Penalties Act" and "West Virginia Tax Procedure and Administration Act" into business franchise tax, effective dates and transition rules; providing for credits against franchise tax; requiring filing of information return with civil penalty for failure to file; defining terms in "West Virginia Corporation Net Income Tax Act" and as to such act providing for: Nine and three-quarters percent tax rate, phasing-down in equal steps over five-year period to nine percent tax rate; taxation of banks and other financial organizations; adjustments to federal taxable income to determine West Virginia income allocation and apportionment of income of multi-state taxpayers; use of four-factor formula for apportionment, double-weighting the sales factor; and procedures for computation, assessment and collection of tax, with effective dates.

Be it enacted by the Legislature of West Virginia:

That article twelve-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section seventeen-a, article twenty-four of said chapter eleven be repealed; that section five, article thirteen, chapter eight of said code
be amended and reenacted; that section two, article nine, chapter
eleven of said code be amended and reenacted; that section three,
article ten of said chapter eleven be amended and reenacted; that
said article ten be further amended by adding thereto a new section,
designated section eighteen-a; that said article twelve-a of said
chapter eleven, be amended by adding thereto a new section,
designated section twenty-four; that sections two, two-d, two-m and
nine, article thirteen of said chapter eleven be amended and
reenacted; that said article thirteen be further amended by adding
thereto two new sections, designated section twenty-eight and section
twenty-nine; that section eight, article twenty-one of said chapter
eleven be amended and reenacted; that sections three, four, five, six,
seven, nine, thirteen and nineteen, article twenty-four of said chapter
eleven be amended and reenacted; that said article twenty-four be
further amended by adding thereto a new section, designated section
nine-a; that said article twenty-four be further amended by
redesignating section thirteen-a as thirteen-b and reenacting the
same, and by adding thereto a new section, designated section
thirteen-a; and that said chapter eleven be further amended by
adding thereto three new articles, designated articles thirteen-a,
thirteen-b and twenty-three, all to read as follows:

Chapter
11. Taxation.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on
rates; effective date of tax; exemptions; activity in two
or more municipalities; administrative provisions.

(a) Authorization to impose tax.—Whenever any business activity
or occupation for which the state imposed its annual business and
occupation or privilege tax under article thirteen, chapter eleven of
this code, prior to July one, one thousand nine hundred eighty-seven,
is engaged in or carried on within the corporate limits of any
municipality, the governing body thereof shall have plenary power
and authority, unless prohibited by general law, to impose a similar
business and occupation tax thereon for the use of the municipality.

(b) Maximum tax rates.—In no case shall the rate of such
municipal business and occupation or privilege tax on a particular
activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of gross value or gross proceeds of sale under section two-m of said article thirteen.

(c) Effective date of local tax.—Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: Provided, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect.

(d) Exemptions.—A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein.

(e) Activity in two or more municipalities.—Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the tax commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the
taxpayer is located. Nothing in this subsection (e) shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) Administrative provisions.—The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection of such tax, which shall be similar to those procedures in article thirteen, chapter eleven of this code, as in existence on June thirtieth, one thousand nine hundred seventy-eight, or to those procedures in article ten, chapter eleven of this code, and shall conform with such provisions as they relate to waiver of penalties and additions to tax.

CHAPTER 11. TAXATION.

Article
10. Procedure and Administration.
12A. Annual Tax on Incomes of Certain Carriers.
13A. Severance Taxes.
13B. Telecommunications Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

(a) The provisions of this article shall apply to the following taxes imposed by chapter eleven:

(1) The inheritance and transfer taxes imposed by article eleven;

(2) The business franchise registration tax imposed by article twelve;

(3) The annual tax on incomes of certain carriers imposed by article twelve-a;

(4) The business and occupation tax imposed by article thirteen;

* Clerk's Note: This section was also amended by S. B. 73, which passed subsequent to this act.
(5) The gasoline and special fuels excise tax imposed by article fourteen;

(6) The motor carrier road tax imposed by article fourteen-a;

(7) The consumers sales and service tax imposed by article fifteen;

(8) The use tax imposed by article fifteen-a;

(9) The cigarette tax imposed by article seventeen;

(10) The soft drinks tax imposed by article nineteen;

(11) The personal income tax imposed by article twenty-one; and

(12) The corporation net income tax imposed by article twenty-four.

(b) The provisions of this article shall also apply to the West Virginia tax procedure and administration act in article ten of chapter eleven, and to any other articles of this chapter when such application is expressly provided for by the Legislature.

(c) Each and every provision of this article shall apply to the articles of this chapter listed in subsections (a) and (b), with like effect, as if the provisions of this article were applicable only to such tax and were set forth in extenso in such article.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

§11-10-18a. Additions to tax for failure to pay estimated tax.

*§11-10-3. Application of this article.

(a) The provisions of this article shall apply to the inheritance and transfer taxes, and interstate compromise and arbitration of inheritance and death taxes, the business franchise registration certificate tax, the annual tax on incomes of certain carriers, the business and occupation tax, the consumers sales and service tax, the use tax, the cigarette tax, the soft drinks tax, the personal income tax, the corporation net income tax, the gasoline and special fuel excise tax, the motor carrier road tax and the tax relief for elderly homeowners and renters administered by the state tax commissioner. This article shall not apply to ad valorem taxes on real and personal property, the corporate license tax or any other tax not listed hereinabove.

(b) The provision of this article shall also apply to any other article of this chapter when such application is expressly provided for by the Legislature.

* Clerk's Note: This section was also amended by S. B. 73, which passed subsequent to this act.
§11-10-18a. Additions to tax for failure to pay estimated tax.

(a) Addition to tax.—Except as provided in subsections (d) and (e), in the case of any underpayment of estimated tax there shall be added to the tax due for the taxable year, under any article administered by this article, an amount determined at the rate established under section seventeen of this article, on the amount of the underpayment of estimated tax for the period of the underpayment.

(b) Amount of underpayment.—For purposes of subsection (a), the amount of the underpayment shall be the excess of:

(1) The amount of the installment which would be required to be paid if the estimated tax were an amount equal to eighty percent of the tax shown on the return for the taxable year, or if no return was filed, eighty percent of the tax for such year, over

(2) The amount, if any, of the installments paid on or before the last date prescribed for payment.

(c) Period of underpayment.—The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

(1) The fifteenth day of the fourth month following the close of the taxable year.

(2) With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision (1), subsection (b) for such installment date.

(d) Exception.—Notwithstanding the provisions of the preceding subsections, the additions to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

(1) Prior year's tax.—The tax shown on the return of the taxpayer
for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

(2) *Prior year’s facts.*—An amount equal to the tax computed at the rates applicable to the current taxable year, but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

(3) *Annualized tax.*—

(A) An amount equal to eighty percent of the tax for the current taxable year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(ii) For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(iii) For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month; and

(iv) For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year.

(B) For purposes of this subdivision (3), the taxable income shall be placed on an annualized basis by:

(i) Multiplying by twelve the taxable income referred to in subparagraph (A), and

(ii) Dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine or eleven, as the case may be) referred to in subparagraph (A).

(e) *Short taxable year.*—The application of this section to taxable years of less than twelve months shall be in accordance with regulations prescribed by the tax commissioner.

ARTICLE 12A. ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS.

§11-12A-24. Repeal of article and date thereof; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.

(a) Each and every provision of article twelve-A of this chapter
is repealed for all tax periods beginning on and after the first day of July, one thousand nine hundred eighty-seven: Provided, That tax liabilities, if any, arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

(b) Persons who are calendar year taxpayers under this article shall file their annual return for calendar year one thousand nine hundred eighty-seven, on or before the fifteenth day of September, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before the fifteenth day of September, one thousand nine hundred eighty-seven, for their short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the tax commissioner.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income was under-reported on such annual return, or that any allowable deductions were over-reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: Provided, That such a taxpayer shall file a supplemental return for such year within one month after the close of each calendar quarter during which he received gross income for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is
to minimize the advantage or disadvantage associated with the different methods of accounting when the carrier income tax is repealed.

**ARTICLE 13. BUSINESS AND OCCUPATION TAX.**

§11-13-2. Imposition of privilege tax; reduction of rates and elimination of surtax on July 1, 1985, and exceptions thereto; elimination of certain classifications effective July 1, 1987, with retention thereafter of only classifications for public service utility businesses and electric power generation businesses.

§11-13-2d. Public service or utility business.

§11-13-2m. Business of generating or producing electric power; exception; rate.


§11-13-29. Tax commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

*§11-13-2. Imposition of privilege tax; reduction of rates and elimination of surtax on July 1, 1985, and exceptions thereto; elimination of certain classifications effective July 1, 1987, with retention thereafter of only classifications for public service utility businesses and electric power generation businesses.

(a) **Periods before July 1, 1987.**—For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k until expiration of such surtax on the first day of July, one thousand nine hundred eighty-five. On and after the first day of July, one thousand nine hundred eighty-five, the rates set forth in sections two-b through two-m, inclusive, shall be reduced by five percent through reduction of the rates applicable and in effect on the thirtieth day of June, one thousand nine hundred eighty-five, except that taxpayers exercising privileges in respect of severance, extraction and production of natural resource products and taxable at the rates set forth under section two-a of this article, shall not receive such rate reduction: Provided, That there shall be no such reduction of the tax imposed in section two-l for the use and benefit of counties and municipalities; Provided, further, That the additional, temporary surtax set forth in section two-k of this article shall, on and after

* Clerk's Note: This section was also amended by S. B. 705, which passed subsequent to this act.
the first day of July, one thousand nine hundred eighty-five, be nullified and of no further force or effect whatsoever.

(b) **Periods after June 30, 1987.**—For taxable years or months thereof beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five.

(c) If any person liable for any tax under sections two-a, two-b, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(e) Gross income included in the measure of the tax under sections two-a, two-b, two-l and two-m of this article shall neither be added nor deducted in computing the tax levied under the other sections of this article.

(f) A person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business
of selling his natural resources, manufactured products or electricity at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article.

(g) Persons exercising any privilege taxable under section two-b or two-m of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

(h) A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products, the production of which is taxable under sections two-a and two-l, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.

§11-13-2d. Public service or utility business.

Upon any person engaging or continuing within this State in any public service or utility business, except railroad, railroad car, express, pipeline, telephone and telegraph companies, water carriers by steamboat or steamship and motor carriers, there is likewise
hereby levied and shall be collected taxes on account of the business engaged in equal to gross income of the business multiplied by the respective rates as follows: Street and interurban and electric railways, one and four-tenths percent; water companies, four and four-tenths percent, except as to income received by municipally owned water plants; electric light and power companies, four percent on sales and demand charges for domestic purposes and commercial lighting and four percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants producing or purchasing electricity and distributing same: Provided, That electric light and power companies which engage in the supplying of public service but which do not generate or produce electric power shall be taxed on the gross income derived therefrom at the rate of three percent on sales and demand charges for domestic purposes and commercial lighting and three percent on sales and demand charges for all other purposes, except as to income received by municipally owned plants: Provided, however, That the sale of electric power under this section shall be taxed at the rate of two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five, and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.
§11-13-2m. Business of generating or producing electric power; exception; rates.

(1) Upon every person engaging or continuing within this State in the business of generating or producing electric power for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, when the sale thereof is not subject to tax under section two-d [§11-13-2d] of this article, the amount of the tax to be equal to the value of the electric power, as shown by the gross proceeds derived from the sale thereof by the generator or producer of the same multiplied by a rate of four percent, except that the rate shall be two and forty-six hundredths percent on that portion of the gross proceeds derived from the sale of electric power to a plant location of a customer engaged in a manufacturing activity, if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year, or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year: Provided, That such two and forty-six hundredths percent rate will be reduced to a rate of two and three hundred thirty-seven thousandths percent through occurrence of the contemplated five percent reduction of rates on the first day of July, one thousand nine hundred eighty-five, and with such rate to thereafter, on the first day of July, one thousand nine hundred eighty-seven, become two percent; natural gas companies, four and twenty-nine hundredths percent on the gross income; toll bridge companies, four and twenty-nine hundredths percent; and upon all other public service or utility business, two and eighty-six hundredths percent. The measure of this tax shall not include gross income derived from commerce between this State and other states of the United States or between this State and foreign countries. The measure of the tax under this section shall include only gross income received from the supplying of public services. The gross income of the taxpayer from any other activity shall be included in the measure of the tax imposed upon the appropriate section or sections of this article.

(2) The measure of this tax shall be the value of all electric power generated or produced in this State for sale, profit or commercial use, regardless of the place of sale or the fact that transmission may be to points outside this State: Provided, That the gross income received by municipally owned plants generating or producing electricity shall not be subject to tax under this article.

(a) Taxable year.—For purposes of the tax imposed by this article, a taxpayer’s taxable year shall be the same as the taxpayer’s taxable year for federal income tax purposes.

(b) Method of accounting.—A taxpayer’s method of accounting under this article shall be the same as the taxpayer’s method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the tax under this article shall be computed under such method that in the opinion of the tax commissioner clearly reflects such income.

(c) Adjustments.—In computing a taxpayer’s liability for tax for any taxable year under a method of accounting different from the method under which the taxpayer’s liability for tax under this article for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the tax commissioner, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.


(a) The provisions of sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article are inoperative as of the first day of July, one thousand nine hundred eighty-seven. Persons who are fiscal year taxpayers having a fiscal year ending on the thirtieth day of June, one thousand nine hundred eighty-seven, shall file their annual return for fiscal year one thousand nine hundred eighty-seven on or before the thirty-first day of July, one thousand nine hundred eighty-seven and remit the amount of any taxes shown thereon to be due.

(b) Persons who are calendar year taxpayers and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, and persons who are fiscal year taxpayers having a fiscal year ending on any date other than the thirtieth day of June, one thousand nine hundred eighty-seven, and who are not subject to the tax imposed by this article for months beginning on or after the first day of July, one thousand nine hundred eighty-seven, shall file their annual returns on or before the thirty-first day of July, one thousand nine hundred eighty-seven for the short taxable year which ended the thirtieth day of June, one thousand nine hundred eighty-seven, and remit the amount of any taxes shown thereon to be due. Persons required to file an annual return for a short taxable year may claim
a portion of the annual exemption allowed under section three of this article, determined in accordance with the amount of the exemption allowable for each month in the short taxable year. The five thousand dollar annual exemption allowed to producers of natural gas shall similarly be calculated and allowed on a monthly basis at the rate of four hundred sixteen dollars and sixty-six cents for each month of the short taxable year ending on the thirtieth day of June, one thousand nine hundred eighty-seven.

(c) Persons engaged in activities taxable under sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and two-l of this article prior to the first day of July, one thousand nine hundred eighty-seven, are taxable under either article thirteen-a or twenty-three of this chapter, or both, on and after such date.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending the thirtieth day of June one thousand nine hundred eighty-seven, computing their tax liability under such method. A taxpayer shall file an amended return for such year and pay any additional taxes due within thirty days after determining that gross income, gross proceeds of sale or gross value were under reported on such annual return, or that any allowable deductions were over reported.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending the thirtieth day of June, one thousand nine hundred eighty-seven, computing their tax liability under such method: Provided, That such a taxpayer shall file a supplemental return for such year within one month after the close of each quarter during which he received gross income or gross proceeds of sale for any activity or portion thereof completed prior to the first day of July, one thousand nine hundred eighty-seven, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the business and occupation tax no longer applies to the taxpayer's ongoing business activity.

(f) Tax liabilities, if any arising for taxable years ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if sections two-a, two-b, two-c, two-e, two-g, two-h, two-i, two-j, two-k and
two-l of this article had not been effectively repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.

§11-13-29. Tax Commissioner to furnish comparative study reports to Governor and Legislature, dates therefor.

The state tax commissioner, who will be recipient of informational reports and tax returns from taxpayers in respect of the revised state tax structure on business, beginning on the first day of July, one thousand nine hundred eighty-seven, shall furnish a comparative study report in respect of the data concerning businesses and their changed tax liabilities, entitlement to tax credits, and general categories wherein tax liability is substantially increased or lessened. Such report shall be furnished to the governor and to the Legislature at its regular sessions of the year one thousand nine hundred eighty-six and one thousand nine hundred eighty-seven, with particular emphasis on the elements of equity and adequacy that the acquired data may reflect in respect of the state's major industries and taxpayers, on the basis of their being subjected to taxation under the revised state tax structure.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-1. Short title; arrangement and classification.
§11-13A-3. Imposition of privilege tax, phase-in of modified rates and effective dates therefor.
§11-13A-4. Treatment processes as production.
§11-13A-5. Oil and gas operating units.
§11-13A-6. Additional tax on the severance, extraction and production of coal; deduction 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; expenditures 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.
§11-13A-10. Time for filing returns and paying tax; credit.
§11-13A-13. Place for filing returns or other documents.
§11-13A-14. Time and place for paying tax shown on returns.
§11-13A-16. Bond of taxpayer may be required.
§11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.
§11-13A-22. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

§11-13A-1. Short title; arrangement and classification.

This article may be cited as the “Severance Tax Act.” No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.


(a) General.—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) Terms defined.—

(1) “Coal” means and includes any material composed predominantly of hydrocarbons in a solid state.

(2) “Delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(3) “Economic interest” for the purpose of this article is synonymous with the economic interest ownership required by section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm’s length royalty shall not be considered as having an economic interest.
(4) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining.

(5) "Fiduciary" means and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity, where severed, determined after application of post production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, "gross value" is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the amount received or receivable by the taxpayer.

(B) For natural resources severed or processed (or both severed and processed) but not sold during a reporting period, gross value shall be determined as follows:

(i) If the natural resource is to be sold under the terms of an existing contract, the contract price shall be used in computing gross value.

(ii) If there is no existing contract, the fair market value for that grade and quality of the natural resource shall be used in computing gross value.

(C) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(D) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(E) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of the coal of similar grade and quality and in the same
condition immediately preceding the processing of the coal in this state.

(F) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the State of West Virginia and brought into the State of West Virginia by the taxpayer for the purpose of processing and consumption, the gross value is the fair market value of processing natural resources of similar grade and quality reduced by the fair market value of the coal of similar grade and quality and in the same condition immediately preceding the processing of the coal.

(G) In all instances, the gross value shall not be reduced by any state or federal taxes, royalties, sales commissions, or any other expense.

(H) For natural gas, gross value is the value of the natural gas at the wellhead immediately preceding transportation and transmission.

(7) “Mining” includes not merely the extraction of ores or minerals from the ground but also those treatment processes considered as mining under this article, and those treatment processes necessary or incidental thereto.

(8) “Natural resource” means all forms of minerals including, but not limited to, rock, stone, limestone, coal, shale, gravel, sand, clay, natural gas, oil and natural gas liquids which are contained in or on the soils or waters of this state, and includes standing timber.

(9) “Partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which natural resources are severed, extracted, reduced to possession and produced or prepared in this state for sale, profit or commercial use. “Partner” includes a member of such a syndicate, group, pool, joint venture or organization.

(10) “Person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.
(11) “Processed” or “processing” as applied to oil and natural gas shall not include any conversion or refining activities.

(12) “Related parties” means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm’s length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

(13) “Sale” includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof.

(14) “Severing” or “severed” means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That “severing” or “severed” shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from the earth, Provided, further, That “severing” or “severed” oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

(15) “Stock” includes shares in an association, joint-stock company or corporation.

(16) “Tax commissioner” means the tax commissioner of the state of West Virginia, or his delegate.

(17) “Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(18) “Taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind
engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest therein, the party who owns the natural resource or has an economic interest therein is the taxpayer.

(19) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(20) "This state" means the state of West Virginia.

§11-13A-3. Imposition of privilege tax; phase-in of modified rates and effective dates therefor.

(a) Upon every person exercising the privilege of engaging or continuing within this state in severing, extracting, reducing to possession and producing for sale, profit or commercial use any natural resource product or products there is hereby imposed a tax in the amount to be determined by the application of rates against the gross 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 rates, in the classifications and according to the effective dates in subsection (b) of this section.

(b) Tax rates; classifications; effective dates.—Beginning on and after the first day of July, one thousand nine hundred eighty-seven and for each first day of July thereafter, as specified below, the rates of tax on each respective classification and for each respective year are as follows:

(1) On coal, and including the thirty-five one hundredths (.35) of one percent additional severance tax on such coal for the benefit of counties and municipalities, as provided in section six of this article, on

July 1, 1987—three and eighty-five one hundredths (3.85) percent;

July 1, 1988—three and eighty-eight one hundredths (3.88) percent;

July 1, 1989—three and ninety-one one hundredths (3.91) percent;

July 1, 1990—three and ninety-four one hundredths (3.94) percent;

July 1, 1991—three and ninety-seven one hundredths (3.97) percent; and
July 1, 1992 and thereafter—four (4.0) percent.

(2) On limestone or sandstone quarried or mined, on
July 1, 1987—two and two-tenths (2.2) percent;
July 1, 1988—two and fifty-six one hundredths (2.56) percent;
July 1, 1989—two and ninety-two one hundredths (2.92) percent;
July 1, 1990—three and twenty-eight one hundredths (3.28) percent;
July 1, 1991—three and sixty-four one hundredths (3.64) percent; and
July 1, 1992—and thereafter—four (4.0) percent.

(3) On oil, on
July 1, 1987—four and thirty-four one hundredths (4.34) percent;
July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;
July 1, 1989—four and two hundred four one thousandths (4.204) percent;
July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;
July 1, 1991—four and sixty-eight one thousandths (4.068) percent; and
July 1, 1992—and thereafter—four (4.0) percent.

(4) (a) On natural gas, on
July 1, 1987—six and five-tenths (6.5) percent;
July 1, 1988—six (6.0) percent;
July 1, 1989—five and five-tenths (5.5) percent;
July 1, 1990—five (5.0) percent;
July 1, 1991—four and five-tenths (4.5) percent; and
July 1, 1992—and thereafter—four (4.0) percent.

(4) (b) On natural gas produced from new wells drilled and placed in service on and after July 1, 1987—four (4.0) percent.
(5) On sand, gravel or other mineral product not quarried or mined, on
    July 1, 1987—four and thirty-four one hundredths (4.34) percent;
    July 1, 1988—four and two hundred seventy-two one thousandths (4.272) percent;
    July 1, 1989—four and two hundred four one thousandths (4.204) percent;
    July 1, 1990—four and one hundred thirty-six one thousandths (4.136) percent;
    July 1, 1991—four and sixty-eight one thousandths (4.068) percent; and
    July 1, 1992—and thereafter (4.0) percent.

(6) On timber, on and after July 1, 1987—two and five-tenths (2.5) percent.

(7) On other natural resources, on
    July 1, 1987—two and eighty-six one hundredths (2.86) percent;
    July 1, 1988—three and eighty-eight one thousandths (3.088) percent;
    July 1, 1989—three and three hundred sixteen one thousandths (3.316) percent;
    July 1, 1990—three and five hundred forty-four one thousandths (3.544) percent;
    July 1, 1991—three and seven hundred seventy-two one thousandths (3.772) percent
    and
    January 1, 1992—and thereafter four (4.0) percent.

(c) Tax in addition to other taxes.—The taxes imposed by this article shall apply to all persons severing or processing (or both severing and processing) natural resources in this state and shall be in addition to all other taxes imposed by law.

(d) Statement of purpose; relationship to existing contracts.—It is the intent of the Legislature in enacting this article thirteen-a to continue the imposition of the tax upon exercising the privilege of engaging or continuing within this state the business of severing,
extracting, reducing to possession and producing for sale, profit or commercial use, natural resource products, which was imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven, by such act. The provisions of any contract entered into prior to the effective date of this act and relating to the allocation, reimbursement, payment or assessment of the tax imposed by section two-a, article thirteen of this chapter, formerly, shall apply with full force and effect to the tax imposed by this article; it being the intent of the Legislature that, for purposes of any such contractual provision, the tax imposed by this article shall be considered the same as the tax imposed by section two-a, article thirteen of this chapter prior to the first day of July, one thousand nine hundred eighty-seven.

§11-13A-4. Treatment processes as production.

(a) Treatment processes considered as mining.—The following treatment processes (and the treatment processes necessary or incidental thereto) when applied by the mine owner or operator to natural resources mined in this state shall be considered as mining and part of the privilege taxed under this article.

(1) Coal.—In the case of coal: Cleaning, breaking, sizing, dust allaying, treating to prevent freezing and loading for shipment.

(2) Minerals customarily sold in crude form.—In the case of other minerals which are customarily sold in crude form: Sorting, concentrating, sintering and substantially equivalent processes to bring them to shipping grade and form, and loading for shipment.

(3) Minerals not customarily sold in crude form.—In the case of other minerals which are not customarily sold in the form of the crude mineral products: Crushing, grinding, and beneficiation by concentration (gravity, flotation, amalgamation or electrostatic or magnetic), cyanidation, leaching, crystallization, precipitation (but not including electrolytic deposition, roasting, thermal or electric smelting or refining), or substantially equivalent processes or combinations of processes used in the separation or extraction of the product or products from the ore or the mineral or minerals from other material from the mine or other natural deposit.

(4) Oil shale.—In the case of oil shale: Extraction from the ground, crushing, loading into the retort and retorting, but not hydrogenation, refining, or any other process subsequent to retorting; and
(5) Other.—Any other treatment process provided for in a legislative rule prescribed by the tax commissioner which, with respect to the particular ore or mineral, is not inconsistent with the preceding subdivisions of this subsection (a).

(b) Treatment processes not considered as mining. —Unless such processes are otherwise provided for in subsection (a), or are necessary or incidental to processes provided for in subsection (a), the following treatment processes shall not be considered as “mining”: Electrolytic deposition, roasting, calcining, thermal or electric smelting, refining, polishing, fine pulverization, blending with other materials, treatment effecting a chemical change, thermal action and molding or shaping.

(c) Treatment processes considered part of production of oil, natural gas and natural gas liquids.—The privileges of severing and producing oil and natural gas shall not include any conversion or refining process.

(d) Timber production privilege.—The privilege of severing and producing timber shall end once the tree is severed and delimbed.

§11-13A-5. Oil and gas operating unit.

(a) For purposes of the production of oil classification and the production of natural gas classification, as set forth in this article, multiple co-owners 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 its 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 two of this article, if not otherwise defined therein, whenever engaged in the producing of oil or natural gas through common use (by joint or separately executed contracts) of the same independent contract 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.

(b) 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.
§11-13A-6. 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) Additional coal severance tax.—Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of the article is measured as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection (a) shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the “additional tax on coal.”

(b) This additional tax on coal 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 this additional tax on coal shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter specified, to the various counties of this state in which the coal upon which this additional tax is imposed was located at the time it was severed from the ground. Those counties are hereinafter in this section referred to as the “coal-producing counties.” The remaining twenty-five percent of the net proceeds of this additional tax on coal shall be distributed, after appropriation, among all the counties and municipalities of this state in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and payable, reported and remitted as elsewhere provided in this article for the tax imposed by said section three 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 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 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 on coal 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 on coal 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 on coal 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 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.

(e) The moneys in the "county coal revenue fund" and the moneys in the "all counties and municipalities revenue fund" shall be allocated among and distributed quarterly to the counties and municipalities entitled thereto by the state treasurer in the manner hereinafter specified. On or before each distribution date, the state treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled thereto on that distribution date. The amount to which a coal-producing county is entitled from the "county coal revenue fund" shall be determined in accordance with subsection (f) of this section, and the amount to which every county and
municipality shall be entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with subsection (g) of this section. After determining as set forth in subsection (f) and 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 entitled from the "county coal revenue fund" shall be determined by (1) 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 (2) 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:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county shall be the county's "base share."

(2) 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 estimated 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 March twenty-eighth, one thousand nine hundred eighty-six, and each March twenty-eighth thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances 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 amendment 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 eighty-six, and each December fifteenth thereafter, the 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 taxes on coal collected the amount of thirty-five thousand dollars annually as a fee for the administration of such additional tax by the tax commissioner.


(a) General rule. — For purposes of the tax imposed by this article, a taxpayer’s taxable year shall be the same as the taxpayer’s taxable year for federal income tax purposes.

(b) Change of taxable year. — If a taxpayer’s taxable year is changed for federal income tax purposes, the taxpayer’s taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) Methods of accounting.

(1) Same as federal. — A taxpayer’s method of accounting under this article shall be the same as the taxpayer’s method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) Change of accounting methods. — If a taxpayer’s method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.


On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year showing such information as the tax commissioner may require and computing the amount of taxes due under this article for the taxable year.

(a) General rule. — Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) **Tax of more than $1,000 per month.** — For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner of the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) **Tax of $1,000 per month or less.** — For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) **Exception.** — Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.
§11-13A-10. Time for filing returns and paying tax; credit.

(a) Calendar year taxpayers. — Returns made on the basis of the calendar year shall be filed with the tax commissioner on or before the expiration of one month after the end of the taxable year.

(b) Fiscal year taxpayers. — Returns made on the basis of a fiscal year shall be filed with the tax commissioner on or before the expiration of one month after the end of the fiscal year.

(c) Payment of tax. — A person required to make and file a return under this article shall pay any tax shown to be due by such return, without assessment, notice or demand, to the tax commissioner on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return).

(d) Credit. — Every taxpayer under this article shall be allowed an annual credit of five hundred dollars against the taxes due under this article to be applied at the rate of forty-one dollars and sixty-seven cents per month for each month the taxpayer was engaged in business in this state exercising a privilege taxable under this article.


The tax commissioner may, upon written request received on or prior to the due date of the annual return or any periodic estimate, grant a reasonable extension of time for filing any return or other document required by this article, upon such terms as he may by regulation prescribe, or by contract require, if good cause satisfactory to the tax commissioner is provided by the taxpayer.


(a) Amount determined on return. — The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency. — Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof
will result in undue hardship to the taxpayer.

(c) **No extension for certain deficiencies.** — No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

§11-13A-13. **Place for filing returns or other documents.**

Tax returns, statements, or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivery, in person or by mail, to his office in Charleston, West Virginia: *Provided,* That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements, or other documents, or copies thereof.

§11-13A-14. **Time and place for paying tax shown on returns.**

(a) **General rule.** — The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return.)

(b) **Date fixed for payment of tax.** — The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) **Terms of extension.** — Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may, by regulation, prescribe or by contract require.

§11-13A-15. **Signing of returns and other documents.**

(a) **General.** — Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) **Signing of corporation returns.** — The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on
behalf of the corporation.

(c) **Signing of partnership returns.** — The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) **Signature presumed authentic.** — The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) **Verification of returns.** — Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

§11-13A-16. **Bond of taxpayer may be required.**

(a) Whenever it is deemed necessary to ensure compliance with this article, the tax commissioner may require any taxpayer to post a cash or corporate surety bond.

(b) The amount of the bond shall be fixed by the tax commissioner but, except as provided in subsection (c) of this section, shall not be greater than three times the average quarterly liability of taxpayers filing returns for quarterly periods, five times the average monthly liability of taxpayers required to file returns for monthly periods, or two times the average periodic liability of taxpayers permitted or required to file returns for other than monthly or quarterly periods.

(c) Notwithstanding the provisions of subsection (b) of this section, no bond required under this section shall be less than five hundred dollars.

(d) The amount of the bond may be increased or decreased by the tax commissioner at any time subject to the limitations provided in this section.

(e) The tax commissioner may bring an action for a restraining order or a temporary or permanent injunction to restrain or enjoin the operation of a taxpayer's business until the bond is posted and any delinquent tax, including applicable interest and additions to tax has been paid. Such action may be brought in the circuit court of Kanawha County or in the circuit court of any county having jurisdiction over the taxpayer.
§11-13A-17. Collection of tax; agreement for processor to pay tax due from severor.

(a) General. — In the case of natural resources, other than natural gas, where the tax commissioner finds that it would facilitate and expedite the collection of the taxes imposed under this article, the tax commissioner may authorize the taxpayer processing the natural resource to report and pay the tax which would be due from the taxpayer severing the natural resources. The agreement shall be in such form as the tax commissioner may prescribe. The agreement must be signed: By the owners, if the taxpayers are natural persons; in the case of a partnership or association, by a partner or member; in the case of a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application. The agreement may be terminated by any party to the agreement upon giving thirty days’ written notice to the other parties to the agreement: Provided, That the tax commissioner may terminate the agreement immediately upon written notice to the other parties when either the taxpayer processing the natural resource or the taxpayer severing the natural resource fails to comply with the terms of the agreement.

(b) Natural gas. —

(1) In the case of natural gas, except for those cases:

(A) Where the person severing (or both severing and processing) the natural gas will sell the gas to the ultimate consumer, or

(B) Where the tax commissioner determines that the collection of taxes due under this article would be accomplished in a more efficient and effective manner through the severor, or severor and processor, remitting the taxes; the first person to purchase the natural gas after it has been severed, or in the event that the natural gas has been severed and processed before the first sale, the first person to purchase the natural gas after it has been severed and processed, shall be liable for the collection of the taxes imposed by this article. He shall collect the taxes imposed from the person severing (or severing and processing) the natural gas, and he shall remit the taxes to the tax commissioner. In those cases where the person severing (or severing and processing) the natural gas sells the gas to the ultimate consumer, the person so severing (or severing and processing) the natural gas shall be liable for the taxes imposed by this article. In those cases where the tax commissioner determines that the collection of the taxes due under this article from the
severance (or severance and processing) of natural gas would be accomplished in a more efficient and effective manner through the severor (or severor and processor) remitting the taxes, the tax commissioner shall set out his determination in writing, stating his reasons for so finding, and so advise the severor (or severor and processor) at least fifteen days in advance of the first reporting period for which such action would be effective.

(2) On or before the last day of the month following each taxable calendar month, each person first purchasing natural gas as described in subdivision (1) above, shall report purchases of natural gas during the taxable month, showing the quantities of gas purchased, the price paid, the date of purchase, and any other information deemed necessary by the tax commissioner for the administration of the tax imposed by this article, and shall pay the amount of tax due, on forms prescribed by the tax commissioner.

(3) On or before the last day of the month following each taxable calendar month, each person severing (or severing and processing) natural gas, shall report the sales of natural gas, showing the name and address of the person to whom sold, the quantity of gas sold, the date of sale, and the sales price on forms prescribed by the tax commissioner.


(a) Every taxpayer liable for reporting or paying tax under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement for extension of time.


Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.


If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-13A-22. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven, were in force and effect, as to such taxpayer during the informational tax year: Provided, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.
(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-1. Short title; arrangement and classification.
§11-13B-3. Tax imposed on telecommunications businesses; effective date.
§11-13B-5. Annual return.
§11-13B-6. Periodic installment payments of tax.
§11-13B-8. Extensions of time for paying tax.
§11-13B-9. Place for filing returns or other documents.
§11-13B-10. Time and place for paying tax shown on returns.
§11-13B-13. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.
§11-13B-17. Severability.

§11-13B-1. Short title; arrangement and classification.

This article may be cited as the "Telecommunications Tax Act." No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this article, and no legal effect shall be given to any descriptive matter of headings relating to any part, section, subsection or paragraph of this article.


(a) General.—When used in this article, or in the administration of this article, the terms defined in subsection (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition.

(b) Terms defined.

(1) Business.—The term "business" shall include all activities engaged in or caused to be engaged in with the object of gain or
economic benefit, either direct or indirect.

(2) Communications channel.—The term “communications channel” or “channel” means the smallest discrete circuit or other means whereby a message, conversation, data set or signal may be communicated, which cannot be subdivided without destroying or diminishing its capacity to carry such communications.

(3) Communications pathway.—The term “communications pathway” means any conduit, wire, cable, microwave signal path, radio signal path or other pathway over which telecommunications can be carried. The length of the communications pathway of satellite repeater facilities or other satellite communications facilities is deemed to be the shortest distance over the surface of the earth between the point on the earth from which signals are sent to the satellite and the point on the earth where such signals are received from the satellite.

(4) Delegate.—The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(5) Gross income.—The term “gross income” of a telephone company or communications carrier shall be defined as all gross income received from the provision of local exchange or long distance voice or data communications services but shall not include gross income from the provision of network access, billing or similar services provided to end users, other telephone companies, or communications carriers.

(6) Person.—The term “person” or “company” are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.

(7) Sale.—The term “sale” includes any transfer of the ownership or title to property or any provision of a service, whether for money or in exchange for other property or services, or a combination thereof.

(8) Tax commissioner.—The term “tax commissioner” means the
tax commissioner of the state of West Virginia, or his delegate.

(9) Taxable year.—The term “taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. “Taxable year” means, in case of a return made for a fractional part of a year under the provisions of the article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(10) Taxpayer.—The term “taxpayer” means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in telecommunications business activity.

(11) Telecommunications.—The term “telecommunications” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication, or means of communication, whether used for voice communication, computer data transmission, or other encoded symbolic information transfers. The term shall not include commercial broadcast radio or television, cable television or amateur or citizen’s band radio.

§11-13B-3. Tax imposed on telecommunications businesses; effective date.

(a) Tax imposed.—Upon every telecommunications business selling or furnishing telegraph, telephone or other telecommunications service, there is hereby imposed an annual privilege tax on account of the business, or other activities, of the taxpayer engaged in or carried on within this state, during the taxable year. The amount of taxes due shall be determined by application of rates against gross income, as specified in subsection (b) for telecommunications business effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) Tax rate.—The liability of a taxpayer under this article shall be four percent of the sum of:

(A) Its gross income from all telecommunications business beginning and ending within this state, and

(B) Its gross income apportioned to this state from all telecommunications business that either begins or ends in this state.

(c) Exemptions.—This section shall not apply to telecommunications services provided by municipalities, or by any other political subdivisions of this state.
(d) **Apportionment of certain income of telecommunications companies.**—Gross revenues of telecommunications companies derived from one point business in this state shall be apportioned to the state of West Virginia in the same proportion that the length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, in West Virginia bears to the total length of such company's communications pathways, weighted by the number of channels such pathways are capable of carrying, located everywhere in the United States, its territories, and possessions.

§11-13B-4. **Accounting periods and methods of accounting.**

(a) **Taxable year.**—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) **Change of taxable year.**—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

(c) **Methods of accounting.**

(1) **Same as federal.**—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) **Change of accounting methods.**—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its annual return for the taxable year filed under this article.

§11-13B-5. **Annual return.**

On or before the expiration of one month after the end of the taxable year, every taxpayer subject to the tax imposed by this article shall make and file an annual return for the entire taxable year.
§11-13B-6. Periodic installment payments of tax.

(a) General rule.—Taxes levied under this article shall be due and payable in periodic installments as follows:

(1) Tax of more than $1,000 per month.—For taxpayers whose estimated tax liability under this article exceeds one thousand dollars per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner and the amount of tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for such year.

(2) Tax of $1,000 per month or less.—For taxpayers whose estimated tax liability under this article is one thousand dollars per month or less, the tax shall be due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued.

(A) Each such taxpayer shall, on or before the last day of the fourth, seventh and tenth months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same and mail it together with a remittance, in the form prescribed by the tax commissioner, of the amount of the tax due to the office of the tax commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year and one fourth of any annual exemption allowed for such year.

(b) Exception.—Notwithstanding the provisions of subsection (a) of this section, the tax commissioner, if he deems it necessary to ensure payment of the tax, may require the return and payment
under this section for periods of shorter duration than those
prescribed in subsection (a) of this section.

§II-13B-7. Extension of time for filing returns.

The tax commissioner may, upon written request received on or
prior to the due date of the annual return or any periodic estimate,
grant a reasonable extension of time for filing any return or other
document required by this article, upon such terms as he may by
regulation prescribe, or by contract require, if good cause satisfactory
to the tax commissioner is provided by the taxpayer.

§II-13B-8. Extensions of time for paying tax.

(a) Amount determined on return.—The tax commissioner may
extend the time for payment of the amount of the tax shown, or
required to be shown, on any return required by this article (or for
any periodic installment payments), for a reasonable period not to
exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency.—Under regulations
prescribed by the tax commissioner, he may extend the time for the
payment of the amount determined as a deficiency of the taxes
imposed by this article for a period not to exceed eighteen months
from the date fixed for payment of the deficiency. In exceptional
cases, a further period of time not to exceed twelve months may be
granted. An extension under this subsection (b) may be granted only
where it is shown to the satisfaction of the tax commissioner that
payment of a deficiency upon the date fixed for the payment thereof
will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies.—No extension shall be
granted under this section for any deficiency if the deficiency is due
to negligence, to intentional disregard of rules and regulations, or
to fraud with intent to evade tax.

§II-13B-9. Place for filing returns or other documents.

Tax returns, statements, or other documents, or copies thereof,
required by this article or by regulations shall be filed with the tax
commissioner by delivery, in person or by mail, to his office in
Charleston, West Virginia: Provided, That the tax commissioner
may, by regulation, prescribe the place for filing such returns,
statements, or other documents, or copies thereof.
§11-13B-10. Time and place for paying tax shown on returns.

(a) General rule.—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) Date fixed for payment of tax.—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

(c) Terms of extension.—Any extension of time for payment of tax under this section may be granted upon such terms as the tax commissioner may by regulation prescribe, or by contract require.


(a) General.—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns.—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signing of partnership returns.—The return of a partnership shall be signed by any one of the partners. The fact that a partner's name is signed on the return shall be prima facie evidence that such partner is authorized to sign the return on behalf of the partnership.

(d) Signature presumed authentic.—The fact that an individual's name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(e) Verification of returns.—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices, and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

§11-13B-13. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.

(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: Provided, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current
fiscal year for federal income tax purposes.


Tax liabilities, if any arising for taxable years or portions thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, shall be determined, administered, assessed and collected as if the taxes imposed by article twelve-a of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia shall be fully and completely preserved.


Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.


Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

§11-13B-17. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-8. Credits against tax.

(a) Business and occupation tax credit.—A credit shall be allowed against the tax imposed by section three [§11-21-3] of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this Code: Provided, That the amount of such business and occupation tax credit shall not exceed the portion of the tax imposed
by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article thirteen shall be allowed to the taxpayer, in computing the credit provided for by this section, in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

For purposes of this section, the tax imposed under article thirteen chapter eleven of this Code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Carrier income tax credit.—A credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-A, chapter eleven of this Code: Provided, That the amount of such credit shall not exceed the portion of the tax imposed by this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect of which said income tax under article twelve-A was imposed. In case the West Virginia taxable income of a taxpayer includes income from a partnership, estate, trust or a corporation electing to be taxed under subchapter S of the Internal Revenue Code of 1954, as amended, a part of any tax liability of the partnership, estate, trust or corporation under said article twelve-A shall be allowed to the taxpayer, in computing the credit provided for by this section in an amount proportionate to the income of such partnership, estate, trust or corporation, which is included in the taxpayer's West Virginia taxable income.

(c) Severance tax credit.—On and after the first day of July, one thousand nine hundred eighty-seven, a credit shall be allowed against the tax imposed by section three of this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen-A, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed the portion of the tax imposed by this article which is
attributable to the West Virginia taxable income derived by the
taxpayer for the taxable year from the activities with respect to which
said tax under article thirteen-A was imposed. In case the West
Virginia taxable income of a taxpayer includes income from a
partnership, estate, trust or a corporation electing to be taxed under
subchapter S of the Internal Revenue Code of 1954, as amended,
a part of any tax liability of the partnership, estate, trust or
corporation under said article thirteen-a shall be allowed to the
taxpayer, in computing the credit provided for by this section, in
an amount proportionate to the income of such partnership, estate,
trust or corporation, which is included in the taxpayer’s West
Virginia taxable income.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-1. Legislative finding.
§11-23-2. Short title; arrangement of sections or portions thereof.
§11-23-4. Tax base determined.
§11-23-5. Apportionment of tax.
§11-23-6. Imposition of tax.
§11-23-7. Persons and organizations exempt from tax.
§11-23-10. Extension of time for filing returns.
§11-23-11. Time and place for paying tax shown on returns.
§11-23-12. Extensions of time for paying tax.
§11-23-14. Requirements concerning returns, notices, records and statements.
§11-23-16. Place for filing returns or other documents.
§11-23-17. Credits against tax.
§11-23-18. Tax under this article in addition to all other taxes.
§11-23-23. Information return and due date thereof; penalty for failure to file,
waiver thereof; short taxable year provisions.

§11-23-1. Legislative finding.

This business franchise tax on corporations and partnerships is
enacted pursuant to the provision of article X, section one of the
constitution of this state, granting to the Legislature the authority
to tax privileges, franchises and incomes of persons and corpora-
tions. The Legislature finds and declares that this franchise tax is
imposed on the privilege of doing business in this state, and that
this tax is not an ad valorem property tax imposed on the property of corporations and partnerships doing business in this state.

§11-23-2. Short title; arrangement of sections or portions thereof.

This article shall be known and may be cited as the "Business Franchise Tax Act." No inference, implication or presumption of legislative construction or intent shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article; and no legal effect shall be given to any descriptive matter or heading relating to any part, section, subsection or paragraph of this article.


(a) General. — When used in this article, or in the administration of this article, terms defined in this section shall have the meanings ascribed to them herein unless a different meaning is clearly required by either the context in which the term is used, or by specific definition in this article.

(b) Terms defined.

(1) Business income. — 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, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) Capital. — The term "Capital" of a taxpayer shall mean:

(A) In the case of a corporation, the average of the beginning and ending year balances of the sum of the following entries from Schedule L of Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service for the taxable year:

(i) The value of all common stock and preferred stock of the taxpayer;

(ii) The amount of paid-in or capital surplus;

(iii) Retained earnings, appropriated and unappropriated;

(iv) Less the cost of treasury stock.

(B) In the case of a partnership, the average of the beginning and ending year balances of the value of partner's capital accounts from Schedule L of Federal Form 1065, as filed by the taxpayer with the
Internal Revenue Service for the taxable year.

(C) Additional items in capital. — The term “Capital” for purposes of this article shall include such additional items from the accounts of the taxpayer as the tax commissioner may by regulation prescribe, which fairly represent the net equity of the taxpayer as defined in accordance with generally accepted accounting principles.

(D) Allowance for certain government obligations and obligations secured by residential property. As to both corporations and partnerships, capital shall be multiplied by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120 or Federal Form 1065) of the following:

(a) Obligations and securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(b) Obligations of this state and any political subdivision of this state;

(c) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(d) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the beginning and ending year balances of the total assets of the taxpayer as shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service or, in the case of partnerships, Schedule L of Federal Form 1065, as filed by the taxpayer with the Internal Revenue Service.

(3) Commercial domicile. — The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.
(4) **Commissioner or tax commissioner.** — The terms “commissioner” or “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) **Compensation.** — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) **Corporation.** — The term “corporation” includes any corporation, S corporation, joint-stock company, and any association or other organization which is taxable as a corporation under federal income tax laws or the income tax laws of this state.

(7) **Delegate.** — The term “delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulations promulgated thereunder.

(8) **Doing business.** — The term “doing business” means any activity of a corporation or partnership which enjoys the benefits and protection of the government and laws of this state, except the activity of agriculture and farming, which shall mean the production of food, fiber and woodland products (but not timbering activity), by means of cultivation, tillage of the soil and by the conduct of animal, livestock, dairy, apairy, equine or poultry husbandry, horticulture, or any other plant or animal production and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof.

The activity of agriculture and farming shall mean not less than five acres of land and the improvements thereon, used in the production of the aforementioned activities, and shall mean the production of at least one thousand dollars of products per annum through the conduct of such principal business activities as set forth in section ten, article one-a, chapter eleven of this code.

(9) **Domestic corporation.** — The term “domestic corporation” means a corporation organized under the laws of this state, and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-
three. Every other corporation is a foreign corporation.

(10) **Federal Form 1120. —** The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(11) **Federal Form 1065. —** The term “Federal Form 1065” means the annual federal income tax return of a partnership made pursuant to Section 6031 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a partnership, and filed with the Federal Internal Revenue Service.

(12) **Fiduciary. —** The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(13) **Financial organization. —** The term “financial organization” includes any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization at least ninety percent of the assets of which consist of intangible personal property and at least ninety percent of the gross receipts of which consist of dividends, interest and other charges derived from the use of money or credit.

(14) **Fiscal year. —** The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(15) **Includes and including. —** The term “includes” and “including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning
of the term being defined.

(16) **Parent and subsidiary corporations.** — A corporation which owns on average during the taxable year more than fifty percent of the stock of all classes of another corporation is defined to be the "parent corporation" and the corporation which is so owned by the parent is defined to be a "subsidiary corporation."

(17) **Partnership and partner.** — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not, a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(18) **Person.** — The term "person" includes any corporation or partnership.

(19) **Pro forma return.** — The term "pro forma return" when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(20) **Sales.** — The term "sales" means all gross receipts of the taxpayer that are "business income," as defined in this section.

(21) **State.** — The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(22) **Stock.** — The term "stock" includes shares in a corporation, association or joint stock company. It shall not include nonvoting stock which is limited and preferred as to dividends, or treasury stock. "Stock owned by a corporation" shall include stock owned directly by such corporation and stock which is subject to an option to acquire stock.

(23) **Taxable year.** — The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which tax liability is computed under this article. "Taxable year" means, in case of a return made for a fractional part of a year (short taxable year) under the provisions of this article, or under regulations promulgated by the tax commissioner, the period for which such return is made.

(24) **Taxable in another state.** — The term "taxable in another
state" for purposes of apportionment under this article, means a taxpayer who:

(A) Is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax; or

(B) Would be subject to a net income tax if such other state imposed such a tax.

(25) Taxpayer. — The term “taxpayer” means any person (as defined in this section) subject to the tax imposed by this article.

(26) This code. — The term “this code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.

(27) This state. — The term “this state” means the state of West Virginia.

(28) Treasury stock. — The term “treasury stock” means shares of a corporation which have been issued and have been subsequently acquired by and belong to such corporation, and have not been cancelled or restored to the status of authorized but unissued shares. Treasury stock is deemed to be issued shares, but not outstanding shares.

(c) 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 related to the determination of income for federal income tax purposes as in effect on the first day of January, one thousand nine hundred eighty-five.

§11-23-4. Tax base determined.

The tax base of a taxpayer, for purposes of this article, shall be its capital, as defined and adjusted in section three of this article. If the taxpayer is also taxable in another state, then the tax base of the taxpayer shall be its capital, as defined in section three of this article, multiplied by its apportionment factor determined under section five of this article.

§11-23-5. Apportionment of tax base.

(a) A taxpayer subject to the tax imposed by this article and also
taxable in another state shall, for the purposes of this tax, apportion its tax base to this state by multiplying its tax base by a fraction, the numerator of which is the sum of the property factor, plus the payroll factor, plus two times the sales factor, all of which shall be determined as hereinafter provided in this section, and the denominator of which is four.

(b) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year, and the denominator of which is the average value of all real and tangible personal property owned or rented by the taxpayer and used by it during the taxable year, which is reported on Schedule L of Federal Form 1120 (or 1065 for partnerships), plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(c) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided. That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the net annual rental rate. Net annual rental rate is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(d) Leasehold improvements. — Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the lessee regardless of whether the lessee is entitled to remove
the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(e) *Average value of property.* — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(f) *Payroll factor.* — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer, and the denominator of which is the total compensation paid by the taxpayer during the taxable year as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that portion of cost of goods sold which reflects compensation, or as shown on a pro forma return.

(g) *Compensation.* — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only the amounts paid directly to employees shall be included in the payroll factor. Amounts considered paid directly to employees include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided such amounts constitute income to the recipient for federal income tax purposes.

(h) *Employee.* — The term “employee” means:

1. Any officer of a corporation; or

2. Any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee.

(i) *Compensation paid in this state.* — Compensation is paid in this state if:

1. The employee's service is performed entirely within the state;
(2) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(3) Some of the service is performed in the state and:

(A) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or

(B) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(j) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 or 1065, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(k) Allocation of sales of tangible personal property. — Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and (A) the purchaser
is the United States government or (B) the taxpayer is not taxable in the state of the purchaser.

(l) Allocation of other sales. — Sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(m) Other methods of allocation. —

(1) General. — If the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's tax base.

(2) Burden of Proof. — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsection (a) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§11-23-6. Imposition of tax.

(a) General. — An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect
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of the benefits and protections conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation leasing property located in this state or doing business in this state and from every partnership owning or leasing property located in this state or doing business in this state, effective on and after the first day of July, one thousand nine hundred eighty-seven.

(b) Amount of tax and rate; effective date. — On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer’s first taxable year under this article is a short taxable year, the taxpayer’s liability shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve.

§11-23-7. Persons and organizations exempt from tax.

The following organizations and persons shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Natural persons doing business in this state that are not doing business in the form of a partnership (as defined in section three of this article) or in the form of a corporation (as defined in section three of this article). Such persons include persons doing business as sole proprietors, sole practitioners and other self-employed persons.

(b) Corporations and organizations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to that portion of their capital (as defined in section three of this article) which is used, directly or indirectly in the generation of unrelated business income (as defined in the Internal Revenue Code) of any such corporation or organization if the unrelated business income is subject to federal income tax.

(c) Insurance companies which pay this state a tax upon premiums.

(d) Production credit associations organized under the provisions of the federal “Farm Credit Act of 1933”: Provided, That this exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.
(e) Any trust established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred eighty-five.

(f) Any credit union organized under the provisions of chapter thirty-one, or any other chapter of this code: Provided, That this exemption shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

(g) Any corporation organized under this code which is a political subdivision of the state of West Virginia, or is an instrumentality of a political subdivision of this state, and was created pursuant to this code.


(a) General rule.—For purposes of the tax imposed by this article, a taxpayer's taxable year shall be the same as the taxpayer's taxable year for federal income tax purposes.

(b) Change of taxable year.—If a taxpayer's taxable year is changed for federal income tax purposes, the taxpayer's taxable year for purposes of this article shall be similarly changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service with its return for the taxable year filed under this article.

(c) Methods of accounting.

(1) Same as federal.—A taxpayer's method of accounting under this article shall be the same as the taxpayer's method of accounting for federal income tax purposes. In the absence of any method of accounting for federal income tax purposes, the accrual method of accounting shall be used unless the tax commissioner, in writing, consents to use of another method.

(2) Change of accounting methods.—If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this article shall similarly be changed. The taxpayer shall provide a copy of the authorization for such change from the Internal Revenue Service, with its return for the taxable year filed under this article.

(a) *In general.*—Every person subject to the tax imposed by this article shall make and file an annual return for the taxable year on or before the fifteenth day of the third month of the next succeeding taxable year. The annual return shall include such information as the tax commissioner may require for determining the amount of taxes due under this article for the taxable year.

(b) *Consolidated returns.*—Any corporation that files as part of an affiliated group for purposes of the tax imposed by article twenty-four of this chapter, shall file a consolidated return under this article.

(c) The tax commissioner may, at his discretion, require an affiliated group of corporations to file a consolidated tax return under this article in order to accurately determine the taxes due under this article.

§11-23-10. Extension of time for filing returns.

The tax commissioner may grant a reasonable extension of time for filing any returns or other document required by this article upon such terms as he may by regulations prescribe. An extension of time for filing Federal Form 1120, Federal Form 990T or Federal Form 1065 shall automatically extend the time for filing any return or other document required by this article for the same period as the extension for filing such federal form. An extension of time for filing a return shall not extend the time for payment of the tax.

§11-23-11. Time and place for paying tax shown on returns.

(a) *In general.*—The person required to make the annual return required by this article shall, without assessment or notice and demand from the tax commissioner, pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

(b) *Date fixed for payment of tax.*—The date fixed for payment of the taxes imposed by this article shall be deemed to be a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§11-23-12. Extensions of time for paying tax.

(a) *Amount determined on return.*—The tax commissioner may extend the time for payment of the amount of the tax shown, or required to be shown, on any return required by this article (or any
periodic installment payments), for a reasonable period not to exceed six months from the date fixed for payment thereof.

(b) Amount determined as deficiency.—Under regulations prescribed by the tax commissioner, he may extend the time for the payment of the amount determined as a deficiency of the taxes imposed by this article for a period not to exceed eighteen months from the date fixed for payment of the deficiency. In exceptional cases, a further period of time not to exceed twelve months may be granted. An extension under this subsection (b) may be granted only where it is shown to the satisfaction of the tax commissioner that payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer.

(c) No extension for certain deficiencies.—No extension shall be granted under this section for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations or to fraud with intent to evade tax.


(a) Requirement of declaration.—Every taxpayer subject to tax under this article shall file a declaration of estimated tax for the taxable year if the taxpayer’s liability for tax under this article can reasonably be expected to exceed twelve thousand dollars for the taxable year. A taxpayer not required by this section to file a declaration and pay estimated tax may elect to so file and pay.

(b) Definition of estimated tax.—The term “estimated tax” means the amount which a taxpayer estimates to be his liability under this article for the taxable year.

(c) Contents of declaration.—The declaration shall contain such information as the tax commissioner may, by rules or regulations, require, including, but not limited to, such detailed information as may be necessary to estimate the taxpayer’s liability under sections two and three of this article.

(d) Time for filing declaration.—A declaration of estimated tax shall be filed on or before the fifteenth day of the fourth month of the taxable year, for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.

(e) Amendment of declaration.—A taxpayer may amend his declaration at any time during the taxable year in accordance with regulations prescribed by the tax commissioner. If any amendment
of a declaration is filed by a taxpayer, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax by reason of such amendment. If any amendment is made after the fifteenth day of the ninth month of the taxable year, any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(f) Payment of estimated tax.—The estimated tax shall be paid in four equal installments. At the time the declaration of estimated payment is filed, the taxpayer shall pay one fourth of the estimated tax liability for the taxable year. The second, third and fourth installments shall be paid on the following fifteenth day of the sixth, ninth and twelfth months of the taxable year, respectively.

(g) Application to short taxable year.—This section shall apply to a taxable year of less than twelve months in accordance with regulations of the tax commissioner.

(h) Installment paid in advance.—Any taxpayer may elect to pay any installment of its estimated tax prior to the date prescribed for its payment.

§11-23-14. Requirements concerning returns, notices, records and statements.

(a) General.—The tax commissioner may prescribe regulations as to the keeping of records, the content and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any person, by regulation or notice served upon such person, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such person is liable for tax under this article.

(b) As a part of a full and complete tax return, the taxpayer shall provide:

(1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

(2) If a consolidated federal income tax return was filed for the taxable year:

(A) Supporting schedules showing the consolidation of its income
statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

(B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

(C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

(c) Notice of qualification as receiver, etc.

Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.


(a) General.—Any return, statement or other document required to be made under the provisions of this article shall be signed in accordance with instructions or regulations prescribed by the tax commissioner.

(b) Signing of corporation returns.—The return of a corporation shall be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a return made for a corporation by a fiduciary, such fiduciary shall sign the return. The fact that an individual’s name is signed on the return shall be prima facie evidence that such individual is authorized to sign the return on behalf of the corporation.

(c) Signature presumed authentic.—The fact that an individual’s name is signed to a return, statement or other document shall be prima facie evidence for all purposes that the return, statement or other document was actually signed by him.

(d) Verification of returns.—Except as otherwise provided by the tax commissioner, any return, declaration or other document required to be made under this article shall contain or be verified by a written declaration that it is made under the penalties of perjury.
§11-23-16. Place for filing returns or other documents.

Tax returns, statements or other documents, or copies thereof, required by this article or by regulations shall be filed with the tax commissioner by delivering it, in person or by mail, to his office in Charleston, West Virginia: Provided, That the tax commissioner may, by regulation, prescribe the place for filing such returns, statements or other documents, or copies thereof.

§11-23-17. Credits against tax.

(a) A credit shall be allowed against the tax imposed by this article equal to the amount of franchise tax liability due under this article, (determined before application of credits) multiplied by a fraction, the numerator of which is the gross income of the business subject to tax under article thirteen-a, of this chapter and the denominator of which is the total amount of gross income derived by the taxpayer from all activity in West Virginia.

(b) A parent taxpayer who files a separate return under this article shall be allowed a credit against such taxpayer's liability for the tax under this article for the amount of net taxes that would have been paid without regard to the adjustment required by subparagraph (D), paragraph (2), subsection (b), section three of this article for the taxable year by a subsidiary corporation or partnership: Provided, That the amount of credit allowed shall not exceed the amount of tax that would have been paid, without regard to such adjustment, under this article by the subsidiary or partnership, multiplied by the percentage of the parent's ownership of the subsidiary corporation or partnership. In the case of corporations, this percentage shall be equal to the percentage of stock of all classes owned by the parent. In no case shall any credit allowable by this section, which is not used on an annual return, be carried forward or back, but instead the same shall be forfeited.

(c) A credit shall be allowed against the tax imposed by this article equal to the amount of liability of the taxpayer for the taxable year of the full amount of any tax imposed under sections fourteen and fourteen-a, article three of this chapter.

§11-23-18. Tax under this article in addition to all other taxes.

The returns, requirements and taxes set forth and imposed under this article shall be in addition to all other reports, requirements, taxes and duties set forth and imposed by this state.
(a) Every taxpayer liable for reporting or paying taxes under this article shall keep such records, receipts, invoices and other pertinent papers in such forms as the tax commissioner may require.

(b) Every taxpayer shall keep such records for not less than three years after the annual return is filed under this article, unless the tax commissioner in writing authorizes their earlier destruction. An extension of time for making an assessment shall automatically extend the time period for keeping the records for all years subject to audit covered in the agreement.

Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extenso in this article.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

§11-23-23. Information return and due date thereof; penalty for failure to file, waiver thereof; short taxable year provisions.
(a) The state tax commissioner shall require taxpayers subject to this article to file an information return for the tax year one thousand nine hundred eighty-four and tax year one thousand nine hundred eighty-five. These returns shall be due on the first day of July, one thousand nine hundred eighty-five and on the first day of
July, one thousand nine hundred eighty-six, respectively, unless an extension is provided by the tax commissioner. These returns shall be on forms and pursuant to instructions provided by the tax commissioner. The informational returns shall require computations as if the tax due hereunder and applicable on and after the first day of July, one thousand nine hundred eighty-seven were in force and effect, as to such taxpayer during the informational tax year: Provided, That any person failing to comply with the following requirements of this section in respect of informational returns and on the forms and pursuant to the instructions prescribed by the tax commissioner, shall be subject to a penalty, collectible as provided in article ten of this chapter, the amount of which shall be the greater of one thousand dollars or ten percent of the pro forma tax liability, as computed by the tax commissioner in accordance with this article and the rules and regulations pertaining thereto, which should have been shown on the informational returns of the taxpayer. The tax commissioner is hereby authorized to waive all or any part of such penalty for good cause shown.

(b) If the taxpayer's taxable year under this article is not the calendar year, then such taxpayer's first taxable year under this article shall be a short taxable year and shall cover the period beginning the first day of July, one thousand nine hundred eighty-seven, and ending with the last day of the taxpayer's then current fiscal year for federal income tax purposes.

ARTICLE 24. CORPORATION NET INCOME TAX.


§11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.

§11-24-5. Corporations exempt from tax.

§11-24-6. Adjustments in determining West Virginia taxable income.


§11-24-9. Credits against primary tax; election of taxpayer; expiration of credit.

§11-24-9a. Credits against primary tax; election of taxpayer.

§11-24-13. Returns; time for filing.


§11-24-13b. Information return for corporations electing to be taxed under subchapter S.


(a) General. — Any term used in this article shall have the same

* Clerk's Note: This section was also amended by S. B. 622, which passed prior to this act.
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 related 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-five, 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-four, 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-five, shall be given effect.

(b) Certain terms defined. — For purposes of this article:

(1) Business income. — 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, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(2) Commercial domicile. — The term "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) Compensation. — The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) Corporation. — The term "corporation" includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(5) Delegate. — The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly, by one or more redelegations of authority, to perform the functions mentioned or described in this article or regulation promulgated thereunder.

(6) Domestic corporation. — The term "domestic corporation" means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight
hundred sixty-three. Every other corporation is a foreign corporation.

(7) Engaging in business. — The term “engaging in business” or “doing business” means any activity of a corporation which enjoys the benefits and protection of government and laws of this state.

(8) Federal Form 1120. — The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to Section 6012, 6037, 6038 or 6046 of the United States Internal Revenue Code of 1954, as amended or renumbered, or in successor provisions of the laws of the United States, in respect to the taxable income of a corporation, and filed with the Federal Internal Revenue Service. In the case of a corporation that is exempt from federal income taxes but which has taxable unrelated business income, it means Federal Form 990T. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

(9) Fiduciary. — The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(10) Fiscal year. — The term “fiscal year” means an accounting period of twelve months ending on any day other than the last day of December, and on the basis of which the taxpayer is required to report for federal income tax purposes.

(11) Includes and including. — The terms “includes and including” when used in a definition contained in this article shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(12) Nonbusiness income. — The term “nonbusiness income” means all income other than business income.

(13) Person. — The term “person” is to be deemed interchangeable with the term “corporation” in this section.

(14) Pro forma return. — The term “pro forma return” when used in this article means the return which the taxpayer would have filed with the Internal Revenue Service had it not elected to file federally as part of a consolidated group.

(15) Public utility. — 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.

(16) **Sales.** — The term “sales” means all gross receipts of the taxpayer that are “business income,” as defined in this section.

(17) **State.** — 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.

(18) **Taxable year.** — The term “taxable year” means the taxable year for which the taxable income of the taxpayer is computed under the federal income tax law.

(19) **Tax.** — The term “tax” includes, within its meaning, interest and additions to tax, unless the intention to give it a more limited meaning is disclosed by the context.

(20) **Tax commissioner.** — The term “tax commissioner” means the tax commissioner of the state of West Virginia or his delegate.

(21) **Taxpayer.** — The term “taxpayer” means a corporation subject to the tax imposed by this article.

(22) **This code.** — The term “this code” means the code of West Virginia.

(23) **This state.** — The term “this state” means the state of West Virginia.

(24) **West Virginia taxable income.** — 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.

§11-24-4. Imposition of primary tax and rate thereof; imposition of additional, temporary surtax; effective and termination dates.

(a) **Primary tax.**
(1) In the case of taxable periods beginning after the thirtieth day of June, one thousand nine hundred sixty-seven, and ending prior to the first day of January, one thousand nine hundred eighty-three, a tax is hereby imposed for each taxable year at the rate of six percent per annum on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

(2) In the case of taxable periods beginning on or after the first day of January, one thousand nine hundred eighty-three, and ending prior to the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five, and any banks, banking associations or corporations, trust companies, building and loan associations, and savings and loan associations, at the rates which follow:

(A) On taxable income not in excess of fifty thousand dollars, the rate of six percent; and

(B) On taxable income in excess of fifty thousand dollars, the rate of seven percent.

(3) In the case of taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five, at the rate of nine and three quarters percent. Beginning the first day of July, one thousand nine hundred eighty-eight, the rate shall be reduced by fifteen one hundredths (0.15) of one percent per year for five successive years, with such rate to be nine percent (9.0) on and after the first day of July, one thousand nine hundred ninety-two.

(b) Temporary surtax. — In addition to the primary tax imposed, determinable and with exemptions, as aforesaid, there is hereby imposed an additional tax, a temporary surtax, of fifteen percent of the determined primary tax liability (as determined prior to application of any credits allowable under section nine of this article), and with such additional, temporary surtax being hereby made effective and applicable to taxable years or portions thereof.
beginning on and after the first day of January, one thousand nine hundred eighty-three, with such additional temporary surtax to expire, be nullified and be of no further force or effect whatsoever after the thirtieth day of June, one thousand nine hundred eighty-five. Section four-a of this article, applicable to the effect of any rate changes during a taxable year, shall be construed to include and also be applicable to this surtax or any change of such surtax hereafter occurring during a taxable year. Corporations exempt under section five of this article from the primary tax, as imposed, are hereby made exempt from the additional temporary surtax as imposed.

§11-24-5. Corporations exempt from tax.

The following corporations shall be exempt from the tax imposed by this article to the extent provided in this section:

(a) Corporations which by reason of their purposes or activities are exempt from federal income tax: Provided, That this exemption shall not apply to the unrelated business income, as defined in the Internal Revenue Code, of any such corporation if such income is subject to federal income tax.

(b) Insurance companies which pay this state a tax upon premiums.

(c) Production credit associations organized under the provisions of the federal "Farm Credit Act of 1933": Provided, That the exemption shall not apply to corporations or associations organized under the provisions of article four, chapter nineteen of this code.

(d) Corporations electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended: Provided, That said corporations shall file the information return required by section thirteen-b of this article.

(e) Trusts established pursuant to section one hundred eighty-six, chapter seven, title twenty-nine of the code of the laws of the United States (enacted as section three hundred two (c) of the labor management relations act, one thousand nine hundred forty-seven), as amended prior to the first day of January, one thousand nine hundred sixty-seven.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General. — In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax
purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. — There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items except that adjustment (5) shall be required only with respect to tax periods ending after the thirty-first day of December, one thousand nine hundred eighty-one:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority thereof;

(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 taxable income and not credited against federal income tax, and the taxes imposed by this state for which credit against the taxes imposed by section four is allowed by section nine;

(4) Interest charges directly incurred in the carrying of securities whose income is not taxable under this article, to the extent deductible in determining federal taxable income; and

(5) The deferral value of certain income that is not recognized for federal tax purposes, which value shall be an amount equal to a percentage of the amount allowed as a deduction in determining federal taxable income pursuant to the accelerated cost recovery system under section 168 of the Internal Revenue Code for the federal taxable year, with the percentage of the federal deduction to be added as follows with respect to the following recovery property: three-year property — no modifications; five-year property — ten percent; ten-year property — fifteen percent; fifteen-year public utility property — twenty-five percent; and fifteen-year or eighteen-year real property — thirty-five percent: Provided, That this modification shall not apply to any person whose federal deduction is determined by the use of the straight line method, or to any taxable year beginning after the first day of July, one thousand nine hundred eighty-seven.

(c) Adjustments decreasing federal taxable income. — There shall
be subtracted from federal taxable income:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, 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;

(2) 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;

(3) The amount of dividends received, to the extent included in federal taxable income: Provided, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven; and

(4) Thirty-seven and one-half percent of the excess of net long-term capital gain over net short-term capital loss as defined in the laws of the United States: Provided, That this modification shall not be made for taxable years beginning after the first day of July, one thousand nine hundred eighty-seven.

(d) Adjustment resulting from recomputation of net operating loss deduction. — In determining the West Virginia taxable income of a corporation entitled to a net operating loss deduction for the taxable year for federal income tax purposes, there shall be added to or subtracted from the federal taxable income the amount of an adjustment reflecting a recomputation of such net operating loss deduction in which the adjustments required by subsections (b) and (c) are made for each taxable year involved in the computation of such net operating loss deduction.

(e) Special adjustments for expenditures for water and air pollution control facilities.

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of water pollution control facilities and air pollution control facilities as defined in
section 48 (h)(12)(B) and (C) of the Internal Revenue Code, and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law (including extensions thereof) for the taxable year in which such amounts were paid or incurred. Such election shall be made in such manner, and the scope of application of such election shall be defined, as the tax commissioner may by regulations prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under section seven, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall (instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven) be made to the portion of the taxpayer's net income, computed without regard to such adjustments, allocated and apportioned to this state in accordance with the amounts of any allowances for depreciation and amortization of such water pollution control facilities and air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(f) Allowance for certain government obligations and obligations secured by residential property.—The West Virginia taxable income of a taxpayer subject to this article as adjusted in accordance with parts (b), (c), (d) and (e) of this section shall be further adjusted by multiplying such taxable income after such adjustment by parts (b), (c), (d) and (e) by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the beginning and ending account balances for the taxable year (account balances to be determined at cost in the same manner that such obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any
agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy, which is specifically made exempt from state taxes by federal law;

(B) Obligations or securities of this state and any political subdivision or authority thereof;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide, located in this state and occupied by nontransients.

(2) The denominator of which is the average of the beginning and ending year balances of the total assets of the taxpayer as shown on Schedule L of the Federal Form 1120, as filed by the taxpayer with the Internal Revenue Service.


(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer's federal taxable income adjusted as provided in section six.

(b) "Taxable in another state" defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporation stock tax, or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to such tax.

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, and if such taxpayer is not taxable in another state, entire net income of such taxpayer is subject to the tax imposed by this article.

(d) Business activities partially within and partially without West
Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and such taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4).

(1) Net rents and royalties.

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state, or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains.

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale, or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.
(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to section 631 (a) and (b) of the Internal Revenue Code of 1954, as amended, shall be considered business income for purposes of this article.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(4) Patent and copyright royalties.

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(e) Business activities partially within and partially without this state; apportionment of business income. — All net income, after deducting those items specifically allocated under subsection (d), shall be apportioned to this state by multiplying such net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor, and the denominator of which is four.

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and
tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer’s real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L, Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) **Value of property.** — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided,* That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under regulations of the tax commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term “net annual rental rate” is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) **Leasehold improvements.** — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(4) **Average value of property.** — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided,* That the tax commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the
taxable year, or where property is acquired after the beginning of
the taxable year, or is disposed of, or whose rental contract ceases,
before the end of the taxable year.

(5) Payroll factor. — The payroll factor is a fraction, the
numerator of which is the total compensation paid in this state
during the taxable year by the taxpayer for compensation, and the
denominator of which is the total compensation paid by the taxpayer
during the taxable year, as shown on the taxpayer's federal income
tax return as filed with the Internal Revenue Service, as reflected
in the schedule of wages and salaries and that portion of cost of
goods sold which reflects compensation, or as shown on a pro forma
return.

(6) Compensation. — The term “compensation” means wages,
salaries, commissions and any other form of remuneration paid to
employees for personal services. Payments made to an independent
contractor or to any other person not properly classifiable as an
employee shall be excluded. Only amounts paid directly to employees
are included in the payroll factor. Amounts considered as paid
directly to employees include the value of board, rent, housing,
lodging and other benefits or services furnished to employees by the
taxpayer in return for personal services, provided such amounts
constitute income to the recipient for federal income tax purposes.

(7) Employee. — The term “employee” means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule
applicable in determining the employer-employee relationship, has
the status of an employee.

(8) Compensation. — Compensation is paid in this state if:

(A) The employee's service is performed entirely within this state;
or

(B) The employee's service is performed both within and without
this state, but the service performed without the state is incidental
to the individual's service within this state. The word “incidental”
means any service which is temporary or transitory in nature, or
which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and

(i) The employee's base of operations or, if there is no base of
operations, the place from which the service is directed or controlled is in the state, or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(9) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year, less returns and allowances. The denominator of the fraction shall be the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth.

(10) Allocation of sales of tangible personal property. — Sales of tangible personal property are in this state if:

(A) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(B) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and

(i) The purchaser is the United States government; or

(ii) The taxpayer is not taxable in the state of the purchaser.

(11) Allocation of other sales. — Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and
outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(f) Income producing activity. — The term “income producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. Such activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service,

(2) The sale, rental, leasing, licensing or other use of real property,

(3) The rental, leasing, licensing or other use of tangible personal property,

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income producing activity.

(g) Cost of performance. — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment.

(i) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for, or the tax commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer’s income.
(2) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the tax commissioner may require, as an alternative to the other methods provided for in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code, provided the allocation and apportionment provisions of such system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of proof. — In any proceeding before the tax commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) or (2) of this subsection is sought on the ground that the allocation and apportionment provisions of subsections (d) and (e) do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof shall:

(A) If the tax commissioner seeks employment of one of such methods, be on the tax commissioner, or

(B) If the taxpayer seeks employment of one of such other methods, be on the taxpayer.

§11-24-9. Credits against primary tax; election of taxpayer; expiration of credit.

(a) Credit for primary taxes imposed under article thirteen, chapter eleven of this code. — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed under article thirteen, chapter eleven of this code: Provided, That the amount of such business and occupation tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the business or occupation with respect to which said tax under article thirteen was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the business and occupation tax liability of the taxpayer, which was
taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its business and occupation tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen computed without reduction for the tax credit for industrial expansion or revitalization allowed for such year.

(b) Credit for taxes imposed under article twelve-a, chapter eleven of this code. — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for any tax imposed on the taxpayer under article twelve-a, chapter eleven of this code: Provided, That the amount of such credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from any source with respect to which said tax under article twelve-a was imposed and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the carrier income tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its carrier income tax liability for the taxable year, which was taken as a deduction on its federal return for the taxable year.

(c) Expiration of credits. — The credits authorized in subsections (a) and (b) of this section shall expire and not be authorized or allowed for any taxable year beginning after the thirtieth day of June, one thousand nine hundred eighty-seven.
§11-24-9a. Credits against primary tax; election of taxpayer.

Credit for primary taxes imposed under article thirteen-A, chapter eleven of this code. — A credit shall be allowed against the primary tax imposed by this article equal to the amount of the liability of the taxpayer for the taxable year for the severance tax imposed under article thirteen-a, chapter eleven of this code: Provided, That the amount of such severance tax credit shall not exceed fifty percent of the primary tax liability of the taxpayer under this article, which is attributable to the West Virginia taxable income derived by the taxpayer for the taxable year from the activities with respect to which said tax under article thirteen-a was imposed, and shall not in any event exceed fifty percent of the primary tax liability of the taxpayer under this article for such taxable year: Provided, however, That the entire amount of the severance tax liability of the taxpayer, which was taken as a deduction in determining its federal taxable income for the taxable year, shall be an adjustment increasing federal taxable income under section six of this article: Provided further, That the taxpayer may at its option elect, in lieu of claiming the credit allowable by this subsection, to not increase its federal taxable income under section six of this article and thereby take as a full deduction under this article for the taxable year the amount of its severance tax liability for the taxable year, which was taken as a deduction on its federal return for such taxable year.

For purposes of this section, the tax imposed under article thirteen-a, chapter eleven of this code shall be the amount of the liability of the taxpayer for such tax under said article thirteen-a computed without reduction for the tax credit for coal loading facilities or for industrial expansion or revitalization allowed for such year.

§11-24-13. Returns; time for filing.

On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article.


(a). Privilege to file. — An “affiliated group” of corporations (as defined for purposes of filing a consolidated federal income tax return), shall subject to the provisions of this section and in accordance with any regulations prescribed by the tax commissioner,
have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group and which are included in such return consent to the filing of such return. The filing of a consolidated return shall be considered as such consent. In the case of a corporation which is a member of the affiliated group for a fractional part of the year, the consolidated return shall include the income of such corporation for such part of the year as it is a member of the affiliated group.

(b) **Election binding.** — If an affiliated group of corporations elects to file a consolidated return under this article for any taxable year ending after June thirtieth, one thousand nine hundred eighty-seven, such elections once made shall not be revoked for any subsequent taxable year without the written approval of the tax commissioner consenting to the revocation.

(c) **Method of filing under this article deemed controlling for filing under other business taxes articles.** — The taxpayer shall file on the same basis under articles thirteen-a, thirteen-b, and twenty-three of this chapter as such taxpayer has filed pursuant to this article. Such filing method may not be changed in respect of this article or articles thirteen-a, thirteen-b or twenty-three of this chapter without the written consent of the tax commissioner.

(d) **Regulations.** — The tax commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the tax commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(e) **Computation and payment of tax.** — In any case in which a consolidated return is filed, or is required to be filed, the tax due under this article from the affiliated group shall be determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the tax commissioner, in effect on the last day prescribed by law for the filing of such return, and such affiliated group shall be treated as the taxpayer.
(f) *Consolidated return required.* — If any affiliated group of corporations has not elected to file a consolidated return, the tax commissioner may require such corporations to make a consolidated return in order to clearly reflect the taxable income of such corporations.

§11-24-13b. **Information return for corporations electing to be taxed under subchapter S.**

Every corporation electing to be taxed under subchapter S of the Internal Revenue Code of one thousand nine hundred fifty-four, as amended, shall on or before the fifteenth day of the third month following the close of the taxable year file an information return for each tax year, stating specifically the items of its gross income and the deductions allowable, the names and addresses of all persons owning stock in the corporation at any time during the tax year, the number of shares of stock owned by each shareholder at all times during the tax year, the amount of money and other property distributed by the corporation during the tax year to each shareholder, the date of each such distribution, and such other information as the tax commissioner may prescribe. Corporations failing to file information returns by the due date as prescribed in this section shall be subject to a penalty of fifty dollars for each failure to file, with such penalty being collected as other penalties are collected by the tax commissioner. This section shall take effect for tax years beginning on or after the first day of July, one thousand nine hundred seventy-two.

§11-24-19. **Requirements concerning returns, notices, records and statements.**

(a) *General.* — The tax commissioner may prescribe regulations as to the keeping of records, the contents and form of returns and statements, and the filing of copies of federal income tax returns and determinations. The tax commissioner may require any corporation, by regulation or notice served upon such corporation, to make such returns, render such statements, or keep such records, as the tax commissioner may deem sufficient to show whether or not such corporation is liable under this article for tax.

(b) *Information at source.* — The tax commissioner may prescribe regulations and instructions requiring returns of information to be made by any person, including lessees or mortgagers of real or personal property, fiduciaries, employers, and all officers and
employees of this state, or of any municipal corporation or political subdivision of this state, having the control, receipt, custody, disposal or payment of interest, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable gains, profits or income, except interest coupons payable to bearer.

(c) Notice of qualifications as receiver, etc. — Every receiver, trustee in bankruptcy, assignee for benefit of creditors, or other like fiduciary shall give notice of his qualification as such to the tax commissioner, as may be required by regulation.

(d) Federal return information. — As part of a full and complete tax return, the taxpayer shall provide:

1) A copy of pages one through four of its signed, federal corporation income tax return or its signed federal partnership income tax return, as filed with the Internal Revenue Service for the taxable year; and

2) If a consolidated federal income tax return was filed for the taxable year:

   A) Supporting schedules showing the consolidation of its income statement and balance sheets, including schedules supporting any eliminations and adjustments made to the income statement and balance sheets;

   B) A copy of Federal Form 851 as filed with the Internal Revenue Service and supporting schedules displaying any subsidiary corporations in which the taxpayer has stock ownership; and

   C) A signed statement explaining the relationship and differences, if any, between the income statement and the balance sheet reported for federal, consolidated filing purposes and the income statement and the balance sheet reported to this state under the tax imposed by this article.

CHAPTER 163

(S. B. 705—Originating in the Committee on Finance)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and two-b, article
thirteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to business and occupation tax liability of persons exercising the privilege of engaging or continuing within this state in any taxable activity; providing for certain tax rates to be reduced by five percent for taxable months beginning on and after the first day of July, one thousand nine hundred eighty-five; providing for all tax rates except those set forth in sections two-d and two-m, to expire on the first day of July, one thousand nine hundred eighty-seven, for taxable months beginning on and after such date; providing for the rates set forth in sections two-d and two-m, on the first day of July, one thousand nine hundred eighty-seven, increase to and revert back to those rates in effect on the first day of January, one thousand nine hundred eighty-five, for taxable months beginning on and after said first day of July; reducing rate of tax under section two-b to eight tenths of one percent upon the effective date of this bill or said first day of July, whichever is first, and for there to be no five percent reduction of said rate; requiring persons exercising the privilege of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use to pay tax imposed on privilege of selling such products at wholesale in this state on or after the effective date of this bill; and providing for persons exercising the privilege of dressing and processing of food for human consumption sold in this state to report gross proceeds of such sales under wholesale sales classification or retail sales classification and pay applicable rate of tax thereon.

Be it enacted by the Legislature of West Virginia:

That sections two and two-b, 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.

§11-13-2. Imposition of privilege tax; reduction and restoration of rates; expiration on July 1, 1987, of all tax on all privileges except public service utility businesses and electric power generation.
§11-13-2b. Manufacturing, compounding or preparing products; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; exemption of dressing and processing food for human consumption; valuation of timber products.

*§11-13-2. Imposition of privilege tax; reduction and restoration of rates; expiration on July 1, 1987, of all tax on all privileges except public service utility businesses and electric power generation.

1 (a) Periods before July 1, 1987.—For taxable years or months thereof ending prior to the first day of July, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amounts to be determined by the application of rates against values or gross income as set forth in sections two-a to two-m, both inclusive, of this article and the application of the surtax rate against gross income as set forth in section two-k: Provided, That on the first day of July, one thousand nine hundred eighty-five, the taxes imposed by this section, at the rates set forth in sections two-b through two-m, both inclusive, of this article, and in effect on the first day of January, one thousand nine hundred eighty-five, exclusive of any surtaxes, shall be reduced by five percent for taxable months beginning on and after said first day of July: Provided, however, That on and after the first day of July, one thousand nine hundred eighty-five, the rate of tax under section two-b of this article shall not be less than eight tenths of one percent: Provided further, That there shall be no such reduction of the rates set forth in section two-a or two-l of this article.

2 (b) Periods after June 30, 1987.—For taxable years or months thereof beginning after the thirtieth day of June, one thousand nine hundred eighty-seven, there is hereby levied and shall be collected annual privilege taxes against the persons, on account of the business and other activities, and in the amount to be determined by the application of rates against values or gross income as set forth in sections two-d and two-m of this article: Provided, That on and after the first day of July, one thousand nine hundred eighty-

* Clerks Note: This section was also amended by H. B. 1693, which passed prior to this act.
seven, the rates applicable to the privileges exercised in sections two-d and two-m of this article shall be restored and returned to those which were in effect as to such privileges on the first day of January, one thousand nine hundred eighty-five.

(c) If any person liable for any tax under section two-a, two-b, two-l or two-m shall ship or transport his products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax imposed in said sections, except in those instances in which another measure of the tax is expressly provided. The tax commissioner shall prescribe equitable and uniform rules for ascertaining such value.

(d) In determining value, however, as regards sales from one to another of affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale, the tax commissioner shall prescribe uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(e) Gross income included in the measure of the tax under sections two-a, two-b, two-l and two-m of this article shall neither be added nor deducted in computing the tax levied under the other sections of this article.

(f) A person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling his natural resources, manufactured products or electricity at retail in this state shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in section two-c of this article for the privilege of engaging in the business of selling such natural resources, manufactured products or electricity at retail in this state. But any person exercising any privilege taxable under section two-a, two-b, two-l or two-m of this article and engaging in the business of selling
his natural resources, manufactured products or electricity to producers of natural resources, manufacturers, wholesalers, jobbers, retailers or commercial consumers for use or consumption in the purchaser's business shall not be required to pay the tax imposed in section two-c of this article: Provided, That on and after the effective date of this proviso, a person exercising any privilege taxable under section two-b of this article, and engaging in the business of selling his manufactured products in this state shall be required to make returns of the gross proceeds of such wholesale sales and pay the tax imposed by this section at the rate set forth in section two-c of this article for the privilege of engaging in the business of selling such manufactured products in this state.

(g) Persons exercising any privilege taxable under section two-b or two-m of this article shall not be required to pay the tax imposed in section two-c of this article for the privilege of selling their manufactured products or electricity for delivery outside of this state, but the gross income derived from the sale of such products or electricity outside of this state shall be included in determining the measure of the tax imposed on such person in section two-b or two-m.

(h) A person exercising privileges taxable under the other sections of this article, producing coal, oil, natural gas, minerals, timber or other natural resource products, the production of which is taxable under sections two-a and two-l, and using or consuming the same in his business or transferring or delivering the same as any royalty payment, in kind, or the like, shall be deemed to be engaged in the business of mining and producing coal, oil, natural gas, minerals, timber or other natural resource products for sale, profit or commercial use, and shall be required to make returns on account of the production of the business showing the gross proceeds or equivalent in accordance with uniform and equitable rules for determining the value upon which such privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of similar products of like quality or character by other taxpayers, which rules the tax commissioner shall prescribe.
§11-13-2b. Manufacturing, compounding or preparing products; exception of generated or produced electric power by public utilities or others; treatment accorded electricity generated by manufacturers for own use; exemption of dressing and processing food for human consumption; valuation of timber products.

1 (a) Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit or commercial use, either directly or through the activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising) except electric power produced by public utilities or others, the amount of the tax to be equal to the value of the article, substance, commodity or newspaper, manufactured, compounded or prepared for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing the same, except as otherwise provided, multiplied by a rate of eight tenths of one percent.

(b) The measure of this tax is the value of the entire product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(c) The value of electricity generated by persons taxed under the provisions of this section, which electricity is directly used by such persons in the business of manufacturing and not sold or otherwise transferred or transmitted to others, shall be exempt from the imposition of any tax under this article.

(d) With respect to the manufacturing, compounding or preparing for sale of timber or timber products, the measure of this tax is the value of the entire timber product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state but such value shall not include the value of any
timber or timber products used as ingredients, components or elements of such timber products.

(e) The dressing and processing of food intended for human consumption by a person, firm or corporation, which food is to be sold in this state by such person, firm or corporation shall not be considered as manufacturing or compounding or preparing for sale, but the sale of these products shall be reported under section two-c of this article, as either a wholesale or retail sale, as the case may be.

(f) It is further provided, however, that in those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state the measure of this tax under this section shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

CHAPTER 164
(Com. Sub. for S. B. 198—By Senators Loehr, Burdette, Karras and Mr. Tonkovich, Mr. President)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]
sections one, two, three, four, five and six, article thirteen-d of said chapter; to further amend said article thirteen-d by adding thereto three new sections, designated sections seven, eight and nine; to amend and reenact sections two, three, five and six, article thirteen-e of said chapter; to further amend said article thirteen-e by adding thereto a new section, designated section seven; to amend article twenty-three of said chapter by adding thereto a new section, designated section seventeen-a; and to further amend chapter eleven by adding thereto a new article, designated article thirteen-c, all relating generally to providing tax credits for certain investment in new or expanded businesses, or eligible research and development projects, and for certain investment in coal loading facilities; providing the West Virginia business investment and jobs expansion tax credit act, and as to such act: Providing a short title; stating legislative purpose and findings; defining terms; allowing credit for qualified investment for business expansion based on the useful life of property and number of new jobs created; limiting application of credit to taxes directly attributable to qualified investment for business expansion; permitting credit to offset business and occupation taxes, carrier income taxes, severance taxes, telecommunications taxes, business franchise taxes, corporation net income taxes, or personal income taxes in case of electing small business corporations, partnerships and sole proprietorships, unemployment taxes and workers’ compensation premiums; providing for credit to result in rebate of ad valorem property taxes directly attributable to the qualified investment by means of additional credit against state taxes; providing for transfer, forfeiture and recapture of unused credit under certain circumstances; providing administrative procedures; making credit available to qualified investment made on or after March one, one thousand nine hundred eighty-five; providing tax credits for industrial expansion and industrial revitalization and eligible research and development projects, and as to such credits: Stating legislative purpose and findings; defining terms; allowing credit for eligible investment in industrial expansion and revitalization and in eligible research and development projects; permitting such credit to offset up to
fifty percent of business and occupation taxes of eligible taxpayer for eligible investment made on or after the first day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; providing for transfer, forfeiture and recapture of unused credit under certain circumstances, and preserving legal rights under existing law; providing credit against certain taxes for eligible investment in new or expanded or revitalized coal loading facilities and as to such credit: Defining terms; allowing credit for qualified investment in coal loading facilities; permitting such credit to offset up to fifty percent of business and occupation taxes of eligible taxpayer for qualified investment made on or after the first day of March, one thousand nine hundred eighty-five; permitting allowable credit to offset up to fifty percent of severance taxes and business franchise taxes imposed in lieu of business and occupation taxes after the thirtieth day of June, one thousand nine hundred eighty-seven, regardless of when eligible investment was made; and providing for transfer, forfeiture and recapture of unused credit under certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Article.
13A. Severance Taxes.
13B. Telecommunications Tax.
13C. Business Investment and Jobs Expansion Tax Credit.
13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization and for Research and Development Projects.
13E. Business and Occupation Tax Credit for Coal Loading Facilities.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-3c Tax credit for business investment and jobs expansion.
§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

§11-13-3c. Tax credit for business investment and jobs expansion.

1 (a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-c of this chapter, relating to tax credit for business investment and jobs expansion.
5 (b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-c of this chapter.

§11-13-3d. Tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.

1 (a) There shall be allowed as a credit against the tax imposed by this article, the amount determined under article thirteen-d of this chapter, relating to tax credit for industrial expansion and industrial revitalization, and eligible research and development projects.
5 (b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and article thirteen-d of this chapter.
Any tax credit to which an industrial taxpayer became entitled under section three-c of this article, before its repeal, shall be fully and completely preserved under the provision of this section, as amended, as if this section were in effect, at the time the qualifying investment was made.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-10a. Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

There shall be allowed as a credit against the tax imposed by this article for the taxable year, the amount determined under articles thirteen-c, thirteen-d and thirteen-e of this chapter relating respectively to:

1. The tax credit for business investment and jobs expansion;
2. The tax credit for industrial expansion and revitalization and eligible research and development projects; and
3. The tax credit for coal loading facilities.

The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-e of this chapter.

This provision shall take effect on the first day of July, one thousand nine hundred eighty-seven.

ARTICLE 13B. TELECOMMUNICATIONS TAX.

§11-13B-10a. Tax credit for business investment and jobs expansion; and for eligible research and development projects.

There shall be allowed as a credit against the tax imposed by this article for the taxable year, the amount determined under articles thirteen-c and thirteen-d of this chapter relating respectively to:

1. Tax credit for business investment and jobs expansion; and
2. Tax credit for eligible research and development projects; and
3. Tax credit for coal loading facilities.
10 (b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c and thirteen-d of this chapter.
14 (c) This provision shall take effect on the first day of July, one thousand nine hundred eighty-seven.

ARTICLE 13C. BUSINESS INVESTMENT AND JOBS EXPANSION TAX CREDIT.

§11-13C-1. Short title.
§11-13C-2. Legislative finding and purpose.
§11-13C-4. Amount of credit allowed.
§11-13C-5. Application of annual credit allowance.
§11-13C-6. Qualified investment.
§11-13C-7. New jobs percentage.
§11-13C-8. Forfeiture of unused tax credits; redetermination of credit allowed.
§11-13C-10. Identification of investment credit property.
§11-13C-11. Failure to keep records of investment credit property.
§11-13C-12. Interpretation and construction.

§11-13C-1. Short title.
1 This article may be cited as the "West Virginia Business Investment and Jobs Expansion Tax Credit Act."

§11-13C-2. Legislative finding and purpose.
1 The Legislature finds that the encouragement of economic growth and development in this state is in the public interest and promotes the general welfare of the people of this state. In order to encourage capital investment in businesses in this state and thereby increase employment and economic development, there is hereby provided a business investment and jobs expansion tax credit.

1 (a) General.—When used in this article, or in the administration of this article, terms defined in subsecton (b) shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by either the context in which the term is used, or by specific definition, in this article.
7 (b) Terms defined.
(1) **Business.**—The term “business” means any activity taxable under article twelve-a or thirteen (or both) of this chapter, which is engaged in by any person in this state: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen, or both, of this chapter” shall mean “taxes imposed by article thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(2) **Business expansion.**—The term “business expansion” means capital investment in a new or expanded business facility in this state.

(3) **Business facility.**—The term “business facility” means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility, used in connection with the operation of such facility, in a business taxable under article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(4) **Commissioner or tax commissioner.**—The terms “commissioner” and “tax commissioner” are used interchangeably herein and mean the tax commissioner of the state of West Virginia, or his delegate.

(5) **Compensation.**—The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(6) **Controlled group.**—The term controlled group means one or more chains of corporations connected through stock ownership with a common parent corporation if stock possessing at least fifty percent of the voting power of all classes of stock of each of the corporations is owned directly or indirectly by one or more of the corporations; and the common parent owns directly stock possessing at least fifty percent of the voting power of all classes of stock of at least one of the other corporations.
50) **Corporation.**—The term "corporation" means any corporation, joint-stock company or association, and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument.

55) **Delegate.**—The term "delegate" in the phrase "or his delegate," when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article.

59) **Eligible taxpayer.**—The term "eligible taxpayer" means any person subject to the taxes imposed by article twelve-a or thirteen (or both) of this chapter, who purchases property that has the effect of business expansion and creation of new jobs at a business facility located in this state: *Provided,* That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

73) **Expanded facility.**—The term "expanded facility" means any facility (other than a new or replacement facility) resulting from the acquisition, construction, reconstruction, installation or erection of improvements or additions to existing property (not including any improvement or addition resulting from a repair, refurbishing, retooling, recycling or other similar process or procedure that merely preserves or restores the value of an existing facility, and not including any improvement or addition that, in the determination of the tax commissioner, does not constitute an integral part of a qualified activity), if such improvements or additions are purchased on or after March one, one thousand nine hundred eighty-five, but only to the extent of the taxpayer's qualified investment in such improvements or additions.

88) **Includes and including.**—The terms "includes" and "including," when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term defined.
New business facility.—The term "new business facility" means a facility which satisfies all the requirements of subparagraphs (A), (B), (C) and (D) of this paragraph.

(A) The facility is employed by the taxpayer in the conduct of a business taxable under article twelve-a or thirteen (or both) of this chapter. Such facility shall not be considered a new business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons.

(B) Such facility is acquired by, or leased to, the taxpayer on or after March one, one thousand nine hundred eighty-five.

(C) The facility was not acquired by the taxpayer from a related person.

(D) If such facility was acquired by the taxpayer from an unrelated person (or persons), such facility was not in service or use during the ninety days immediately prior to transfer of the title to such facility, or to the commencement of the term of the lease of such facility, unless upon application of the taxpayer, the tax commissioner consents to waiving this ninety-day period.

New employee.—The term "new employee" means a person residing and domiciled in this state, hired by the taxpayer to fill a position for a job in this state, which previously did not exist in the business enterprise in this state, prior to the date on which the taxpayer's qualified investment is placed in service or use in this state. In no case shall the new employees allowed for purposes of this credit exceed the total increase in the taxpayer's employment in this state. A person shall be deemed to be a "new employee" if such person's duties in connection with the operation of the business enterprise are on:

(A) A regular, full-time and permanent basis.

(1) "Full-time employment" means employment for at least one hundred twenty hours per month at a wage not less than the prevailing state or federal minimum wage, depending on which minimum wage provision is applicable to the business.

(2) "Permanent employment" does not include employment that is temporary or seasonal.

(B) A part-time basis, provided such person is
customarily performing such duties at least twenty hours per week for at least six months during the taxable year.

(14) **New job.**—The term "new job" means a job which did not exist in the business of the taxpayer in this state prior to the taxpayer's qualified investment being made, and which is filled by a new employee.

(15) **New property.**—The term "new property" means:

(A) Property the construction, reconstruction or erection of which is begun on or after March one, one thousand nine hundred eighty-five; and

(B) Property acquired by the taxpayer on or after March one, one thousand nine hundred eighty-five, if the original use of such property commences with the taxpayer and commences after such date.

(16) **Original use.**—The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of the property by the taxpayer.

(17) **Partnership and partner.**—The term "partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not, a trust or estate, a corporation or a sole proprietorship. The term "partner" includes a member in such a syndicate, group, pool, joint venture or organization.

(18) **Person.**—The term "person" includes any natural person, corporation or partnership.

(19) **Property purchased for business expansion.**

(A) **Included property.**—Except as provided in subparagraph (B), the term "property purchased for business expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after the first day of March, one thousand nine hundred eighty-five, for use as a component part of a new or expanded business, as defined in this section, which business is located within West Virginia. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the business taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is
placed in service or use in this state, of four years or more. Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded business facility, shall be included within this definition.

(B) Excluded property.—The term "property purchased for business expansion" shall not include:

1. Property which qualifies or was qualified for credit under article thirteen-c of this chapter prior to its repeal, or under article thirteen-d or thirteen-e of this chapter;
2. Repair costs, including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;
3. Motor vehicles licensed by the department of motor vehicles;
4. Airplanes;
5. Off-premise transportation equipment;
6. Property which is primarily used outside this state; and
7. Property which is acquired incident to the purchase of the stock or assets of a taxpayer, which property was or had been used by the seller in a business taxable under article twelve-a or thirteen (or both) of this chapter, or which property was previously designated qualified or eligible investment for purposes of the tax credits authorized by article thirteen-c of this chapter (prior to its repeal), article thirteen-d or article thirteen-e of said chapter eleven: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by article thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

(c) Purchase date.—Property shall be deemed to have been purchased prior to a specified date only if:

1. The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the purchaser prior to the specified date;
2. The machinery or equipment was owned by the
taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to the specified date; or
(3) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(20) Purchase. — The term "purchase" means any acquisition of property, but only if:
(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707 (b) of the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five;
(B) The property is not acquired by one component member of a controlled group from another component member of the same controlled group; and
(C) The basis of the property for federal income tax purposes, in the hands of the person acquiring it is not determined:
(1) In whole or in part by reference to the federal adjusted basis of such property in the hands of the person from whom it was acquired; or
(2) Under Section 1014 (e) of the United States Internal Revenue Code of 1954, as amended and in effect on the first day of January, one thousand nine hundred eighty-five.

(21) Qualified activity. — The term "qualified activity" means any business or other activity subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

(22) Related person. — The term "related person" means:
(A) A corporation, partnership, association or trust controlled by the taxpayer;
(B) An individual, corporation, partnership, association or trust that is in control of the taxpayer;
(C) A corporation, partnership, association or trust
controlled by an individual, corporation, partnership, association or trust that is in control of the taxpayer; or (D) A member of the same controlled group as the taxpayer.

For purposes of subdivisions (20) and (22) of this section, "control," with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in Section 267 (c) of the United States Internal Revenue Code of 1954, as amended, other than paragraph (3) of such section.

(23) Replacement facility.—The term "replacement facility" means any property (other than an expanded facility) that replaces or supersedes any other property located within this state that:

(A) The taxpayer or a related person used in or in connection with any activity for more than two years during the period of five consecutive years ending on the date the replacement or superseding property is placed in service by the taxpayer.

(B) Is not used by the taxpayer or a related person in or in connection with any qualified activity for a continuous period of one year or more commencing with the date the replacement or superseding property is placed in service by the taxpayer.

(24) Taxpayer.—The term "taxpayer" means any person subject to the tax imposed by article twelve-a or thirteen (or both) of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

(25) This code.—The term "this code" means the code of
West Virginia, one thousand nine hundred thirty-one, as amended.

(26) *This state.*—The term "this state" means the state of West Virginia.

(27) *Used property.*—The term "used property" means property acquired after the twenty-eighth day of February, one thousand nine hundred eighty-five, that is not "new property."

§11-13C-4. Amount of credit allowed.

(a) *Credit allowed.*—Eligible taxpayers shall be allowed a credit against the portion of taxes imposed by this state that are attributable to and the consequence of the taxpayer's qualified investment in a new or expanded business in this state, which results in the creation of new jobs. The amount of this credit shall be determined and applied as hereinafter provided in this article.

(b) *Amount of credit.*—The amount of credit allowable is determined by multiplying the amount of the taxpayer's "qualified investment" (determined under section six) in property purchased for business expansion on or after March one, one thousand nine hundred eighty-five, by the taxpayer's new jobs percentage (determined under section seven). The product of this calculation establishes the maximum amount of credit allowable under this article, due to the qualified investment.

(c) *Application of credit over ten years.*—The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the taxpayer places the qualified investment in service or use in this state. The annual credit allowance shall be taken in the manner prescribed in section four of this article.

(d) *Placed in service or use.*—For purposes of the credit allowed by this section, property shall be considered placed in service or use in the earlier of the following taxable years:

1. The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins; or

2. The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.
§11-13C-5. Application of annual credit allowance.

(a) In general.—The aggregate annual credit allowance for the current taxable year is an amount equal to the sum of:

(1) The one-tenth part allowed under section three, for qualified investment placed into service or use during a prior taxable year, plus

(2) The one-tenth part allowed under section three, for qualified investment placed into service or use during the current taxable year.

(b) Application of current year annual credit allowance.—The amount determined under subsection (a) shall be allowed as a credit against that portion of the taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified investment, and shall be applied as provided in subsections (c) through (j), both inclusive.

(c) Business and occupation taxes.

(1) That portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen of this chapter for the taxable year (determined before application of allowable credits against tax and the annual exemption).

(2) If the taxes due under said article thirteen, are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen, for the taxable year (determined before application of any allowable credits against tax and the annual exemption), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article thirteen of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees
of the taxpayer, employed in this state, whose positions are
directly attributable to the business or other activity of the
taxpayer, that is taxable under article thirteen of this
chapter.

(3) The annual exemption allowed by section three of
said article thirteen, plus any credits allowable under
articles thirteen-d and thirteen-e of this chapter, shall be
applied against and reduce only the portion of article
thirteen taxes not apportioned to the qualified investment
under this article: Provided, That any excess exemption or
credits may be applied against the amount of article
thirteen taxes apportioned to the qualified investment
under this article, that is not offset by the amount of annual
credit against such taxes allowed under this article for the
taxable year, unless their application is otherwise
prohibited by this chapter.

(d) Carrier income taxes.

(1) That portion of the allowable credit attributable to
qualified investment in a business or other activity subject
to the taxes imposed by article twelve-a of this chapter, shall first be applied to reduce up to eighty percent of the
taxes imposed by article twelve-a of this chapter, for the
taxable year.

(2) If the taxes due under said article twelve-a are not
solely attributable to and the direct result of the taxpayer's
qualified investment in a business or other activity taxable
under article twelve-a of this chapter, the amount of such
taxes, which are so attributable, shall be determined by
multiplying the amount of taxes due under said article
twelve-a, for the taxable year, by a fraction, the numerator
of which is all wages, salaries and other compensation paid
during the taxable year to all employees of the taxpayer
employed in this state, whose positions are directly
attributable to the qualified investment in a business or
other activity taxable under article twelve-a of this chapter.
The denominator of the fraction shall be the wages, salaries
and other compensation paid during the taxable year to all
employees of the taxpayer, employed in this state, whose
positions are directly attributable to the business or other
activity of the taxpayer, that is taxable under article
twelve-a of this chapter.

(e) Severance taxes.
(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the tax imposed by article thirteen-a of this chapter, and qualified investment in a business or activity that was subject to the tax imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed by article thirteen-a of this chapter for the taxable year (determined before application of any allowable credits against tax).

(2) If the taxes due under said article thirteen-a are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen-a of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen-a, for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article thirteen-a of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article thirteen-a of this chapter.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article thirteen-a taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article thirteen taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.
(f) **Telecommunications taxes.**

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or other activity subject to the taxes imposed by article thirteen-b of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article thirteen-b of this chapter for the taxable year (determined before application of allowable credits against tax) and qualified investment in a business or activity that was subject to the taxes imposed by article twelve-a of this chapter prior to said first day of July, but on and after said first day of July is subject to the tax imposed by article thirteen-b of this chapter.

(2) If the taxes due under said article thirteen-b are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article thirteen-b of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article thirteen-b, for the taxable year (determined before application of any allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article thirteen-b of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article thirteen-b of this chapter.

(g) **Business franchise tax.**

(1) On and after the first day of July, one thousand nine hundred eighty-seven, that portion of the allowable credit attributable to qualified investment in a business or activity subject to the taxes imposed by article twenty-three of this chapter, and qualified investment in a business or activity that was subject to the taxes imposed by article thirteen of this chapter prior to said first day of July, but on and after said first day of July, is subject to the tax imposed
by article twenty-three of this chapter, shall first be applied to reduce up to eighty percent of the taxes imposed by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article twenty-three, but before application of any other allowable credits against tax).

(2) If the taxes due under said article twenty-three are not solely attributable to and the direct result of the taxpayer's qualified investment in a business or other activity taxable under article twenty-three of this chapter, the amount of such taxes, which are so attributable, shall be determined by multiplying the amount of taxes due under said article twenty-three, for the taxable year (determined after application of the credits against tax provided in section seventeen of said article twenty-three, but before application of any other allowable credits), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment in a business or other activity taxable under article twenty-three of this chapter. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state, whose positions are directly attributable to the business or other activity of the taxpayer, that is taxable under article twenty-three of this chapter.

(3) Any credits allowable under articles thirteen-d and thirteen-e of this chapter, shall be applied against and reduce only the portion of article twenty-three taxes not apportioned to the qualified investment under this article: Provided, That any excess exemption or credits may be applied against the amount of article twenty-three taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(h) Corporation net income taxes.

(1) After application of subsections (c) through (g), both inclusive, of this section, any unused credit shall next be
applied to reduce up to eighty percent of the taxes imposed by article twenty-four of this chapter, for the taxable year (determined before application of allowable credits against tax).

(2) If the taxes due under said article twenty-four (determined before application of allowable credits against tax) are not solely attributable to and the direct result of the taxpayer's qualified investment, the amount of such taxes which are so attributable, shall be determined by multiplying the amount of taxes due under said article twenty-four for the taxable year (determined before application of allowable credits against tax), by a fraction, the numerator of which is all wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer employed in this state, whose positions are directly attributable to the qualified investment. The denominator of the fraction shall be the wages, salaries and other compensation paid during the taxable year to all employees of the taxpayer, employed in this state.

(3) Any credits allowable under article twenty-four of this chapter shall be applied against and reduce only the amount of article twenty-four taxes not apportioned to the qualified investment under this article: Provided, That any excess credits may be applied against the amount of article twenty-four taxes apportioned to the qualified investment under this article, that is not offset by the amount of annual credit against such taxes allowed under this article for the taxable year, unless their application is otherwise prohibited by this chapter.

(i) Personal income taxes.

(1) If the person making the qualified investment is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1954, as amended), a partnership or a sole proprietorship, then any unused credit (after application of subsections (c), (d), (e), (f) and (g)) shall be allowed as a credit against up to eighty percent of the taxes imposed by article twenty-one of this chapter on net income from business or other activity subject to tax under article twelve-a or thirteen (or both) of this chapter.

(2) Electing small business corporations, partnerships and other unincorporated organizations shall allocate the
credit allowed by this article among its members in the
same manner as profits and losses are allocated for the
taxable year.

(3) If the amount of taxes due under article twenty-one
of this chapter (determined before application of allowable
credits against tax), that is attributable to business, is not
solely attributable to and the direct result of the qualified
investment of the electing small business corporation,
partnership, other unincorporated organization or sole
proprietorship, the amount of such taxes which are so
attributable shall be determined by multiplying the amount
of taxes due under said article twenty-one (determined
before application of allowable credits against tax), that is
attributable to business by a fraction, the numerator of
which is all wages, salaries and other compensation paid
during the taxable year to all employees of the electing
small business corporation, partnership, other
unincorporated organization or sole proprietorship,
employed in this state, whose positions are directly
attributable to the qualified investment. The denominator
of the fraction shall be the wages, salaries and other
compensation paid during the taxable year to all employees
of the taxpayer.

(4) No credit shall be allowed under this section against
an employer withholding taxes imposed by article twenty-
one of this chapter.

(j) Ad valorem property taxes.

(1) After application of subsections (a) through (i), both
inclusive, of this section, any unused credit shall next be
applied as a rebate of up to eighty percent of the ad valorem
property taxes imposed pursuant to article eight of this
chapter for the taxable year, on property of the taxpayer
that is directly attributable to the qualified investment
(including property having a useful life of less than four
years) of the taxpayer, in the new or expanded business of
the taxpayer resulting in new jobs.

(2) A taxpayer eligible to claim this rebate for ad
valorem property taxes shall apply the rebate against the
remaining twenty percent of the taxes imposed by articles
twelve-a, thirteen, thirteen-a, thirteen-b, twenty-one,
twenty-three and twenty-four of this chapter, attributable
to the qualified investment under this article.
293  (k) **Unemployment taxes.**
294  (1) After application of subsections (c) through (j), both
295    inclusive, of this section, any unused credit shall next be
296    applied to reduce up to eighty percent of the taxes imposed
297    by article five, chapter twenty-one-a of this code, for the
298    taxable year.
299  (2) If the taxes due under said article five are not solely
300    attributable to and the direct result of the taxpayer's
301    qualified investment, the amount of such taxes which are so
302    attributable shall be determined by multiplying the amount
303    of taxes due under article five, chapter twenty-one-a of this
304    code, by a fraction, the numerator of which is all wages,
305    salaries and other compensation paid during the taxable
306    year to employees of the taxpayer whose positions are
307    directly attributable to the qualified investment, and the
308    denominator of which is the wages, salaries and other
309    compensation paid during the taxable year to all employees
310    of the taxpayer in this state.
311    (l) **Workers' compensation premium.**
312  (1) After application of subsections (c) through (k), both
313    inclusive, of this section, any unused credit shall next be
314    applied to reduce up to twenty percent of the workers'
315    compensation premiums imposed by article two, chapter
316    twenty-three of this code, for the taxable year.
317  (2) If the premiums due under article two of said chapter
318    twenty-three, for the taxable year, are not solely
319    attributable to and the direct result of the taxpayer's
320    qualified investment, the amount of such premiums which
321    are so attributable shall be determined by multiplying the
322    amount of premiums due under article two, chapter twenty-
323    three of this code for the taxable year, by a fraction, the
324    numerator of which is all wages, salaries and compensation
325    paid during the taxable year to employees of the taxpayer
326    whose positions are directly attributable to the qualified
327    investment, and the denominator of which is the wages,
328    salaries and other compensation paid during the taxable
329    year to all employees of the taxpayer, in this state.
330    (m) **Unused credit forfeited.**—If any credit remains after
331    application of subsection (b), the amount thereof shall be
332    forfeited. No carryover to a subsequent taxable year or
333    carryback to a prior taxable year shall be allowed for the
334    amount of any unused portion of any annual credit
335    allowance.
§11-13C-6. Qualified investment.

(a) General.—The qualified investment in property purchased for business expansion shall be the applicable percentage of the cost of each property purchased for the purpose of business expansion which is placed in service or use in this state by the taxpayer during the taxable year.

(b) Applicable percentage.—For the purpose of subsection (a), the applicable percentage of any property shall be determined under the following table:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3%</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3%</td>
</tr>
</tbody>
</table>
| 8 years or more | 100%

The useful life of any property, for purposes of this section, shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost.—For purposes of subsection (a), the cost of each property purchased for business expansion shall be determined under the following rules:

(1) Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for business expansion.

(2) Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

(3) Rental property.—The cost of property acquired by written lease for a primary term of ten years, or longer, shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

(4) Property purchased for multiple use.—In the case of property purchased for use as a component part of a new or expanded business taxable under article twelve-a of this chapter, and use as a component part of a new or expanded business taxable under article thirteen of this chapter, the cost thereof shall be apportioned between such businesses. The amount apportioned to each such new or expanded business for which credit is allowed under this article, shall be considered as a qualified investment subject to the conditions and limitations of this article.
(5) **Self-constructed property.**—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

§11-13C-7. **New jobs percentage.**

(a) *In general.*—The new jobs percentage is based on the number of new jobs created in this state that are directly attributable to the qualified investment of the taxpayer.

(b) *Applicable percentage.*—For the purpose of subsection (a), the applicable new jobs percentage shall be determined under the following table:

<table>
<thead>
<tr>
<th>If number of new jobs is:</th>
<th>The applicable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000</td>
<td>90%</td>
</tr>
<tr>
<td>760</td>
<td>80%</td>
</tr>
<tr>
<td>520</td>
<td>70%</td>
</tr>
<tr>
<td>280</td>
<td>60%</td>
</tr>
<tr>
<td>50</td>
<td>50%</td>
</tr>
</tbody>
</table>

(c) *When a job is attributable.*—An employee's position is directly attributable to the qualified investment if:

(1) The employee's service is performed or his base of operations is at the new or expanded business facility;

(2) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment; and

(3) But for the qualified investment, the position would not have existed.

(d) *Certification of new jobs.*—With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the taxable year in which the qualified investment is first placed in service or use in this state, the taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by it in this state within the period prescribed in subsection (f), that are, or will be, directly attributable to the qualified investment of the taxpayer: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter).”
(e) **Equivalency of permanent employees.**—The hours of part-time employees shall be aggregated to determine the number of equivalent full-time employees.

(f) **Redetermination of new jobs percentage.**—With the annual return for the taxes imposed by article twelve-a or thirteen of this chapter, filed for the third taxable year in which the qualified investment is in service or use, the taxpayer shall certify the actual number of new jobs created by it in this state, that are directly attributable to the qualified investment of the taxpayer: *Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase "taxes imposed by article twelve-a or thirteen (or both) of this chapter" shall mean "taxes imposed by articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter (or any one or combination of such articles of this chapter)."

(1) If the actual number of jobs created would result in a higher new jobs percentage, the credit allowed under this article shall be redetermined and amended returns filed for the first and second taxable years that the qualified investment was in service or use in this state.

(2) If the actual number of jobs created would result in a lower new jobs percentage, the credit previously allowed under this article shall be redetermined and amended returns filed for the first and second taxable years. In applying the amount of redetermined credit allowable for the two preceding taxable years, the redetermined credit shall first be applied to the extent it was originally applied in such prior two years to workers' compensation premiums, then to unemployment taxes, then to ad valorem property tax rebates, then to personal income taxes, then to corporation net income taxes, then to business franchise taxes, then to telecommunications taxes, then to severance taxes, then to carrier income taxes and lastly to business and occupation taxes. Any additional taxes due under this chapter shall be remitted with the amended returns filed with the tax commissioner, along with interest, as provided in section seventeen, article ten of this chapter, and a ten percent penalty, which may be waived by the tax commissioner if the taxpayer shows that the overclaimed amount of the new jobs percentage was due to reasonable cause and not due to willful neglect.
§11-13C-8. Forfeiture of unused tax credits; redetermination of credit allowed.

(a) Disposition of property or cessation of use.—If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section six of this article; or

(2) Ceases to be used in an eligible business of the taxpayer in this state prior to the end of its useful life, as determined under said section six, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section six, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in the new or expanded business of the taxpayer. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return or carrier income tax return, for the year in which the forfeiture occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided, That for taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, such reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter.

(b) Cessation of operation of business facility.—If during any taxable year the taxpayer ceases operation of a business facility in this state for which credit was allowed under this article, before expiration of the useful life of property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property.
allowed under section six, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a business of the taxpayer that is taxable under article twelve-a or thirteen of this chapter. Taxpayer shall then file a reconciliation statement with its annual business and occupation tax return or carrier income tax return for the year in which the forfeiture occurs, and pay any additional taxes owed due to reduction of the amount of credit allowable for such earlier years, plus interest and any applicable penalties: Provided,

That for taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, such reconciliation statement shall be filed with the annual return for the primary tax for which the taxpayer is liable under articles thirteen, thirteen-a, thirteen-b and twenty-three of this chapter.

(c) Reduction in number of employees.—If during any taxable year subsequent to the taxable year in which the new jobs percentage is redetermined as provided in section seven of this article, the average number of employees of the taxpayer, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment falls below the minimum number of new jobs created upon which the taxpayer's annual credit allowance is based, the taxpayer shall calculate what his annual credit allowance would have been had his new jobs percentage been determined based upon the average number of employees, for the then current taxable year, employed in positions created because of and directly attributable to the qualified investment. The difference between the result of this calculation and the taxpayer's annual credit allowance for the qualified investment as determined under section four of this article, shall be forfeited for the then current taxable year, and for each succeeding taxable year unless for such succeeding taxable year the taxpayer's average employment in positions directly attributable to the qualified investment once again meets the level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.


(a) Mere change in form of business.—Property shall not
be treated as disposed of under section eight of this article, by reason of a mere change in the form of conducting the business as long as the property is retained in a business in this state, and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the business facility or facilities transferred, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

(b) Transfer or sale to successor.—Property shall not be treated as disposed of under section eight by reason of any transfer or sale to a successor business which continues to operate the business facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13C-10. Identification of investment credit property.

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of qualified property:

1. Its identity;
2. Its actual or reasonably determined cost;
3. Its straight-line depreciation life;
4. The month and taxable year in which it was placed in service;
5. The amount of credit taken; and
6. The date it was disposed of or otherwise ceased to be qualified property.

§11-13C-11. Failure to keep records of investment credit property.

A taxpayer who does not keep the records required for identification of investment credit property, is subject to the following rules:

1. A taxpayer shall be treated as having disposed of, during the taxable year, any investment credit property which the taxpayer cannot establish was still on hand, in this state, at the end of that year.
2. If a taxpayer cannot establish when investment
credit property reported for purposes of claiming this credit
returned during the taxable year was placed in service, the
taxpayer shall be treated as having placed it in service in the
most recent prior year in which similar property was placed
in service, unless the taxpayer can establish that the
property placed in service in the most recent year is still on
hand. In that event, the taxpayer will be treated as having
placed the returned property in service in the next most
recent year.

§11-13C-12. Interpretation and construction.
(a) No inference, implication or presumption of
legislative construction or intent shall be drawn or made by
reason of the location or grouping of any particular section,
provision or portion of this article; and no legal effect shall
be given to any descriptive matter or heading relating to any
section, subsection or paragraph of this article.
(b) The provisions of this article shall be liberally
construed in order to effectuate the legislative intent
recited in section two of this article.

(a) If any provision of this article or the application
thereof shall for any reason be adjudged by any court of
competent jurisdiction to be invalid, such judgment shall
not affect, impair or invalidate the remainder of said
article, but shall be confined in its operation to the
provision thereof directly involved in the controversy in
which such judgment shall have been rendered, and the
applicability of such provision to other persons or
circumstances shall not be affected thereby.
(b) If any provision of this article or the application
thereof shall be made invalid or inapplicable by reason of
the failure of the Legislature to enact any statute therein
addressed or referred to, or by reason of the repeal or any
other invalidation of any statute therein addressed or
referred to, such failure to reenact on such repeal or
invalidation of any such statute shall not affect, impair or
invalidate the remainder of the said article, but shall be
confined in its operation to the provision thereof directly
involved with, pertaining to, addressing or referring to the
said statute, and the application of such provision with
ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR
INDUSTRIAL EXPANSION AND REVITALIZATION
AND FOR RESEARCH AND DEVELOPMENT
PROJECTS.

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§11-13D-1. Legislative finding and purpose.

The Legislature finds that the encouragement of the
location of new industry in this state; the expansion, growth
and revitalization of existing industrial facilities in this
state; and the conduct of research and development in this
state, for purposes of expanding markets for sales and uses
of this state's natural resources and industrial products, are
all in the public interest and promote the general welfare of
the people of this state. In order to encourage capital
investment in this state and thereby increase employment
and economic development, there is hereby provided a
business and occupation tax credit for industrial expansion
and revitalization in this state, and for certain research and
development related expenditures in this state.


(a) Any term used in this article shall have the same
meaning as when used in a comparable context in article
thirteen of this chapter, unless a different meaning is
clearly required by the context of its use or by definition in
this article.

(b) For purposes of this article, the term:
(1) "Eligible investment" means that amount
determined under either section four of this article, for
investment in a new or expanded or revitalized industrial
(2) "Eligible taxpayer" means an industrial taxpayer who purchases new property for the purpose of industrial expansion, or for the purpose of revitalizing an existing industrial facility in this state; or a taxpayer who purchases property or services (or both) for the purpose of conducting an eligible research and development project in this state.

(3) "Eligible research and development project" means a research and development project engaged in or conducted within this state, by a person who is engaged in this state in the business of producing natural resources or in an industrial business when such research and development project is conducted for purposes relating to the technical, economic, financial, engineering or marketing aspects of expanding markets for, and increasing sales of, this state's natural resource products, or industrial products (or both).

(4) "Industrial business" means any privilege taxable under section two-b or two-m, article thirteen of this chapter, and includes a manufacturing service taxable under section two-h of said article: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the term "industrial business" shall mean the business of manufacturing, compounding or preparing tangible personal property for sale, profit or commercial use, the business of generating electric power, and the business of providing a manufacturing service, which were taxable, respectively, under sections two-b, two-m and two-h, article thirteen of this chapter on the first day of January, one thousand nine hundred eighty-five.

(5) "Industrial facility" means any factory, mill, plant, refinery, warehouse, buildings or complex of buildings located within this state, including the land on which it is located, and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility in an industrial business.

(6) "Industrial revitalization" means capital investment in an industrial facility located in this state to replace or modernize buildings, equipment, machinery and other tangible personal property used in connection with
the operation of such facility in an industrial business of the taxpayer, including the acquisition of any real property necessary to the industrial revitalization.

(7) "Industrial expansion" means capital investment in a new or expanded industrial facility in this state.

(8) "Industrial taxpayer" means any person subject to business and occupation taxes under article thirteen of this chapter, exercising any privilege taxable under section two-b or two-m of said article thirteen, or providing a manufacturing service taxable under section two-h of said article thirteen: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "industrial taxpayer" shall mean any person subject to tax under section two-n, article thirteen of this chapter; or any person subject to tax under article thirteen-a or twenty-three of this chapter engaging in any activity that was taxable under section two-b, article thirteen of this chapter, on the first day of January, one thousand nine hundred eighty-five; or any person taxable under article twenty-three of this chapter providing a manufacturing service that was taxable under section two-h, article thirteen of this chapter on the first day of January, one thousand nine hundred eighty-five.

(9) "Manufacturing service" means a privilege that would be taxable under section two-b, article thirteen of this chapter, if title to the raw materials used in the manufacturing process was vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(10) Subject to subdivision (12) below, "property purchased for an eligible research and development project" means real property, and improvements thereto, and tangible personal property, but only if such real or personal property is constructed or purchased on or after the first day of July, one thousand nine hundred eighty-five, for use as a component part of an eligible research and development project which is located within this state on or after the first day of July, one thousand nine hundred eighty-five. This term includes only tangible personal property with respect to which depreciation or amortization, in lieu of depreciation, is allowable in determining the personal income tax or corporation net
income tax liability of the purchaser under article twenty-one or twenty-four of this chapter. Property acquired by written lease for a term of ten years or longer, if used as a component part of an eligible research and development project, shall be included within this definition.

(11) Subject to subdivision (13) below, "property purchased for industrial expansion" means real property, and improvements thereto, and tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July, one thousand nine hundred sixty-nine, for use as a component part of a new or expanded industrial facility (as defined in subdivision (5) of this subsection) located within this state. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life, at the time such property is placed in service or use in this state, of four years or more.

Property acquired by written lease, for a primary term of ten years or longer, if used as a component part of a new or expanded industrial facility, shall be included within this definition.

(12) Subject to subdivision (13) below, "property purchased for industrial revitalization" means real property, and improvements thereto, and new tangible personal property, but only if such property was constructed, or purchased, on or after the first day of July, one thousand nine hundred eighty-one, for use as a component part of an ongoing industrial facility (as defined in subdivision (5) of this subsection located within this state. This term includes only tangible personal property with respect to which depreciation is allowable in determining the personal income tax or corporation net income tax liability of the industrial taxpayer under article twenty-one or twenty-four of this chapter, and has a useful life at the time the property is placed in service or use in this state of four years or more. Property acquired by written lease for a primary term of ten years or longer, if used as a component part of an industrial revitalization, shall be included within this definition.
(13) "Property purchased for industrial expansion," "property purchased for industrial revitalization" and "property purchased for an eligible research and development project" shall not include:

(A) Repair costs including materials used in the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed;

(B) Motor vehicles licensed by the department of motor vehicles;

(C) Airplanes;

(D) Off-premise transportation equipment;

(E) Property which is primarily used outside this state; and

(F) Property which is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his industrial business in this state, or which property was previously designated "property purchased for industrial expansion" or "property purchased for industrial revitalization," or "property purchased for eligible research and development project," and used to qualify for business and occupation tax credit for industrial expansion or revitalization, or for an eligible research and development project.

(14) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or

(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

(15) "Taxpayer" means any person taxable under article thirteen of this chapter: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, "taxpayer" shall mean any person taxable under article thirteen, thirteen-a or twenty-three of this chapter.
§11-13D-3. Amount of credit allowed for industrial expansion or revitalization and for eligible research and development projects.

(a) Credit allowed.—There shall be allowed to eligible taxpayers a credit against the taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for industrial expansion or revitalization, and for eligible research and development projects. The amount of credit shall be determined as hereinafter provided in this section.

(b) Qualified investment for industrial expansion; July 1, 1969—March 31, 1978.—For property purchased for industrial expansion during the period beginning the first day of July, one thousand nine hundred sixty-nine, and ending the thirty-first day of March, one thousand nine hundred seventy-eight, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under article thirteen of this chapter, subject to the following conditions and limitations:

1. The amount of credit allowable shall be applied over a ten year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.

2. The amount of annual credit allowed shall not reduce the business and occupation tax under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

3. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(c) Qualified investment for industrial expansion; April 1, 1978—February 28, 1985.—For property purchased for industrial expansion during the period beginning the first day of March, one thousand nine hundred seventy-eight, and ending the twenty-eighth day of February, one
thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the qualified investment (as determined in section four) made for industrial expansion, and shall reduce the business and occupation tax liability of the industrial taxpayer under sections two-b, two-h and two-m, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the qualified investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b, two-h and two-m, article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(d) Eligible investment for industrial revitalization; July 1, 1981—February 28, 1985.—For property purchased for industrial revitalization during the period beginning the first day of July, one thousand nine hundred eighty-one, and ending the twenty-eighth day of February, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined under section four) made for industrial revitalization, and shall reduce the business and
occupation tax under sections two-b and two-h, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-b and two-h of said article, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter: Provided, That the tax under section two-h of said article thirteen, shall not be reduced by more than fifty percent of the tax attributable to the privilege of manufacturing for another, which privilege would be taxable under section two-b of said article thirteen, if title to the raw materials involved in the manufacturing process were vested in the taxpayer exercising the privilege taxable under section two-h of said article thirteen.

(3) When in any taxable year the eligible industrial taxpayer is entitled to claim credit under both this subsection (d) and under subsection (b) or (c), or both, of this section, the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this section for any property purchased for industrial revitalization prior to the first day of July, one thousand nine hundred eighty-one.

(e) Eligible investment for industrial expansion or revitalization after February 28, 1985.—For property purchased for industrial expansion or industrial revitalization on or after the first day of March, one thousand nine hundred eighty-five, the amount of
allowable credit shall be equal to ten percent of the eligible investment (as determined in section four) made for industrial expansion or industrial revitalization, and shall reduce the business and occupation tax imposed under article thirteen of this chapter subject to the following conditions and limitations:

1. The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

2. The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

3. When in any taxable year the industrial taxpayer is entitled to claim credit under this subsection (e) and under subsection (b), (c) or (d) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.

4. No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

5. When in any taxable year the industrial taxpayer is entitled to claim credit under this article and article thirteen-e of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes imposed by article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year, computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

6. No credit shall be allowed under this subsection (e) for any property purchased on or after the first day of March, one thousand nine hundred eighty-five, for which credit is allowed under article thirteen-c of this chapter.

7. No credit shall be allowed under this subsection (e)
for any property purchased for industrial expansion or
industrial revitalization prior to the first day of March, one
thousand nine hundred eighty-five.

(f) Eligible investment for research and development project after June 30, 1985.—For property and services purchased for an eligible research and development project on or after the first day of July, one thousand nine hundred eighty-five, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five) made for an eligible research and development project, and shall reduce the business and occupation taxes under sections two-a, two-b, two-h and two-m, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state, or is expensed for federal income tax purposes.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-a of said article, on the business of producing natural resources; under section two-b of said article thirteen, on the business of manufacturing, compounding or preparing tangible personal property for sale; under section two-h of said article thirteen on the providing of a manufacturing service; and under section two-m of said article thirteen, on the business of generating electric power, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under both this subsection (f) and subsection (b), (c) or (d) of this section (or any combinations thereof), the total amount of all credits allowed under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.

(4) No carryover to a subsequent tax year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Any unused credit shall be forfeited.
(5) No credit shall be allowed under this subsection (f) for any property purchased for an eligible research and development project, when such property is used to determine the eligible investment under section four of this article, or determine the amount of credit allowable under article thirteen-c of this chapter.

(6) No credit shall be allowed under this subsection (f) for any property purchased for research and development prior to the first day of July, one thousand nine hundred eighty-five.

(g) Credit limitation.—The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year, computed prior to application of the tax credits provided by this article and articles thirteen-c and thirteen-e of this chapter, and the annual exemption allowed provided by section three, article thirteen of this chapter.

(h) Application of credit after June 30, 1987.—On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under subsections (b), (c), (e) and (f) of this section shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter, for taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-e, or both, of this chapter.

§11-13D-4. Eligible investment for industrial expansion or revitalization.

(a) General.—The eligible or qualified investment in property purchased for industrial expansion or revitalization shall be the applicable percentage of the cost of each property purchased for the purpose of industrial expansion or revitalization, which is placed in service or use in this state, by the eligible taxpayer during the taxable year.

(b) Applicable percentage.—For the purpose of
subsection (a), the applicable percentage for any property shall be determined under the following table:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 years or more but less than 6 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost.—For purposes of subsection (a), the cost of each property purchased for industrial expansion or revitalization, or for conduct of an eligible research and development project, shall be determined under the following rules:

1. Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for industrial expansion or revitalization.
2. Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.
3. Rental property.—The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.
4. Property purchased for multiple use.—The cost of property purchased for multiple business use including use as a component part of a new or expanded or revitalized industrial business, together with some other business or activity not eligible for credit under this article, shall be apportioned between such businesses and occupations. The amount apportioned to the new or expanded or revitalized industrial business, shall be considered to be as an eligible investment, subject to the conditions and limitations of this section.
5. Self-constructed property.—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for purposes of depreciation.

§11-13D-5. Eligible investment for research and development.
(a) General.—The eligible investment in a research and development project shall be the sum of the applicable percentage of the cost of land and depreciable property purchased for the conduct of an eligible research and development project, which is placed in service or use in this state during the taxable year, plus the amount of qualified research expenses (as defined in this section) deducted by the eligible taxpayer, for federal income tax purposes.

(b) Applicable percentage of property.—For the purpose of subsection (a), the applicable percentage for land and depreciable property shall be determined under the following table:

<table>
<thead>
<tr>
<th>Useful Life</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 years</td>
<td>33 1/3</td>
</tr>
<tr>
<td>6 years or more but less than 8 years</td>
<td>66 2/3</td>
</tr>
<tr>
<td>8 years or more</td>
<td>100</td>
</tr>
</tbody>
</table>

The useful life of any property for purposes of this section shall be determined as of the date such property is first placed in service or use in this state by the taxpayer, determined in accordance with federal income tax law.

(c) Cost of property.—For purposes of subsection (a), the cost of each property purchased for the conduct of an eligible research and development project shall be determined under the following rules:

1. Trade-ins.—Cost shall not include the value of property given in trade or exchange for the property purchased for conduct of the research and development project.

2. Damaged, destroyed or stolen property.—If property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost of replacement property shall not include any insurance proceeds received in compensation for the loss.

3. Rental property.—The cost of property acquired by lease for a term of ten years or longer shall be one hundred percent of the rent reserved for the primary term of the lease, not to exceed twenty years.

4. Property purchased for multiple use.—The cost of property purchased for multiple business use including direct use in the conduct of an eligible research and development project, together with some other business or
activity not eligible under this section, shall be apportioned between such activities. The amount apportioned to the conduct of the eligible research and development project shall be considered to be eligible investment subject to the conditions and limitations of this section.

(5) **Self-constructed property.**—In the case of self-constructed property, the cost thereof shall be the amount properly charged to the capital account for depreciation in accordance with federal income tax law.

(d) **Qualified research expenses.**—For purposes of this section:

(1) “Qualified research expenses” means the sum of in-house and contract research expenses for qualified research allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under sections two-a, two-b and two-m, article thirteen of this chapter, or under section two-h of said article thirteen (in the case of manufacturing services only): Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, “qualified research expenses” shall mean the sum of in-house and contract research expenses for qualified research, allocated to this state, which are paid or incurred by the eligible taxpayer during the taxable year in carrying on any trade or business taxable under article thirteen, thirteen-a or twenty-three of this chapter, that would have been taxable under section two-a, two-b, two-m or two-h (in the case of manufacturing services only) of said article thirteen, as in effect on the first day of January, one thousand nine hundred eighty-five.

In no event shall “qualified research expenses” include any expense that must be capitalized and depreciated for federal income tax purposes, or any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent or quality of any deposit of coal, limestone or other natural resource, including oil and natural gas.

(2) “In-house research expenses” means:

(A) Wages paid or incurred to an employee for qualified services performed in this state by such employee;

(B) Amounts paid or incurred for supplies used in the conduct of qualified research in this state; and

(C) Amounts paid or incurred to another person for the
right to use personal property in the conduct of qualified
research in this state.
(3) “Qualified services” means services consisting of:
(A) Engaging in qualified research in this state; or
(B) Engaging in the direct supervision or direct support
of research activities in this state, which constitute
qualified research.
If substantially all of the services performed by an
individual for the taxpayer during the taxable year consist
of services meeting the requirements of subparagraph (A) or
(B), the term “qualified services” means all services
performed by such individual for the taxable year.
(4) “Supplies” means any tangible property other than:
(A) Land or improvements to land; and
(B) Property of a character subject to depreciation for
federal income tax purposes.
(5) “Wages” has the meaning given to such term by
Section 3401(a) of the Internal Revenue Code of 1954, as
amended. In the case of self-employed individuals and
owner-employees (within the meaning of Section 401(c)(1)
of said Internal Revenue Code), the term “wages” includes
the earned income (as defined in Section 401(c)(2) of said
Internal Revenue Code) of such employee. The term
“wages” shall not include any amount taken into account in
determining the federal targeted jobs credit under Section
51(a) of said Internal Revenue Code.
(6) “Contract research expenses” means:
(A) In general, sixty-five percent of any amount paid or
incurred by the taxpayer to any person (other than an
employee of the taxpayer) for qualified research.
(B) If any contract research expenses paid or incurred
during any taxable year are attributable to qualified
research to be conducted after the close of the taxable year,
such amount shall be treated as paid or incurred during the
taxable year during which the qualified research is
conducted.
(7) “Qualified research” means research and
development conducted for purposes relating to the
technical, economic, financial, engineering or marketing
aspects of expanding markets for and increasing sales of
this state’s natural resource products or manufactured
products, or both: Provided, That it shall not include:
(A) Research or development conducted outside this state;
(B) Research or development not directly related to increasing the uses for and sales of this state's natural resource products and industrial products;
(C) Research in the social sciences or humanities; or
(D) Research and development to the extent funded by any grant, contract or otherwise by another person (or any governmental entity).

(e) Research by colleges, universities and certain research organizations.—In general, sixty-five percent of the amount paid or incurred by a corporation to any nonprofit educational organization which is an institution of higher education (as defined in Section 3304(f) of the Internal Revenue Code of 1954, as amended), an institution of higher education subject to the jurisdiction of the West Virginia board of regents, or any other nonprofit organization exempt from federal income taxes which is organized and operated primarily to conduct scientific research and is not a private foundation for federal income tax purposes for research to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

(f) Standards for determining qualified research expenses.—In prescribing standards for determining which research and development expenses are considered to be West Virginia qualified research expenses for purposes of this section, the tax commissioner may consider: (1) The place where the services are performed; (2) the residence or business location of the person or persons performing the services; (3) the place where qualified research supplies are consumed; and (4) other factors that the tax commissioner believes relevant in determining whether or not the research and development expenses, land and depreciable property were purchased and used for qualified research, as defined in this article, during the taxable year.

§11-13D-6. Forfeiture of unused tax credits; redetermination of credit required.

(a) Disposition of property or cessation of use.—If
during any taxable year, property with respect to which a
tax credit has been allowed under this article:
(1) Is disposed of prior to the end of its useful life, as
determined under section four or five of this article; or
(2) Ceases to be used in the new or expanded or
revitalized industrial business, or in the eligible research
and development project, of the taxpayer in this state prior
to the end of its useful life, as determined under said section
four or five, then the unused portion of the credit allowed
for such property shall be forfeited for the taxable year and
all ensuing years. Additionally, except when the property is
damaged or destroyed by fire, flood, storm or other
casualty, or is stolen, the taxpayer shall redetermine the
amount of credit allowed in all earlier years by reducing the
applicable percentage of cost of such property allowed
under said section three, to correspond with the percentage
of cost allowable for the period of time that the property
was actually used in this state in the industrial business of
the taxpayer. Taxpayer shall then file a reconciliation
statement with its annual business and occupation tax
return for the year in which the forfeiture occurs and pay
any additional business and occupation taxes owed due to
reduction of the amount of credit allowable for such earlier
years, plus interest and any applicable penalties: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase "taxes imposed by article
twelve-a or thirteen (or both) of this chapter" shall mean
"taxes imposed by articles thirteen, thirteen-a and twenty-
three of this chapter (or any one or combination of such
articles of this chapter)."
(b) Cessation of operation of industrial facility or
eligible research and development project.—If during any
taxable year, the industrial taxpayer ceases operation of an
industrial facility in this state, or of an eligible research and
development project, for which credit was allowed under
this article, or article thirteen-c of this chapter prior to its
repeal, before expiration of the useful life of the property
with respect to which tax credit has been allowed under this
article or article thirteen-c of this chapter prior to its repeal,
then the unused portion of the allowed credit shall be
forfeited for the taxable year and all ensuing years.
Additionally, except when the cessation is due to fire, flood,
storm or other casualty, the taxpayer shall redetermine the
amount of credit allowed in earlier years by reducing the
applicable percentage of cost of such property allowed
under section three, to correspond with the percentage of
cost allowable for the period of time that the property was
actually used in this state in the industrial business of the
taxpayer. Taxpayer shall then file a reconciliation
statement with its annual business and occupation tax
return for the year in which the forfeiture occurs and pay
any additional business and occupation taxes owed due to
reduction of the amount of credit allowable for such earlier
years, plus interest and any applicable penalties: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase “taxes imposed by article
twelve-a or thirteen (or both) of this chapter” shall mean
“taxes imposed by articles thirteen, thirteen-a and twenty-
three of this chapter (or any one or combination of such
articles of this chapter).”


(a) Mere change in form of business.—Property shall not
be treated as disposed of under section six of this article, by
reason of a mere change in the form of conducting the
business as long as the property is retained in a similar
industrial business activity in this state and the taxpayer
retains a controlling interest in the successor business. In
this event, the successor business shall be allowed to claim
the amount of credit still available with respect to the
industrial facility or facilities transferred (or to the eligible
research and development project); and the taxpayer
(transferor) shall not be required to redetermine the amount
of credit allowed in earlier years.

(b) Transfer or sale to successor.—Property shall not be
treated as disposed of under section six by reason of any
transfer or sale to a successor business which continues to
operate the industrial facility in this state. Upon transfer or
sale, the successor shall acquire the amount of credit that
remains available under this article for each subsequent
taxable year and the taxpayer (transferor) shall not be
required to redetermine the amount of credit allowed in
earlier years.

Any tax credit to which an industrial taxpayer became entitled under article thirteen-c of this chapter, before the repeal of said article thirteen-c, shall be fully and completely preserved under the provisions of this article, as if the provisions of this article were in effect at the time the qualifying investment was made.


(a) If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) If any provision of this article or the application thereof shall be made invalid or inapplicable by reason of the failure of the Legislature to enact any statute therein addressed or referred to, or by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such failure to reenact on such repeal or invalidation of any such statute shall not affect, impair or invalidate the remainder of the said article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by any such invalid or repealed statute shall not be abrogated or diminished in any way.

ARTICLE 13E. BUSINESS AND OCCUPATION TAX CREDIT FOR COAL LOADING FACILITIES.


§11-13E-3. Amount of credit allowed for coal loading facilities.

§11-13E-5. Forfeiture of unused tax credits; redetermination of credit required.

§11-13E-6. Transfer of eligible investment to successors.

§11-13E-7. Severability.


(a) Any term used in this article shall have the same
meaning as when used in a comparable context in article
thirteen or thirteen-a of this chapter, unless a different
meaning is clearly required by the context of its use or by
definition in this article.

(b) For purpose of this article, the term:

(1) "Coal loading facility" means any building or
structure specifically designed and solely used to transfer
coal from a coal processing or preparation facility, or from a
coil storage facility, or both, or from any means of
transportation, to any means of rail or barge transportation
used to move coal, including such land as is directly
associated with and solely used for the coal loading facility,
and including any device or combination of machinery and
equipment that is directly associated with and solely used
for the loading of coal. This definition applies only when the
transfer is to any means of rail or barge transportation and
specifically excludes the transfer to any other form of
transportation. This may include, but is not limited to, the
coal loading tipple, conveyors, coal storage facilities,
weighing equipment and rail trackage, if they are directly
associated with and solely used for the loading of coal. In no
event may the eligible investment in a coal loading facility,
for purposes of this credit, include the cost of any coal
processing, preparation, blending or sizing facility or
equipment, or any combination thereof, even though
physically a part of the coal loading facility, and even
though such coal processing, preparation, blending or
sizing facility or equipment, or any combination thereof, is
necessary or essential to the loading of commercially usable
or marketable coal.

(2) "Eligible taxpayer" means any person subject to tax
under article thirteen, thirteen-a or twenty-three of this
chapter who purchases real or personal property, or a
combination thereof, for the purpose of building or
constructing a new or expanded coal loading facility in this
state, or who revitalizes an existing coal loading facility
located in this state, and upon completion, operates the new
or expanded or revitalized coal loading facility: Provided,
That on and after the first day of July, one thousand nine
hundred eighty-seven, the phrase "subject to tax under
article thirteen of this chapter" shall mean "subject to tax
under article thirteen-a or twenty-three of this chapter."
"Revitalization" means capital investment in a coal loading facility located in this state to replace or modernize buildings, structures, equipment, machinery and other tangible personal property directly associated with and solely used in the operation of a coal loading facility, including the acquisition of any real property directly associated with and solely used in the operation of a revitalized coal loading facility.

Subject to subdivision (5) below, "property purchased for a coal loading facility" means real property and improvements thereto and tangible personal property, but only if such real or personal property is constructed or purchased for use as a component part of a new or expanded coal loading facility, or the revitalization of an existing coal loading facility located within this state. This term includes only tangible personal property with respect to which depreciation, or amortization in lieu of depreciation, is allowable in determining the personal income tax or corporation net income tax due under article twenty-one or twenty-four of this chapter, and has a useful life at the time such property is placed in service or use in this state of four years or more. Property acquired by written lease for a term of ten years or longer, if used as a component part of a coal loading facility, shall be included within this definition.

"Property purchased for a coal loading facility" shall not include:

(A) Property which qualifies or was qualified for credit under article thirteen-c or thirteen-d of this chapter;

(B) Repair costs, including materials used in making the repair, unless for federal income tax purposes the cost of the repair must be capitalized and not expensed;

(C) Motor vehicles licensed by the department of motor vehicles;

(D) Airplanes;

(E) Off-premise transportation equipment;

(F) Property which is primarily used outside the state;

(G) Property purchased prior to the first day of April, one thousand nine hundred eighty-three; and

(H) Property which is acquired incident to the purchase of the stock or assets of a taxpayer which property was or had been used by the seller in his business in this state, or
which property was previously designated "property purchased for industrial expansion" or "property purchased for industrial revitalization" under article thirteen-d of this chapter and used to qualify for the tax credit provided by either of said articles.

(6) Property shall be deemed to have been purchased prior to a specified date only if:

(A) The physical construction, reconstruction or erection of the property was begun prior to the specified date, or such property was constructed, reconstructed, erected or acquired pursuant to a written contract as existing and binding on the taxpayer prior to the specified date;

(B) The machinery or equipment was owned by the taxpayer prior to the specified date or was acquired by the taxpayer pursuant to a binding purchase contract which was in effect prior to such date; or

(C) In the case of leased property, there was a binding written lease or contract to lease identifiable property in effect prior to the specified date.

§11-13E-3. Amount of credit allowed for coal loading facilities.

(a) There shall be allowed to eligible taxpayers a credit against the business and occupation taxes imposed by article thirteen, thirteen-a or twenty-three of this chapter, for investment in a new or expanded or revitalized coal loading facility. The amount of this credit shall be determined as hereinafter provided in this section.

(b) Pre March 1, 1985 investment.—For investment in a new or expanded or revitalized coal loading facility made on or after the first day of April, one thousand nine hundred eighty-three, and prior to the first day of March, one thousand nine hundred eighty-five, the amount of this credit shall be equal to ten percent of the cost of the eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under sections two-a, two-b and two-h of said article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per
taxable year, beginning with the taxable year in which the eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes imposed by section two, article thirteen of this chapter, under section two-a of said article thirteen, on the business of producing coal; under section two-b of said article thirteen, on the business of manufacturing, compounding or preparing coal for sale; and under section two-h of said article thirteen, on the activity of loading coal, below fifty percent of the amount which would be imposed for the taxable year in the absence of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of credits allowed under sections two-b and two-h, article thirteen of this chapter, shall not exceed fifty percent of the tax liability under said sections, on manufacturing or manufacturing-service activity.

(4) No carryover to a subsequent tax year or carryback to a prior tax year shall be allowed for the amount of any unused portion of the credit allowed under this subsection (b) for the taxable year. Any unused credit shall be forfeited.

(5) No credit shall be allowed under this subsection (b) for any property purchased for a coal loading facility prior to the first day of April, one thousand nine hundred eighty-three.

(c) Post February 28, 1985 investment.—For investment in a new or expanded or revitalized coal loading facility made on or after the first day of March, one thousand nine hundred eighty-five, the amount of the credit shall be equal to ten percent of the cost of eligible investment (as determined in section four) made in a coal loading facility and shall reduce the business and occupation tax imposed under article thirteen of this chapter, subject to the following conditions and limitations:

(1) The amount of credit allowable shall be applied over a ten-year period, at the rate of one-tenth thereof per taxable year, beginning with the taxable year in which the
eligible investment is first placed in service or use in this state.

(2) The amount of annual credit allowed shall not reduce the business and occupation taxes under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year in the absence of this credit against tax, computed before application of the annual exemption allowed by section three, article thirteen of this chapter.

(3) When in any taxable year the eligible taxpayer is entitled to claim credit computed under two or more subsections of this section, the total amount of all credits allowable under this section shall not exceed the fifty percent rule outlined in subdivision (2) of this subsection.

(4) No carryover to a subsequent taxable year or carryback to a prior taxable year shall be allowed for the amount of any unused portion of any annual credit allowance. Such unused credit shall be forfeited.

(5) When in any taxable year the eligible taxpayer is entitled to claim credit under this article and article thirteen-d of this chapter, the total amount of all such credits allowable for the taxable year shall not reduce the amount of business and occupation taxes under article thirteen of this chapter, below fifty percent of the amount which would be imposed for such taxable year computed before allowance of the annual exemption allowed by section three, article thirteen of this chapter.

(6) No credit shall be allowed under this subsection (c) for any property purchased on or after the first day of March, one thousand nine hundred eighty-five, for which credit is allowed under article thirteen-c of this chapter.

(7) No credit shall be allowed under this subsection (c) for any property purchased for a coal loading facility prior to the first day of March, one thousand nine hundred eighty-five.

(d) Credit limitation.—The aggregate amount of credit allowable under this article and article thirteen-e of this chapter, against the taxes imposed by article thirteen of this chapter, for the taxable year, shall in no event exceed fifty percent of the tax due for the taxable year computed prior to application of the tax credits provided by this article and article thirteen-d of this chapter, and the annual exemption
provided by section three, article thirteen of this chapter.

(e) Application of credit after June 30, 1987.—On and after the first day of July, one thousand nine hundred eighty-seven, the credits allowed under subsections (b), (c), (e) and (f) of this section, shall be applied to and reduce the taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter: Provided, That this credit shall not reduce the sum of the net tax liability of the taxpayer under articles thirteen, thirteen-a and twenty-three of this chapter for the taxable year below fifty percent of the amount thereof, determined before application of the credits allowed by this article and article thirteen-c or thirteen-d, or both, of this chapter.

§11-13E-5. Forfeiture of unused tax credits; redetermination of credit required.

(a) Disposition of property or cessation of use.—If during any taxable year, property with respect to which a tax credit has been allowed under this article:

(1) Is disposed of prior to the end of its useful life, as determined under section three of this article; or

(2) Ceases to be used in a coal loading facility by the eligible taxpayer, in this state, prior to the end of its useful life, as determined under said section three of this article, then the unused portion of the credit allowed for such property shall be forfeited for the taxable year and all ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed in all earlier years by reducing the applicable percentage of cost of such property allowed under said section three of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state as a coal loading facility of the eligible taxpayer. The taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean...
“taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

(b) **Cessation of operation of coal loading facility.**—If during any taxable year the eligible taxpayer ceases operation of a coal loading facility in this state, for which credit was allowed under this article, before expiration of the useful life of the property with respect to which tax credit has been allowed under this article, then the unused portion of the allowed credit shall be forfeited for the taxable year and all ensuing years. Additionally, except when the cessation is due to fire, flood, storm or other casualty, the taxpayer shall redetermine the amount of credit allowed in earlier years by reducing the applicable percentage of cost of such property allowed under section three of this article, to correspond with the percentage of cost allowable for the period of time that the property was actually used in this state in a coal loading facility of the eligible taxpayer. The taxpayer shall then file a reconciliation statement with its annual business and occupation tax return for the year in which the forfeiture occurs and pay any additional business and occupation taxes, plus interest and any applicable penalties: Provided, That on and after the first day of July, one thousand nine hundred eighty-seven, the phrase “taxes imposed by article twelve-a or thirteen (or both) of this chapter” shall mean “taxes imposed by articles thirteen, thirteen-a and twenty-three of this chapter (or any one or combination of such articles of this chapter).”

§11-13E-6. **Transfer of eligible investment to successors.**

(a) **Mere change in form of business.**—Property shall not be treated as disposed of under section five of this article by reason of a mere change in the form of conducting the business as long as the property is used as or in a coal loading facility in this state and the taxpayer retains a controlling interest in the successor business. In this event, the successor business shall be allowed to claim the amount of credit still available with respect to the coal loading facility or facilities transferred and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.
(b) Transfer or sale to successor.—Property shall not be treated as disposed of under section five by reason of any transfer or sale to a successor business which continues to operate the coal loading facility in this state. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each subsequent taxable year, and the taxpayer (transferor) shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13E-7. Severability.

(a) If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) If any provision of this article or the application thereof shall be made invalid or inapplicable by reason of the failure of the Legislature to enact any statute therein addressed or referred to, or by reason of the repeal or any other invalidation of any statute therein addressed or referred to, such failure to reenact on such repeal or invalidation of any such statute shall not affect, impair or invalidate the remainder of the said article, but shall be confined in its operation to the provision thereof directly involved with, pertaining to, addressing or referring to the said statute, and the application of such provision with regard to other statutes or in other instances not affected by any such invalid or repealed statute shall not be abrogated or diminished in any way.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-17a. Tax credit for business investment and jobs expansion; industrial expansion and revitalization; eligible research and development projects; coal loading facilities.

(a) There shall be allowed as a credit against the tax imposed by this article for the taxable year the amount
determined under articles thirteen-c, thirteen-d and thirteen-e of this chapter relating respectively to:

(1) The tax credit for business investment and jobs expansion;

(2) The tax credit for industrial expansion and revitalization and eligible research and development projects; and

(3) The tax credit for coal loading facilities.

(b) The tax commissioner shall prescribe such regulations as he deems necessary to carry out the purposes of this section and articles thirteen-c, thirteen-d and thirteen-e of this chapter.

(c) This provision shall take effect on the first day of July, one thousand nine hundred eighty-seven.

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CHAPTER 165
(S. B. 621—Originating in the Committee on Finance)

[Passed March 30, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating meaning of terms used in the West Virginia personal income tax act; and making such updating retroactive to taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.


Any term used in this article shall have the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this
article to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1954, as amended, and such other provisions of the laws of the United States as relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States prior to the first day of January, one thousand nine hundred eighty-five, 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-four, 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-five shall be given effect.

CHAPTER 166
(S. B. 343—By Senator Parker)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventy-four, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employer's return and payment of state income tax withheld; date for filing monthly return for taxes withheld in the month of December.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-74. Employer's return and payment of withheld taxes.

(a) General.—Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and
withheld. Where the aggregate amount so deducted and withheld by any employer is less than twenty-five dollars in a calendar quarter and the aggregate for the calendar year can reasonably be expected to be less than one hundred dollars, the tax commissioner may by regulation permit an employer to file an annual return and pay over to the tax commissioner the taxes deducted and withheld on or before the last day of the month following the close of such calendar year. The tax commissioner may, if he believes such action necessary for the protection of the revenues, require any employer to make such return and pay to him the tax deducted and withheld at any time, or from time to time.

(b) Monthly returns and payments of withheld tax for April and May, 1971.—Notwithstanding the provisions of subsection (a), in the case of each of the months of April and May, one thousand nine hundred seventy-one, every employer required to deduct and withhold tax under this article, except any employer with respect to whom the tax commissioner may have by regulation provided otherwise in accordance with the provisions of subsection (a), shall, for the months of April and May, one thousand nine hundred seventy-one, file a withholding return for each of such months as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld for each of such months by the twentieth day of June, one thousand nine hundred seventy-one.

(c) Monthly returns and payments of withheld tax on and after June 1, 1971.—Notwithstanding the provisions of subsection (a), on and after June 1, 1971, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the tax commissioner and pay over to the tax commissioner the taxes so required to be deducted and withheld, if such withheld taxes aggregate one hundred dollars or more for such month; except any employer with respect to whom the tax commissioner may have by
regulation provided otherwise in accordance with the
provisions of subsection (a).
(d) Deposit in trust for tax commissioner.—Whenever
any employer fails to collect, truthfully account for, pay
over the tax, or make returns of the tax as required in this
section, the tax commissioner may serve a notice requiring
such employer to collect the taxes which become collectible
after service of such notice, to deposit such taxes in a bank
approved by the tax commissioner, in a separate account, in
trust for and payable to the tax commissioner, and to keep
the amount of such tax in such account until payment over
to the tax commissioner. Such notice shall remain in effect
until a notice of cancellation is served by the tax
commissioner.

CHAPTER 167
(S. B. 622—Originating in the Committee on Finance)
[Passed April 1, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four,
chapter eleven of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, relating to updating
meaning of terms used in the West Virginia corporation net
income tax act; and making such updating retroactive to
taxable years beginning after the thirty-first day of
December, one thousand nine hundred eighty-three.

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.


1 (a) General.—Any term used in this article shall have
2 the same meaning as when used in a comparable context in

* Clerks Note: This section was also amended by H. B. 1693, which passed
subsequent to this act.
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-five, 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-four, 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-five, shall be
given effect.

(b) Certain terms defined.—For purposes of this article:
(1) The term “tax commissioner” means the tax
commissioner of the state of West Virginia or his delegate.
(2) The term “corporation” means and includes a joint-
stock company or any association which is taxable as a
corporation under the federal income tax law.
(3) The term “domestic corporation” means any
corporation organized under the laws of West Virginia.
(4) The term “foreign corporation” means any
corporation other than a domestic corporation.
(5) The term “state” means any state of the United
States, the District of Columbia, the Commonwealth of
Puerto Rico, any territory or possession of the United
States, and any foreign country or political subdivision
thereof.
(6) The term “taxable year” means the taxable year for
which the taxable income of the taxpayer is computed
under the federal income tax law.
(7) The term “taxpayer” means a corporation subject to
the tax imposed by this article.
(8) The term “tax” includes, within its meaning, interest
and additions to tax, 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.
The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

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.

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, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

The term "nonbusiness income" means all income other than business income.

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.

The term "this code" means the code of West Virginia.

The term "this state" means the state of West Virginia.

CHAPTER 168
(S. B. 52—By Senator Tucker)

[Passed March 22, 1985; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter eleven-a of the code of West Virginia, one thousand nine
hundred thirty-one, as amended, relating to publication by the sheriff of a notice of sale of land for delinquent taxes; notice to landowners and lienholders; manner and time of notice.

**Be it enacted by the Legislature of West Virginia:**

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

**ARTICLE 3. SALE OF LAND FOR TAXES.**

§11A-3-2. Second publication of list of delinquent real estate; notice.

1 On or before September tenth of each year, the sheriff shall:
2 prepare a second list of delinquent lands, which shall include all real estate in his county remaining delinquent as of September first, together with a notice of sale, in form or effect as follows:
3 Notice is hereby given that the following described tracts or lots of land or undivided interests therein in the County of ............ which are delinquent for the nonpayment of taxes for the year (or years) 19 .... , will be offered for sale by the undersigned sheriff (or collector) at public auction at the front door of the courthouse of the county, between the hours of ten in the morning and four in the afternoon, on the ............ day of ..................., 19 .... .
4 Each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, will be sold at public auction to the highest bidder for cash in an amount which shall not be less than the taxes, interest and charges which shall be due thereon to the date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land described</th>
<th>Local description of land</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before sale, of the total amount of taxes, interest and charges due thereon up to the date of redemption.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Given under my hand this ..................... day of
.................................................., 19....
..................................................
Sheriff (or collector).

The sheriff shall publish the list and notice prior to the
sale date fixed in the notice as a Class III-0 legal
advertisement in compliance with the provisions of article
three, chapter fifty-nine of this code, and the publication
area for such publication shall be the county. In addition to
such publication, no less than thirty days prior to the sale
the sheriff shall send a notice of such delinquency by
certified mail to the last known address of each person
whose taxes are delinquent and to each person having a lien
on real property upon which the taxes are due, as disclosed
by a valid lien instrument duly recorded in the office of the
clerk of the county commission: Provided, That in a case
where one owner owns more than one parcel of real
property upon which taxes are delinquent, the sheriff may,
at his option, mail separate notices to the owner and each
lienholder for each parcel, or may prepare and mail to the
owner and each lienholder a single notice which pertains to
all such delinquent parcels. If he elects to mail only one
notice, that notice shall set forth a legally sufficient
description of all parcels of property on which taxes are
delinquent. In no event shall failure to receive the mailed
notice by the landowner or lienholder affect the validity of
the title of the property conveyed if it is sold pursuant to
section four, article three, chapter eleven-a of this code.

To cover the cost of preparing and publishing the
delinquent list and mailing notice to the landowner and any
lienholder, a charge of six dollars shall be added to the
taxes, interest and charges already due on each item and
other charges shall be stated in the list as the total amount
due.

Any person, whose taxes were delinquent on September
first, may have his name removed from the delinquent list
prior to the time the same is delivered to the newspapers for
publication and the mailing of the above required notice by
paying to the sheriff the full amount of taxes and costs owed
by such person at the date of such redemption. In such case,
the sheriff shall include but fifty cents of the costs provided
in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the general county fund.

CHAPTER 169

(Com. Sub. for H. B. 1575—By Delegate J. Martin and Delegate Starcher)

[Passed April 3, 1985; in effect July 1, 1985. Approved by the Governor.]

AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven-e, relating to licensing of transient merchants; definitions relating thereto; providing certain exemptions from licensing; prohibiting a transient merchant from transacting business in this state without a license; requiring certain information to be contained in applications for such licenses; requiring the commissioner of labor to prepare application forms and license certificates; establishing license fees and bonding requirements; providing for the issuance, nontransferability, validity and renewal of such license; requiring registered agents of transient merchants to be residents of this state; requiring the commissioner of labor to maintain a list of licensed transient merchants and their registered agents; providing for the secretary of state to accept service of process on behalf of transient merchants without registered agents; requiring registration of transient vendors with the sheriff of each county in which business will be transacted; registration fees; requiring sheriffs to maintain a list of registered transient merchants; authorizing conduct of business in counties and certain exceptions relating thereto; requiring display of license, registration receipt and business franchise certificates; criminal penalties for violations; and enforcement against violators.

Be it enacted by the Legislature of West Virginia:

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article eleven-e, to read as follows:
ARTICLE 11E. TRANSIENT MERCHANT LICENSING ACT.

§47-11E-1. Short title.
§47-11E-2. General definitions.
§47-11E-3. Application; exemptions.
§47-11E-4. Licenses to operate as transient merchants.
§47-11E-5. Applications for transient merchant licenses.
§47-11E-6. License fee; bond required.
§47-11E-7. Issuance of licenses; nontransferability; conditions of validity.
§47-11E-8. Registered agents; state residency requirements; service of process, notice, etc., upon registered agents.
§47-11E-9. Listings of transient merchants and registered agents to be maintained by commissioner.
§47-11E-10. Service of process, notices, etc., upon secretary of state.
§47-11E-11. Local registration with county sheriff; fee; display of license.
§47-11E-12. Activities prohibited; criminal penalties; enforcement.

§47-11E-1. Short title.

This article shall be known and may be cited as the "West Virginia Transient Merchant Licensing Act."

§47-11E-2. General definitions.

As used in this article, the following words and phrases shall have the meanings respectively ascribed to them in this section:

(a) "Commissioner" means the commissioner of labor or his duly authorized representative.

(b) "Person" means any individual, corporation, partnership, association or entity.

(c) "Temporary or transient business" means any business conducted for the sale or offer for sale of goods, wares or merchandise which is carried on in any building, structure, motor vehicle, railroad car or real estate for a period of less than six months in each year.

(d) "Merchandise, goods or wares" means any consumer item that is, or is represented to be, new or not previously owned by a consumer.

(e) "Transient merchant" means any person, firm, corporation, partnership or other entity which engages in, does or transacts any temporary or transient business in the state, either in one locality or in traveling from place to place in the state, offering for sale or selling goods, wares, merchandise or services and includes those merchants who, for the purpose of carrying on such business, hire, lease, use or occupy any
building, structure, motor vehicle, railroad car or real estate.

§47-11E-3. Application; exemptions.

The provisions of this article shall not apply to:

1. Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
2. Wholesale trade shows or conventions;
3. Sales of goods, wares or merchandise by sample catalogue or brochure for future delivery;
4. State and local fairs and conventions;
5. Any general sale, fair, auction or bazaar sponsored by any church, religious or nonprofit organization;
6. Garage sales held on premises devoted to residential use;
7. Sales of crafts or items made by hand and sold or offered for sale by the person making such crafts or handmade items;
8. Sales of agricultural products, except nursery products and foliage plants;
9. Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of such premises; or
10. A person who operates a permanent business in this state and in connection with the permanent business, operates a temporary business location and prominently displays the business name and permanent address while conducting business from the temporary business location.

A transient merchant not otherwise exempted from the provisions of this article shall not be relieved or exempted from the provisions of this article by reason of associating himself temporarily with any local dealer, auctioneer, trader, contractor or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

§47-11E-4. Licenses to operate as transient merchants.

It is unlawful for any transient merchant to transact business in this state unless such merchant and the owners of any
goods, wares or merchandise to be offered for sale or sold, if such are not owned by the merchant, shall have first secured a license and shall have otherwise complied with the requirements of this article.

§47-11E-5. Applications for transient merchant licenses.

(a) Any transient merchant desiring to transact business shall make application for and obtain a license from the commissioner. The application for license shall be filed with the commissioner and shall include the following information:

(1) The name and permanent address of the transient merchant making the application and if the applicant is a firm or corporation the name and address of the members of the firm or the officers of the corporation, as the case may be;

(2) If the applicant is a corporation, there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the state of West Virginia, the date on which such corporation qualified to transact business as a foreign corporation in the state of West Virginia;

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact such business and the location of such proposed place of business;

(4) The name and permanent address of the transient merchant's registered agents or offices;

(5) A statement that the applicant has acquired all other required city, county and state permits and licenses;

(6) A receipt or statement showing that any personal property taxes due on goods, wares or merchandise to be offered for sale have been paid, including any taxes due under the provisions of section eight, article five, chapter eleven of this code;

(7) A written statement by each registered agent designated in the application for a license that the agent is a resident of the state of West Virginia and shall be agent of the transient merchant upon whom any process, notice or demand required or permitted by law to be served upon the transient merchant may be served; and
(8) Counties in which the transient merchant intends to conduct business.

(b) The commissioner shall design and cause to be printed appropriate forms for applications for licenses and for the license certificates to be issued to applicants under this article.

§47-11E-6. License fee; bond required.

Each application for a transient merchant license shall be accompanied by a license fee of two hundred fifty dollars and by a cash bond or a surety bond issued by a corporate surety authorized to do business in the state in the amount of two thousand dollars or five percent of the wholesale value of any goods, wares, merchandise or services to be offered for sale whichever sum is lesser. The surety bond shall be in favor of the state of West Virginia and shall assure the payment by the applicant of all taxes that may be due from the applicant to the state or any political subdivision of the state, the payment of any fines that may be assessed against the applicant or its agents or employees for violation of the provisions of this article and for the satisfaction of all judgments that may be rendered against the transient merchant or its agents or employees in any cause of action commenced by any purchaser of goods, wares, merchandise or services within one year from the date of the sale by such transient merchant. The bonds shall be maintained so long as the transient merchant conducts business in the state of West Virginia and for a period of one year after the termination of such business and shall be released only when the transient merchant furnishes satisfactory proof to the commissioner that it has satisfied all claims of purchasers of goods, wares, merchandise or services from such merchant and that all state and local sales taxes and other taxes have been paid.

§47-11E-7. Issuance of licenses; nontransferability; conditions of validity.

A transient business license shall be issued hereunder only when all requirements of this article have been met, such license shall not be transferable, shall be valid only for a period of ninety days and shall be valid only for the business stated in the application. A license so issued shall be valid for only one person unless such person shall be a member of a
7 partnership or employee of a firm or corporation obtaining
8 such license.
9 A license may be renewed for an additional period of ninety
10 days upon payment of an additional license fee of ten dollars.

§47-11E-8. Registered agents; state residency requirements; service
of process, notice, etc., upon registered agents.
1 Each registered agent designated by a transient merchant in
2 the application for a license shall be a resident of the state
3 of West Virginia and shall be agent of the transient merchant
4 upon whom any process, notice or demand required or
5 permitted by law to be served upon the transient merchant
6 may be served. The registered agent shall agree in writing to
7 act as such agent and a copy of the agreement to so act shall
8 be filed by the applicant with the application for license
9 required by section five of this article.

§47-11E-9. Listings of transient merchants and registered agents to
be maintained by commissioner.
1 The commissioner shall maintain an alphabetical list of all
2 transient merchants for each county and the names and
3 addresses of their registered agents.

§47-11E-10. Service of process, notices, etc., upon secretary of
state.
1 If any transient merchant doing business or having done
2 business in this state shall fail to have or maintain a registered
3 agent in this state or if such registered agent cannot be found
4 at a permanent address in this state, the secretary of state shall
5 be an agent of such transient merchant for service of all
6 process, notices or demands. Service on the secretary of state
7 shall be made in the manner provided by section thirty-three,
8 article three, chapter fifty-six of this code, as amended. The
9 provisions of this section shall not limit or otherwise affect the
10 right of any person to serve any process, notice or demand
11 in any other manner now or hereafter authorized by law.

§47-11E-11. Local registration with county sheriff; fee; display of
license.
1 After receipt of a transient vendor license from the
2 commissioner, a transient vendor shall pay a five dollar
3 registration fee and shall register in the office of the sheriff
4 in each county in which the transient vendor intends to do
business. The sheriff’s office shall maintain and make available
to police agencies and the public, upon request, a current
listing of such registrations including date and time of
registration. Upon registration with the sheriff and offering
proof of licensing as required by section four of this article,
the vendor shall be authorized to conduct business in that
county for the seventy-two hour period immediately following
registration, except that nothing herein shall be deemed to
permit the conduct of business in those counties wherein the
same is prohibited on Sunday pursuant to the provisions of
article ten, chapter sixty-one of this code, and except that
nothing herein shall be deemed to permit the conduct of
business on public rights-of-way or other areas where the
conduct of business is otherwise prohibited, and except that
nothing herein shall be deemed to authorize the conduct of
business prior to registration with the state tax department
pursuant to the provisions of article twelve, chapter eleven of
this code.

A transient vendor conducting any business pursuant to this
article shall prominently display at the business site the license
issued by the commissioner of labor, the receipt from the
sheriff of the county wherein the business is being conducted,
and the business franchise certificate issued by the state tax
department.

§47-11E-12. Activities prohibited; criminal penalties; enforcement.

No person or entity shall transact a transient business as
defined in this article without having first obtained a license
therefor from the commissioner and without having then
registered with the sheriff in the county in which the transient
vendor transacts any business, nor shall any person or entity
knowingly advertise, offer for sale or sell any goods, wares,
merchandise or service in violations of the provisions of this
article.

Any person or entity violating any provision of this article
is guilty of a misdemeanor, and, upon conviction thereof, shall
be fined not less than two hundred nor more than one
thousand dollars or imprisoned in the county jail not less than
ten days nor more than one year, or both fined and
imprisoned. The penalties prescribed herein shall be in
addition to any other penalties prescribed by law for violation
16 of any other criminal offense committed by any such person
17 or entity.
18 Notwithstanding the enforcement powers of the commis-
19 sioner of labor and the state department of labor, violators
20 of this article shall be subject to investigation and arrest by
21 state, county and local law-enforcement officers.

CHAPTER 170
(H. B. 1904—By Mr. Speaker, Mr. Albright, and Delegate Swann, by request of
the Executive)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one; section
ten, article five; sections one, one-b and fifteen, article six;
section one, article eight; and section eleven, article ten, all of
chapter twenty-one-a of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, all relating to
the employment security generally, the unemployment
compensation trust fund and the employee contributions
thereto; employee eligibility for benefits and the qualifications
therefor; requalification requirements; disqualification for such
benefits; benefit payments for service with educational
institutions; and the establishment and use of certain
information provided.

Be it enacted by the Legislature of West Virginia:

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

Article.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
8. Unemployment Compensation Fund.
10 General Provisions.
ARTICLE I. DEPARTMENT OF EMPLOYMENT SECURITY.


As used in this chapter, unless the context clearly requires otherwise:

“Administration fund” means the employment security administration fund, from which the administrative expenses under this chapter shall be paid.

“Annual payroll” means the total amount of wages for employment paid by an employer during a twelve-month period ending with June thirty of any calendar year.

“Average annual payroll” means the average of the last three annual payrolls of an employer.

“Base period” means the first four out of the last five completed calendar quarters immediately preceding the first day of the individual benefit year.

“Base period employer” means any employer who in the base period for any benefit year paid wages to an individual who filed claim for unemployment compensation within such benefit year.

“Base period wages” means wages paid to an individual during the base period by all his base period employers.

“Benefit year” with respect to an individual means the fifty-two-week period beginning with the first day of the calendar week in which a valid claim is effective, and thereafter the fifty-two-week period beginning with the first day of the calendar week in which such individual next files a valid claim for benefits after the termination of his last preceding benefit year.

An initial claim for benefits filed in accordance with the provisions of this chapter shall be deemed to be a valid claim within the purposes of this definition if the individual has been paid wages in his base period sufficient to make him eligible for benefits under the provisions of this chapter.

“Benefits” means the money payable to an individual with respect to his unemployment.

“Board” means board of review.

“Calendar quarter” means the period of three consecutive calendar months ending on March thirty-one, June thirty, September thirty or December thirty-one, or the equivalent
thereof as the commissioner may by regulation prescribe.

“Commissioner” means the employment security commissioner.

“Computation date” means June thirty of the year immediately preceding the January one on which an employer’s contribution rate becomes effective.

“Employing unit” means an individual, or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, corporation (domestic or foreign), state or political subdivision thereof, or their instrumentalities, as provided in paragraph (b), subdivision (9) of the definition of “employment” in this section, institution of higher education, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has on January first, one thousand nine hundred thirty-five, or subsequent thereto, had in its employ one or more individuals performing service within this state.

“Employer” means:

1. Until January one, one thousand nine hundred seventy-two, any employing unit which for some portion of a day, not necessarily simultaneously, in each of twenty different calendar weeks, which weeks need not be consecutive, within either the current calendar year, or the preceding calendar year, has had in employment four or more individuals irrespective of whether the same individuals were or were not employed on each of such days;

2. Any employing unit which is or becomes a liable employer under any federal unemployment tax act;

3. Any employing unit which has acquired or acquires the organization, trade or business, or substantially all the assets thereof, of an employing unit which at the time of such acquisition was an employer subject to this chapter;

4. Any employing unit which, after December thirty-one, one thousand nine hundred sixty-three, and until January one, one thousand nine hundred seventy-two, in any one calendar quarter, in any calendar year, has in employment four or more individuals and has paid wages for employment in the total
sum of five thousand dollars or more, or which, after such
date, has paid wages for employment in any calendar year in
the sum total of twenty thousand dollars or more;

(5) Any employing unit which, after December thirty-one,
one thousand nine hundred sixty-three, and until January one,
one thousand nine hundred seventy-two, in any three-week
period, in any calendar year, has in employment ten or more
individuals;

(6) For the effective period of its election pursuant to
section three, article five of this chapter, any employing unit
which has elected to become subject to this chapter;

(7) Any employing unit which, after December thirty-one,
one thousand nine hundred seventy-one, (i) in any calendar
quarter in either the current or preceding calendar year paid
for service in employment wages of one thousand five hundred
dollars or more, or (ii) for some portion of a day in each of
twenty different calendar weeks, whether or not such weeks
were consecutive, in either the current or the preceding
calendar year had in employment at least one individual
(irrespective of whether the same individual was in employ-
ment in each such day) except as provided in subdivisions
eleven and twelve hereof;

(8) Any employing unit for which service in employment,
as defined in subdivision (9) of the definition of “employment”
in this section, is performed after December thirty-one, one
thousand nine hundred seventy-one;

(9) Any employing unit for which service in employment,
as defined in subdivision (10) of the definition of “employ-
ment” in this section, is performed after December thirty-one,
one thousand nine hundred seventy-one;

(10) Any employing unit for which service in employment,
as defined in paragraphs (b) and (c) of subdivision (9) of the
definition of “employment” in this section, is performed after
December thirty-one, one thousand nine hundred seventy-
seven;

(11) Any employing unit for which agricultural labor, as
defined in subdivision (12) of the definition of “employment”
in this section, is performed after December thirty-one, one
thousand nine hundred seventy-seven;
(12) Any employing unit for which domestic service in employment, as defined in subdivision (13) of the definition of "employment" in this section, is performed after December thirty-one, one thousand nine hundred seventy-seven.

"Employment," subject to the other provisions of this section, means:

(1) Service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied;

(2) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, by an employee, as defined in section 3306(i) of the Federal Unemployment Tax Act, including service in interstate commerce;

(3) Any service performed prior to January one, one thousand nine hundred seventy-two, which was employment as defined in this section prior to such date and, subject to the other provisions of this section, service performed after December thirty-one, one thousand nine hundred seventy-one, including service in interstate commerce, by any officer of a corporation;

(4) An individual's entire service, performed within or both within and without this state if: (a) The service is localized in this state or (b) the service is not localized in any state but some of the service is performed in this state and (i) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state or (ii) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(5) Service not covered under paragraph four of this subdivision and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be
employment subject to this chapter if the individual perform-
ing such services is a resident of this state and the commis-
sioner approves the election of the employing unit for whom
such services are performed that the entire service of such
individual shall be deemed to be employment subject to this
chapter;

(6) Service shall be deemed to be localized within a state,
if: (a) The service is performed entirely within such state; or
(b) the service is performed both within and without such state,
but the service performed without such state is incidental to
the individual's service within this state, as, for example, is
temporary or transitory in nature or consists of isolated
transactions;

(7) Services performed by an individual for wages shall be
deemed to be employment subject to this chapter unless and
until it is shown to the satisfaction of the commissioner that:
(a) Such individual has been and will continue to be free from
control or direction over the performance of such services,
both under his contract of service and in fact; and (b) such
service is either outside the usual course of the business for
which such service is performed or that such service is
performed outside of all the places of business of the enterprise
for which such service is performed; and (c) such individual
is customarily engaged in an independently established trade,
occupation, profession or business;

(8) All service performed by an officer or member of the
crew of an American vessel (as defined in section three
hundred five of an act of Congress entitled Social Security Act
Amendment of 1946, approved August tenth, one thousand
nine hundred forty-six), on or in connection with such vessel,
provided that the operating office, from which the operations
of such vessel operating on navigable waters within and
without the United States is ordinarily and regularly
supervised, managed, directed and controlled, is within this
state;

(9) (a) Service performed after December thirty-one, one
thousand nine hundred seventy-one, by an individual in the
employ of this state or any of its instrumentalities (or in the
employ of this state and one or more other states or their
instrumentalities) for a hospital or institution of higher
education located in this state: Provided, That such service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (11) of the exclusion from employment;

(b) Service performed after December thirty-one, one thousand nine hundred seventy-seven, in the employ of this state or any of its instrumentalities or political subdivisions thereof or any of its instrumentalities or any instrumentality of more than one of the foregoing or any instrumentality of any foregoing and one or more other states or political subdivisions: Provided, That such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act and is not excluded from "employment" under subdivision (15) of the exclusion from employment in this section; and

(c) Service performed after December thirty-one, one thousand nine hundred seventy-seven, in the employ of a nonprofit educational institution which is not an institution of higher education;

(10) Service performed after December thirty-one, one thousand nine hundred seventy-one, by an individual in the employ of a religious, charitable, educational or other organization but only if the following conditions are met:

(a) The service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of section 3306(c)(8) of that act; and

(b) The organization had four or more individuals in employment for some portion of a day in each of twenty different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time;

(11) Service of an individual who is a citizen of the United States, performed outside the United States after December thirty-one, one thousand nine hundred seventy-one, (except in Canada and in the case of Virgin Islands after December thirty-one, one thousand nine hundred seventy-one, and before January one of the year following the year in which the secretary of labor approves for the first time an unemployment
insurance law submitted to him by the Virgin Islands for approval) in the employ of an American employer (other than service which is deemed "employment" under the provisions of subdivision (4), (5) or (6) of this definition of "employment" or the parallel provisions of another state's law) if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States, but (i) the employer is an individual who is a resident of this state; or (ii) the employer is a corporation which is organized under the laws of this state; or (iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this subdivision (11) is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

An "American employer," for purposes of this subdivision (11) means a person who is (i) an individual who is a resident of the United States; or (ii) a partnership if two thirds or more of the partners are residents of the United States; or (iii) a trust, if all of the trustees are residents of the United States; or (iv) a corporation organized under the laws of the United States or of any state;

(12) Service performed after December thirty-one, one thousand nine hundred seventy-seven, by an individual in agricultural labor as defined in subdivision (5) of the exclusions from employment in this section when:

(a) Such service is performed for a person who (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of twenty thousand dollars or more to individuals employed in agricultural labor or (ii) for some portion of a day in each of twenty different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten or more individuals, regardless of whether they were employed at the same moment of time;
(b) Such service is not performed in agricultural labor if performed before January one, one thousand nine hundred eighty-six, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(c) For the purposes of the definition of employment, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader (i) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and (ii) if such individual is not an employee of such other person within the meaning of subdivision (7) of the definition of employer;

(d) For the purposes of this subdivision (12), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subparagraph (c) of this subdivision (12), (i) such other person and not the crew leader shall be treated as the employer of such individual; and (ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person;

(e) For the purposes of this subdivision (12), the term "crew leader" means an individual who (i) furnishes individuals to perform service in agricultural labor for any other person, (ii) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them, and (iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person;

(13) The term "employment" shall include domestic service
after December thirty-one, one thousand nine hundred seventy-seven, in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of one thousand dollars or more after December thirty-one, one thousand nine hundred seventy-seven, in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

Notwithstanding the foregoing definition of "employment," if the services performed during one half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment.

The term "employment" shall not include:

(1) Service performed in the employ of this state or any political subdivision thereof, or any instrumentality of this state or its subdivisions, except as otherwise provided herein until December thirty-one, one thousand nine hundred seventy-seven;

(2) Service performed directly in the employ of another state, or its political subdivisions, except as otherwise provided in paragraph (a), subdivision (9) of the definition of "employment," until December thirty-one, one thousand nine hundred seventy-seven;

(3) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law shall be applicable to such instrumentalities and to service performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not
be certified for any year by the secretary of labor under section 1603(c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter, with respect to payments erroneously collected;

(4) Service performed after June thirty, one thousand nine hundred thirty-nine, with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The commissioner may enter into agreements with the proper agency established under such an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an act of Congress, or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after such publications which shall comply with the general rules of the department;

(5) Service performed by an individual in agricultural labor, except as provided in subdivision (12) of the definition of "employment" in this section. For purposes of this subdivision (5), the term "agricultural labor" includes all services performed:

(a) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;
(c) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(d) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one half of the commodity with respect to which such service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in clause (i), but only if such operators produced more than one half of the commodity with respect to which such service is performed; but the provisions of clauses (i) and (ii) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(e) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subdivision (5), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(6) Domestic service in a private home except as provided in subdivision (13) of the definition of "employment" in this section;

(7) Service performed by an individual in the employ of his son, daughter or spouse;

(8) Service performed by a child under the age of eighteen years in the employ of his father or mother;
(9) Service as an officer or member of a crew of an American vessel, performed on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(10) Service performed by agents of mutual fund brokers-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;

(11) Service performed (i) in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (ii) by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or (iii) prior to January one, one thousand nine hundred seventy-eight, in the employ of a school which is not an institution of higher education; or (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or (v) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or (vi) prior to January one, one thousand nine hundred seventy-eight, for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution, and after December thirty-one, one thousand nine hundred seventy-seven, by an inmate of a custodial or penal institution;

(12) Service performed in the employ of a school, college or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school,
(13) Service performed by an individual under the age of twenty-two who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(14) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in this section;

(15) Service in the employ of a governmental entity referred to in subdivision (9) of the definition of “employment” in this section if such service is performed by an individual in the exercise of duties (i) as an elected official; (ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (iii) as a member of the state national guard or air national guard; (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (v) in a position which, under or pursuant to the laws of this state, is designated as (I) a major nontenured policy-making or advisory position, or (II) a policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week.

Notwithstanding the foregoing exclusions from the definition of “employment,” services, except agricultural labor and domestic service in a private home, shall be deemed to be in employment if with respect to such services a tax is required
to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act are required to be covered under this chapter.

"Employment office" means a free employment office or branch thereof, operated by this state, or any free public employment office maintained as a part of a state controlled system of public employment offices in any other state.

"Fund" means the unemployment compensation fund established by this chapter.

"Hospital" means an institution which has been licensed, certified or approved by the state department of health as a hospital.

"Institution of higher education" means an educational institution which:

1. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

2. Is legally authorized in this state to provide a program of education beyond high school;

3. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or provides a program of post-graduate or post-doctoral studies, or provides a program of training to prepare students for gainful employment in a recognized occupation; and

4. Is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this definition all colleges and universities in this state are institutions of higher education for purposes of this section.

"Payments" means the money required to be paid or that may be voluntarily paid into the state unemployment compensation fund as provided in article five of this chapter.

"Separated from employment" means, for the purposes of this chapter, the total severance, whether by quitting, discharge
or otherwise, of the employer-employee relationship.

"State" includes, in addition to the states of the United States, Puerto Rico, District of Columbia and the Virgin Islands.

"Total and partial unemployment" means:

(1) An individual shall be deemed totally unemployed in any week in which such individual is separated from employment for an employing unit and during which he performs no services and with respect to which no wages are payable to him.

(2) An individual who has not been separated from employment shall be deemed to be partially unemployed in any week in which due to lack of full-time work wages payable to him are less than his weekly benefit amount plus twenty-five dollars: Provided, That said individual must have earnings of at least twenty-six dollars.

"Wages" means all remuneration for personal service, including commissions and bonuses, and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service: Provided, That the term "wages" shall not include:

(1) That part of the remuneration which, after remuneration equal to three thousand dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid after December thirty-one, one thousand nine hundred thirty-nine, and prior to January one, one thousand nine hundred forty-seven, to such individual by such employer with respect to employment during such calendar year; or that part of the remuneration which, after remuneration equal to three thousand dollars with respect to employment after one thousand nine hundred thirty-eight, has been paid to an individual by an employer during any calendar year after one thousand nine hundred forty-six, is paid to such individual by such employer during such calendar year, except that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That notwithstanding the foregoing provisions, on
and after January one, one thousand nine hundred sixty-two, the term "wages" shall not include:

That part of the remuneration which, after remuneration equal to three thousand six hundred dollars has been paid to an individual by an employer with respect to employment during any calendar year, is paid during any calendar year after one thousand nine hundred sixty-one; and shall not include that part of remuneration which, after remuneration equal to four thousand two hundred dollars is paid during a calendar year after one thousand nine hundred seventy-one; and shall not include that part of remuneration which, after remuneration equal to six thousand dollars is paid during a calendar year after one thousand nine hundred seventy-seven; and shall not include that part of remuneration which, after remuneration equal to eight thousand dollars is paid during a calendar year after one thousand nine hundred eighty, to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to such individual by such employee during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this subdivision (1), the term "employment" shall include service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter; and, except, that for the purposes of sections one, ten, eleven and thirteen, article six of this chapter, all remuneration earned by an individual in employment shall be credited to the individual and included in his computation of base period wages: Provided, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of three thousand six hundred dollars or four thousand two hundred dollars or six thousand dollars or eight thousand dollars herein referred to. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of
all or any portion of such amount which may have been paid
by its predecessor or predecessors: Provided, however, That
if the definition of the term "wages" as contained in section
3306(b) of the Internal Revenue Code of 1954, as amended:
(a) Effective prior to January one, one thousand nine hundred
sixty-two, to include remuneration in excess of three thousand
dollars, or (b) effective on or after January one, one thousand
nine hundred sixty-two, to include remuneration in excess of
three thousand six hundred dollars, or (c) effective on or after
January one, one thousand nine hundred seventy-two, to
include remuneration in excess of four thousand two hundred
dollars, or (d) effective on or after January one, one thousand
nine hundred seventy-eight, to include remuneration in excess
of six thousand dollars, or (e) effective on or after January
one, one thousand nine hundred eighty, to include remunera-
tion in excess of eight thousand dollars, paid to an individual
by an employer under the Federal Unemployment Tax Act
during any calendar year, wages for the purposes of this
definition shall include remuneration paid in a calendar year
to an individual by an employer subject to this article or his
predecessor with respect to employment during any calendar
year up to an amount equal to the amount of remuneration
taxable under the Federal Unemployment Tax Act;

(2) The amount of any payment made after December
thirty-one, one thousand nine hundred fifty-two (including any
amount paid by an employer for insurance or annuities, or into
a fund, to provide for any such payment), to, or on behalf
of, an individual in its employ or any of his dependents, under
a plan or system established by an employer which makes
provision for individuals in its employ generally (or for such
individuals and their dependents), or for a class or classes of
such individuals (or for a class or classes of such individuals
and their dependents), on account of (A) retirement, or (B)
sickness or accident disability, or (C) medical or hospitaliza-
tion expenses in connection with sickness or accident
disability, or (D) death;

(3) Any payment made after December thirty-one, one
thousand nine hundred fifty-two, by an employer to an
individual in its employ (including any amount paid by an
employer for insurance or annuities, or into a fund, to provide
for any such payment) on account of retirement;
(4) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, to, or on behalf of, an individual in its employ after the expiration of six calendar months following the last calendar month in which such individual worked for such employer;

(5) Any payment made after December thirty-one, one thousand nine hundred fifty-two, by an employer to, or on behalf of, an individual in its employ or his beneficiary (A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) of the Federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the Federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under section 3101 of the Federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home of the employer of agricultural labor;

(7) Remuneration paid by an employer after December thirty-one, one thousand nine hundred fifty-two, in any medium other than cash to an individual in its employ for service not in the course of the employer’s trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer after December thirty-one, one thousand nine hundred fifty-two, to an individual in its employ after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed;

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially
unemployed but earned prior to becoming totally or partially 
unemployed: Provided, That the term totally or partially
unemployed shall not be interpreted to include (1) employees
who are on vacation by reason of the request of the employees
or their duly authorized agent, for a vacation at a specific time,
and which request by the employees or their agent is acceded
to by their employer, (2) employees who are on vacation by
reason of the employer's request provided they are so informed
at least ninety days prior to such vacation, or (3) employees
who are on vacation by reason of the employer's request where
such vacation is in addition to the regular vacation and the
employer compensates such employee at a rate equal to or
exceeding their regular daily rate of pay during the vacation
period.

Gratuities customarily received by an individual in the
course of his employment from persons other than his
employing unit shall be treated as wages paid by his employing
unit, if accounted for and reported to such employing unit.

The reasonable cash value of remuneration in any medium
other than cash shall be estimated and determined in
accordance with rules prescribed by the commissioner, except
for remuneration other than cash for services performed in
agricultural labor and domestic service.

"Week" means a calendar week, ending at midnight
Saturday, or the equivalent thereof, as determined in
accordance with the regulations prescribed by the
commissioner.

"Weekly benefit rate" means the maximum amount of
benefit an eligible individual will receive for one week of total
unemployment.

"Year" means a calendar year or the equivalent thereof, as
determined by the commissioner.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10. Experience ratings; decreased rates; adjustment of
accounts and rates; debit balance account rates.

On and after July one, one thousand nine hundred eighty-
one, an employer's payment shall remain two and seven-tenths
percent, until:

* Clerk's Note: This section was also amended by S. B. 195, which passed prior
to this act.
(1) There have elapsed thirty-six consecutive months immediately preceding the computation date throughout which an employer's account was chargeable with benefits.

(2) His payments credited to his account for all past years exceed the benefits charged to his account by an amount equal to at least the percent of his average annual payroll as shown in Column B of Table II. His rate shall be the amount appearing in Column C of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of the calendar year equal or exceed one hundred percent but are less than one hundred twenty-five percent of the average benefit payments from the trust fund for the three preceding calendar years, an employer's rate shall be the amount appearing in Column D of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred twenty-five percent but are less than one hundred fifty percent, an employer's rate shall be the amount appearing in Column E of Table II on line with the percentage in Column B.

When the total assets of the fund as of January one of a calendar year equal or exceed one hundred fifty percent, an employer's rate shall be the amount appearing in Column F of Table II on line with the percentage in Column B.

TABLE II

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All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer’s rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred eighty-four, the noncredited contribution identified in section seven of this article shall not be added to the employer’s debit balance to determine the employer contribution rate.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three percent of wages paid by them with respect to employment; except that effective on and after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years
exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July one, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in the fund on any due date, contributions received, but not benefits paid, for such month next following the end of a calendar quarter shall be included.

(a) Notwithstanding any other provision of this section, every employer subject to the provisions of this chapter shall, in addition to any other tax provided for in this section, pay contributions at the rate of one percent surtax on wages paid by him with respect to employment, beginning January first, one thousand nine hundred eighty-one, until such time that the commissioner determines that the fund assets equal or
122 exceed the average benefits payments from the fund for the
123 preceding three calendar years at which time such surtax shall
124 be discontinued, and the commissioner shall so notify the
125 employers subject to the provisions of this chapter.
126 (b) Notwithstanding any other provision of this section,
127 every debit balance employer subject to the provisions of this
128 chapter, and any foreign corporation or business entity
129 engaged in the construction trades which has not been an
130 employer in the state of West Virginia for thirty-six consecutive
131 months ending on the computation date, shall, in
132 addition to any other tax provided for in this section, pay
133 contributions at the rate of one percent surtax on wages paid
134 by him with respect to employment for a period of three years,
135 beginning January first, one thousand nine hundred eighty-six.
136 (c) Effective June thirty, one thousand nine hundred eighty-five, and each computation date thereafter, the reserve balance
137 of a debit balance employer shall be reduced to fifteen percent
138 if such balance exceeds fifteen percent. The amount of
139 noncredited tax shall be reduced by an amount equal to the
140 eliminated charges. If the eliminated charges exceed the
141 amount of noncredited tax, the noncredited tax shall be
142 reduced to zero.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.
§21A-6-1. Eligibility qualifications.
§21A-6-1b. Requalification requirement.
§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

*§21A-6-1. Eligibility qualifications.

1 An unemployed individual shall be eligible to receive
2 benefits only if the commissioner finds that:
3 (1) He has registered for work at and thereafter continues
4 to report at an employment office in accordance with the
5 regulations of the commissioner, and provides accurate
6 verification of his social security number.
7 (2) He has made a claim for benefits in accordance with the
8 provisions of article seven of this chapter.
9 (3) He is able to work and is available for full-time work
10 for which he is fitted by prior training or experience and is

* Clerk's Note: This section was also amended by S. B. 195, which passed prior to this act.
doing that which a reasonably prudent person in his circumstances would do in seeking work.

(4) He has been totally or partially unemployed during his benefit year for a waiting period of one week prior to the week for which he claims benefits for total or partial unemployment.

(5) He has within his base period earned wages for employment equal to not less than two thousand two hundred dollars and must have earned wages in more than one quarter of his base period.

§21A-6-1b. Requalification requirement.

An individual filing a claim for benefits which, if otherwise valid, would establish a subsequent benefit year, in order to be eligible for benefits for such subsequent benefit year, must have returned to work and earned wages in covered employment after the beginning of his previous benefit year equal to or exceeding an amount eight times his weekly benefit rate amount established for the previous benefit year, and be otherwise eligible under the provisions of this article and of this chapter.

§21A-6-15. Benefit payments for service with nonprofit organizations, state hospitals, institutions of higher education, educational institutions and governmental entities.

(1) Benefits based on service in employment as defined in subdivisions (9) and (10) of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter; except that benefits based on service in an instructional, research or principal administrative capacity in an institution of higher education shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services, in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.
(2) Benefits based on service in employment defined in subdivisions (9) and (10) of the definition of "employment" in section three, article one of this chapter, shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this chapter, except that:

(a) With respect to service performed after December thirty-one, one thousand nine hundred seventy-seven, in an instructional, research or principal administrative capacity for an educational institution, benefits shall not be paid based on such services for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during any holiday or vacation period, or during a period of paid sabbatical leave provided for in the individual's contract, to any individual if such individual performs such services in the first of such academic years (or terms) or prior to the beginning of such holiday or vacation period and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms or after such holiday or vacation period: Provided, That subsection (1) of this section shall apply with respect to such services prior to January one, one thousand nine hundred seventy-eight;

(b) With respect to services performed after April one, one thousand nine hundred eighty-three, in any other capacity for an educational institution, benefits shall not be paid on the basis of such services to any individual for any week which commences during any holiday or vacation period, or during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms or prior to the beginning of such holiday or vacation period and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms or after such holiday or vacation periods, except that if compensation is denied to any individual under this subsection and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive
payment of compensation for each week for which the
individual filed a timely claim for compensation and for which
compensation was denied solely by reason of this clause.

(c) On and after April one, one thousand nine hundred
eighty-four, benefits shall not be payable on the basis of
services in any such capacities as specified in subdivisions (a)
and (b) of this section, to any individual who performed such
services in an educational institution while in the employ of
an educational service agency. For purposes of this subdivision
the term "educational service agency" means a governmental
agency or governmental entity which is established and
operated exclusively for the purpose of providing such services
to one or more educational institutions.

ARTICLE 8. UNEMPLOYMENT COMPENSATION FUND.

§21A-8-1. Establishment.

There is hereby established as a special fund, separate and
apart from all public moneys or funds of the state, an
unemployment compensation fund. The fund shall consist of:

(1) All payments collected under this chapter.
(2) Interest earned upon money in the fund.
(3) Property or securities acquired through the use of the
fund.
(4) Earnings of such property or securities.
(5) Amounts transferred from the employment security
special administration fund.
(6) Any moneys received from the federal unemployment
account in the unemployment trust fund in accordance with
Title XII of the Social Security Act, as amended.

All money in the fund shall be mingled and undivided.

Any interest required to be paid on advances under Title
XII of the Social Security Act, as amended, shall be paid by
the date on which such interest is due. No interest shall be
paid directly or indirectly from amounts in the unemployment
compensation trust fund.
ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

The commissioner may require an employing unit to provide sworn or unsworn reports concerning:

1. The number of individuals in its employ.
2. Individually their hours of labor.
3. Individually the rate and amount of wages.
4. Such other information as is reasonably connected with the administration of this chapter.

Information thus obtained shall not be published or be open to public inspection so as to reveal the identity of the employing unit of the individual, with the exception of information furnished to the department of welfare as required under the provisions of section sixteen, article six of this chapter, information furnished to the United States department of agriculture, information provided to the department of human services for enforcement of the medicaid program under Title Nineteen of the Social Security Act and information furnished to the United States department of health and human services or any state or federal program operating and approved under Title One, Title Ten, Title Fourteen or Title Sixteen of the Social Security Act. However, a claimant of benefit or any other interested party shall, upon request, be supplied with information from such records to the extent necessary for the proper presentation or defense of a claim. Such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

A person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty dollars nor more than two hundred dollars, or imprisoned not longer than ninety days, or both.

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.
AN ACT to amend and reenact section one, article three, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing and reestablishing the state advisory council of the department of employment security.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ADVISORY COUNCIL.

§21A-3-1. Creation; continuation and reestablishment.

There is hereby created in the department of employment security a "state advisory council" composed of nine members. After having conducted a performance 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 advisory council of the department of employment security should be continued and reestablished. Accordingly, notwithstanding the provisions of section four, article ten, chapter four of this code, the state advisory council of the department of employment security shall continue to exist until the first day of July, one thousand nine hundred ninety-one.

CHAPTER 172

(H. B. 1084—By Delegate Wiedebusch and Delegate Faircloth)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
regular meetings of the state advisory council in the department of employment security; specifying certain months during which regular meetings are to be held; exact date and time to be set by commissioner.

**Be it enacted by the Legislature of West Virginia:**

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

**ARTICLE 3. ADVISORY COUNCIL.**


The council shall hold one regular meeting in May and one regular meeting in November each year. The exact date and time of each regular meeting shall be determined by the commissioner. Special meetings may be convened on the call of the commissioner, the governor, or a majority of the members.
twenty-six weeks; changing the maximum weekly benefit
rate; amending the benefit table; and increasing the total
extended benefit amount.

Be it enacted by the Legislature of West Virginia:

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

Article
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
6A. Extended Benefits Program.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

*§21A-5-10. Experience ratings; decreased rates; adjustment of
accounts and rates; debit balance account rates.

1 On and after July one, one thousand nine hundred eighty-
one, an employer's payment shall remain two and seven-
tenths percent, until:
4 (1) There have elapsed thirty-six consecutive months
immediately preceding the computation date throughout
which an employer's account was chargeable with benefits.
7 (2) His payments credited to his account for all past years
exceed the benefits charged to his account by an amount
equal to at least the percent of his average annual payroll as
shown in Column B of Table II. His rate shall be the amount
appearing in Column C of Table II on line with the
percentage in Column B.
13 When the total assets of the fund as of January one of a
calendar year equal or exceed one hundred percent but are
less than one hundred twenty-five percent of the average
benefit payments from the trust fund for the three
preceding calendar years, an employer's rate shall be the
amount appearing in Column D of Table II on line with the
percentage in Column B.
20 When the total assets of the fund as of January one of a
calendar year equal or exceed one hundred twenty-five

*Clerks Note: This section was also amended by H. B. 1904, which passed
subsequent to this act.
percent but are less than one hundred fifty percent, an 
employer's rate shall be the amount appearing in Column E 
of Table II on line with the percentage in Column B. 

When the total assets of the fund as of January one of a 
calendar year equal or exceed one hundred fifty percent, an 
employer's rate shall be the amount appearing in Column F 
of Table II on line with the percentage in Column B.

### TABLE II

<table>
<thead>
<tr>
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<td>Percentage of Average Annual Payroll By which Rate Credits Exceed Charges</td>
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<tr>
<td>38 (9)</td>
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<tr>
<td>39 (10)</td>
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<td>1.3</td>
<td>0.3</td>
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<tr>
<td>40 (11)</td>
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<td>1.1</td>
<td>0.1</td>
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<tr>
<td>41 (12)</td>
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<td>18.0 and over</td>
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</table>

All employer accounts in which charges for all past years exceed credits for such past years shall be adjusted effective June thirty, one thousand nine hundred sixty-seven, so that as of said date, for the purpose of determining such employer's rate of contribution, the credits for all past years shall be deemed to equal the charges to such accounts.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-eight, and notwithstanding the provisions of subsection (1), section seven of this article relating to the noncrediting of employers' accounts with the first seven tenths or with the
first four tenths of one percent of contributions paid; for the
purpose of determining whether or not an employer shall
pay contributions at a rate in excess of two and seven-
ten- 
senths percent as hereinafter set forth, but not for the
purpose of determining such rate, the department shall,
only for the purpose set forth herein and not as a credit to
such account, add to the accounts of all employers having a
debit balance, contribution payments made by such
employers on and after July one, one thousand nine
hundred sixty-seven, which payments are not credited to
employers' accounts by reason of the provisions contained
in subsection (1), section seven of this article. If, after such
contribution payments have been added to such employers' 
accounts, such accounts continue to show a debit balance,
such employers shall make payments at a rate in excess of
four and five-tenths percent. If, after such contribution 
payments have been added to such employers' accounts, 
such accounts show a credit balance, such employers shall
make payments at the rate of four and five-tenths percent.
If, under the conditions set forth in this paragraph, it is
determined that an employer shall pay contributions at a
rate in excess of four and five-tenths percent, the rate in
excess of four and five-tenths percent at which an employer
shall pay contributions shall then be determined solely
under the conditions set forth in the following paragraphs
of this section. The provisions contained in this paragraph
shall in no way be considered as providing for the crediting
to an employer's account, of amounts of employer
contribution payments which are expressly not credited to
employers' accounts in subsection (1), section seven of this
article.

Effective on and after the computation date of June
thirty, one thousand nine hundred sixty-seven, all
employers with a debit balance account in which the
benefits charged to their account for all past years exceed
the payments credited to their account for such past years
by an amount up to and including ten percent of their
average annual payroll, shall make payments to the
unemployment compensation fund at the rate of three
percent of wages paid by them with respect to employment;
except that effective on and after July one, one thousand
nine hundred eighty-one, all employers with a debit
balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount up to and including five percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of five and five-tenths percent of wages paid by them with respect to employment.

Effective on or after July one, one thousand nine hundred eighty-one, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount in excess of five percent but less than ten percent of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of six and five-tenths percent of wages paid by them with respect to employment.

Effective on and after the computation date of June thirty, one thousand nine hundred sixty-seven, all employers with a debit balance account in which the benefits charged to their account for all past years exceed the payments credited to their account for such past years by an amount of ten percent or above of their average annual payroll, shall make payments to the unemployment compensation fund at the rate of three and three-tenths percent of wages paid by them with respect to employment; except that effective on and after July one, one thousand nine hundred eighty-one, such payments to the unemployment compensation fund shall be at the rate of seven and five-tenths percent of wages paid by them with respect to employment or at such other rate authorized by this article.

"Debit balance account" for the purpose of this section means an account in which the benefits charged for all past years exceed the payments credited for such past years.

"Credit balance account" for the purposes of this section means an account in which the payments credited for all past years exceed the benefits charged for such past years.

Once a debit balance account rate is established for an employer's account for a year, it shall apply for the entire year.

"Due date" means the last day of the month next following a calendar quarter. In determining the amount in
the fund on any due date, contributions received, but not
benefits paid, for such month next following the end of a
calendar quarter shall be included.
(a) Notwithstanding any other provision of this section,
every employer subject to the provisions of this chapter
shall, in addition to any other tax provided for in this
section, pay contributions at the rate of one percent surtax
on wages paid by him with respect to employment,
beginning January first, one thousand nine hundred eighty-
one, until such time that the commissioner determines that
the fund assets equal or exceed the average benefits
payments from the fund for the preceding three calendar
years at which time such surtax shall be discontinued, and
the commissioner shall so notify the employers subject to
the provisions of this chapter.
(b) Notwithstanding any other provision of this section,
every debit balance employer subject to the provisions of
this chapter, and any foreign corporation or business entity
engaged in the construction trades which has not been an
employer in the state of West Virginia for thirty-six
consecutive months ending on the computation date, shall,
in addition to any other tax provided for in this section, pay
contributions at the rate of one percent surtax on wages
paid by him with respect to employment for a period of
three years, beginning January first, one thousand nine
hundred eighty-six.
(c) Effective June thirty, one thousand nine hundred
eighty-five, and each computation date thereafter, the
reserve balance of a debit balance employer shall be
reduced to fifteen percent if such balance exceeds fifteen
percent. The amount of noncredited tax shall be reduced by
an amount equal to the eliminated charges. If the
eliminated charges exceed the amount of noncredited tax,
the noncredited tax shall be reduced to zero.
ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.
§21A-6-1. Eligibility qualifications.
§21A-6-10. Benefit rate—Total unemployment; annual computation and pub-
lication of rates.
*§21A-6-1. Eligibility qualifications.
1 An unemployed individual shall be eligible to receive
* Clerks Note: This section was also amended by H. B. 1904, which passed
subsequent to this act.
benefits only if the commissioner finds that:
(1) He has registered for work at and thereafter
continues to report at an employment office in accordance
with the regulations of the commissioner.
(2) He has made a claim for benefits in accordance with
the provisions of article seven of this chapter.
(3) He is able to work and is available for full-time work
for which he is fitted by prior training or experience and is
doing that which a reasonably prudent person in his
circumstances would do in seeking work.
(4) He has been totally or partially unemployed during
his benefit year for a waiting period of one week prior to the
week for which he claims benefits for total or partial
unemployment.
(5) He has within his base period earned wages for
employment equal to not less than two thousand two
hundred dollars and must have earned wages in more than
one quarter of his base period.

§21A-6-10. Benefit rate — Total unemployment; annual
computation and publication of rates.
Each eligible individual who is totally unemployed in any
week shall be paid benefits with respect to that week at the
weekly rate appearing in Column (C) in the Benefit Table in
this paragraph, on the line on which in Column (A) there is
indicated the employee's wage class, except as otherwise
provided under the term "total and partial unemployment"
in section three, article one of this chapter. The employee's
wage class shall be determined by his base period wages as
shown in Column (B) in the Benefit Table. The right of an
employee to receive benefits shall not be prejudiced nor the
amount thereof be diminished by reason of failure by an
employer to pay either the wages earned by the employee or
the contribution due on such wages. An individual who is
totally unemployed but earns in excess of twenty-five
dollars as a result of odd-job or subsidiary work in any
benefit week shall be paid benefits for such week in
accordance with the provisions of this chapter pertaining to
benefits for partial unemployment.
The maximum benefit for each wage class shall be equal
to twenty-six times the weekly benefit rate.
On and after July one, one thousand nine hundred eighty-
five, and until July one, one thousand nine hundred eighty-
eight, the maximum weekly benefit rate shall be seventy percent of the average weekly wage in West Virginia, which average weekly wage shall not exceed three hundred and twenty-two dollars per week; thereafter, the maximum benefit rate shall be sixty-six and two-thirds percent of the average weekly wage in West Virginia.

Beginning on July one, one thousand nine hundred eighty-eight, the commissioner shall determine the maximum weekly benefit rate upon the basis of the formula set forth above and shall establish wage classes as are required, increasing or decreasing the amount of the base period wages required for each wage class by one hundred fifty dollars, establishing the weekly benefit rate for each wage class by rounded dollar amount to be fifty-five percent of one fifty-second of the median dollar amount of wages in the base period for such wage class, and establishing the maximum benefit for each wage class as an amount equal to twenty-six times the weekly benefit rate. The maximum weekly benefit rate, when computed by the commissioner, in accordance with the foregoing provisions, shall be rounded to the next lowest multiple of one dollar.

BENEFIT TABLE

<table>
<thead>
<tr>
<th>A</th>
<th>Wage Class</th>
<th>B</th>
<th>Wages in Base Period</th>
<th>C</th>
<th>Weekly Benefit Rate</th>
<th>Maximum Benefit in Benefit Year, for Total and/or Partial Unemployment</th>
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<td>$624.00</td>
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After he has established such wage classes, the commissioner shall prepare and publish a table setting forth such information.

Average weekly wage shall be computed by dividing the number of employees in West Virginia earning wages in covered employment into the total wages paid to employees in West Virginia in covered employment, and by further dividing said result by fifty-two, and shall be determined from employer wage and contribution reports for the
The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

1. Fifty percent of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;
2. Thirteen times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year: Provided, that an individual filing for extended benefits through the interstate benefit payment plan and residing in a state where an extended benefit period is not in effect shall be limited to payment for only the first two weeks of such extended benefits.

CHAPTER 174

(S. B. 653—By Mr. Tonkovich, Mr. President and Senator Harman)

[Passed April 13, 1985; in effect ninety days from passage. Approved by the Governor.]
the Qualified Veterans Housing Bond Amendment of 1984 by the establishment of, and the sale of bonds for, the veterans' mortgage fund and the administration of the veterans' mortgage fund program by the West Virginia housing development fund; providing that article eighteen-c be known as the West Virginia veterans' mortgage fund; finding that qualified veterans constitute a readily identifiable and particularly deserving segment of the state's population; providing definitions for the terms bond, housing development fund, lending institution, loan, outstanding bond, program, residential dwelling, state and veteran; creating the veterans' mortgage fund; designating money and interests included in the veterans' mortgage fund; authorizing the issuance of veterans' mortgage bonds; pledging the credit of the state and providing security for bonds; establishing legality for investment and tax exemptions; providing for listing by auditor and agent for registration; authorizing use of veterans' loan payments to pay bonds and interest; providing for sale of bonds by governor; authorizing auditor to be custodian of unsold bonds; providing for designation of bond counsel and financial advisor; providing for approval and payment of necessary expenses; naming housing development fund to administer the veterans' mortgage fund program; authorizing the housing development fund to make available the veterans' mortgage funds; providing for terms and conditions of loans; authorizing the housing development fund to issue rules and regulations; prohibiting funds and benefits inuring to benefit of directors; and providing for annual audit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18C. VETERANS' MORTGAGE FUND.

§31-18C-1. Short title.
§31-18C-2. Legislative findings; purpose and intent of article.
§31-18C-3. Definitions.
§31-18C-4. Veterans' mortgage fund created; purpose.
§31-18C-5. Money and interests included in the veterans' mortgage fund.

§31-18C-6. Veterans' mortgage bonds; amount; terms of bonds; when may issue.

§31-18C-7. Pledge of credit of state and security for bonds.

§31-18C-8. Legality for investment; tax exemption.

§31-18C-9. Listing by auditor; agent for registration.

§31-18C-10. Veterans' loan payments used to pay bonds and interest; investment of remainder.

§31-18C-11. Sale by governor; minimum price.

§31-18C-12. Auditor to be custodian of unsold bonds.

§31-18C-13. Bond counsel and financial advisor.

§31-18C-14. Approval and payment of all necessary expenses.

§31-18C-15. Administration of veterans' mortgage fund program by West Virginia housing development fund.

§31-18C-16. Powers and duties of housing development fund regarding veterans' mortgage fund.

§31-18C-17. Terms and conditions of loans from veterans' mortgage fund.

§31-18C-18. Prohibition of funds inuring to the benefit of or being distributable to the directors or officers.

§31-18C-19. Annual audit.

§31-18C-1. Short title.

This article shall be known and may be cited as the "West Virginia Veterans' Mortgage Fund Act."

§31-18C-2. Legislative findings; purpose and intent of article.

It is hereby found, determined and declared as a matter of legislative finding: (a) That veterans, who have sacrificed in the service of their country valuable years of their lives and considerable earning potential, constitute a readily identifiable and particularly deserving segment of this state's population; (b) that by making additional housing loans available to eligible veterans, limited below-market rate private home loan funds will be more readily available to those qualified to receive such loans; and (c) that the provisions of the Qualified Veterans Housing Bond Amendment of 1984 authorize the Legislature to enact legislation to establish a fund for the purpose of making loans to qualified veterans.

It is hereby declared to be the public policy of this state to assist its qualified veterans in financing owner-occupied residences. It is the purpose and intent of the Legislature in enacting this article to provide loans to qualified veterans of this state to finance owner-occupied single-family
residential dwellings, as a recognition of their sacrifice and service.

The Legislature finds that the public policy of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of the veterans' mortgage fund, and further, that although federal law now effectively prohibits the issuance of tax-exempt bonds to finance the operation of the veterans' mortgage fund program, at such time as federal law is amended so as to permit the issuance of such bonds, because of the critical need to provide such financing for veterans and because of the possibility that Congress might at any time thereafter again take action which would prohibit the operation of the veterans' mortgage fund program, an emergency will exist, requiring that any procedural, interpretive or legislative rules determined by the West Virginia housing development fund to be necessary for the administration of the veterans' mortgage fund program, be promulgated by the West Virginia housing development fund as emergency rules, in accordance with and subject to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

This article authorizes the issuing and selling of general obligation bonds of the state secured by the general credit and taxing power of the state to be issued to provide financing for mortgage loans to qualifying veterans.

§31-18C-3. Definitions.

As used in this article, unless the context otherwise requires:

1. "Bond" means any veterans' mortgage bond, a state general obligation bond issued pursuant to this article;
2. "Housing development fund" means the West Virginia housing development fund created and established under article eighteen, chapter thirty-one of this code;
3. "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage bank, mortgage company, credit union, life insurance company or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing which has been approved
for participation in the program by the housing
development fund; the term includes a holding company for
any of the foregoing;
(4) "Loan" means a veterans' mortgage loan to finance
the purchase, construction, improvement or rehabilitation
of a residential dwelling, made or acquired by the housing
development fund under this article, in the name of and on
behalf of the state, secured by a deed of trust or mortgage on
such residential dwelling;
(5) "Outstanding bond" means a bond which has been
issued pursuant to this article and has not been repaid, but
does not include bonds which are to be paid from
designated moneys or securities which are irrevocably held
in trust solely for such purpose;
(6) "Program" means the veterans' mortgage fund
program administered by the housing development fund
pursuant to this article;
(7) "Residential dwelling" means a single-family
residence located in the state, in which a veteran intends to
reside as his or her principal residence;
(8) "State" means the state of West Virginia; and
(9) "Veteran" means a person who served in the active
military, naval or air service, and who was discharged or
released therefrom under conditions other than
dishonorable.
§31-18C-4. Veterans' mortgage fund created; purpose.
(a) There is hereby created and established under the
jurisdiction of the office of the treasurer of the state a
veterans' mortgage fund. All moneys resulting from the sale
of bonds pursuant to this article shall be credited to such
fund.
(b) For the purpose of creating and maintaining a fund
to provide loans for veterans in accordance with this article,
the state shall issue its negotiable bonds to provide funds
for a veterans' mortgage fund loan program to be made
pursuant to this article.
§31-18C-5. Money and interests included in the veterans'
mortgage fund.
(a) The veterans' mortgage fund shall include:
(1) Any interest of the state in all loans made to veterans
pursuant to the program including any guaranty or
insurance thereon or on the homes or any mortgage-backed
certificates or like instruments taken in exchange therefor,
until the principal amount of such loans together with any
interest and penalties due have been received by the state;
(2) The proceeds from the issuance and sale of such
bonds;
(3) Income, rents and any other pecuniary benefits
received by the state as a result of making or acquiring
veterans' mortgage loans;
(4) Sums received by way of indemnity or forfeiture for
the failure of any bidder for the purchase of any such bonds
to comply with his bid and accept and pay for such bonds;
(5) Interest received from investments of any such
money including earnings received on bond proceeds prior
to disbursement for the purchase of loans; and
(6) Any equitable interest in properties encumbered
under this program.
(b) Money in the veterans' mortgage fund shall be
deposited in the state treasury to the credit of the veterans'
mortgage fund.
(c) Money in the fund shall be held in the following
accounts:
(1) A loan account, into which shall be deposited the
proceeds from the issuance and sale of bonds, from which
loans shall be made or repaid; and
(2) A general account, into which shall be deposited all
other money properly credited to the fund, from which shall
be paid the principal of and interest on the bonds, and all
expenses relating to the administration and operation of
such fund.
§31-18C-6. Veterans' mortgage bonds; amount; terms of
bonds; when may issue.
(a) Bonds of the state, under authority of the Qualified
Veterans Housing Bond Amendment of 1984, are hereby
authorized to be issued and sold for the sole purpose of
raising funds for the veterans' mortgage fund, to be used for
financing loans. No such bonds may be issued, however,
unless they are part of an issue described in a written
declaration executed by the governor and filed in the office
of the secretary of state. The aggregate annual amount
payable on all such bonds, including both principal and
interest, shall be limited such that the debt service accruing
on such bonds in any fiscal year shall not exceed thirty-five
million dollars exclusive of any amounts payable on such
bonds for which moneys or securities have been irrevocably
set aside and dedicated solely for the purpose of such
payment. The total proceeds of each bond sale shall be
deposited in the manner hereinafter provided and shall be
earmarked, designated and used for the purposes of this
article.

(b) The description contained in any declaration with
respect to an issue of bonds hereunder shall specify that the
veterans' mortgage fund program is to be financed through
the issuance of the bonds, the estimate of the cost of loans,
the aggregate amount of outstanding bonds which may at
any point in time constitute a part of such issue, the time or
times and manner of sale of such bonds, and the particular
terms of such bonds, or the manner in which such terms will
be determined, including the date or dates, time or times of
issuance, time or times and amount or amounts of maturity
or maturities, specified or variable rate or rates of interest,
the form of such bonds and provisions for registration or
exchange, if applicable, the method and manner of payment
of such bonds, the provisions, if any, for redemption or
renewal of such bonds, and specifying such other similar
matters as the governor may determine to be necessary and
appropriate in connection with the sale and issuance of the
bonds.

(c) Such bonds shall be executed by the governor under
the great seal of the state, attested by the signature of the
secretary of state, and the coupons, if any, attached thereto
shall be authenticated by the signature of the governor.
Such signatures may be by facsimile signature, but, unless
provision has been made for the authentication thereof by a
bond registrar determined to be responsible by the
governor, each bond shall bear at least one manual
signature.

(d) Prior to the preparation of definitive bonds, the
governor may under like restrictions issue temporary bonds
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 or things which are specified and required by this article or by the constitution of the state.

§31-18C-7. Pledge of credit of state and security for bonds.

(a) The state covenants and agrees with the holders of the bonds issued pursuant hereto as follows: (1) That such bonds shall constitute a direct and general obligation of the state; (2) that the full faith and credit of the state is hereby pledged to secure the payment of the principal of and interest on such bonds; (3) that an annual state tax shall be collected in an amount sufficient to pay, as it may accrue, the interest on such bonds and the principal thereof; and (4) that such tax shall be levied in any year only to the extent that the moneys in the veterans' mortgage fund irrevocably set aside for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

(b) In addition, in connection with any issue of bonds hereunder, the governor may pledge or assign as security for the payment of the principal of or interest on such bonds, any of the following:

(1) The proceeds of any such bonds pending their use or of bonds which may be issued to renew such bonds;

(2) The loans made with the proceeds of such bonds including all collateral security for the payment of such loans;

(3) The proceeds of any mortgage or other insurance or guaranty or letters of credit or similar arrangements undertaken in connection with the financing of the program; and

(4) Any other assets, including certificates of any entity approved by the governor received in exchange for loans pursuant to subdivision (k), section sixteen of this article, specifically designated for the purpose of paying any such principal or interest.

(c) Any such pledge or assignment by the governor shall be valid and binding from the time it is made, and the lien of such pledge or assignment shall be enforceable and need not be perfected by delivery or any filing or further act. Such lien shall be valid against all parties having claims of any
37 kind in tort, contract or otherwise, irrespective of whether
38 such parties have notice of the lien of such pledge or
39 assignment.

§31-18C-8. Legality for investment; tax exemption.

1 (a) The bonds are hereby made securities in which all
2 insurance companies and associations, and other persons
3 carrying on an insurance business, all banks, bankers, trust
4 companies, building and loan associations, savings and
5 loan associations, investment companies and other persons
6 carrying on a banking business, and other persons, except
7 administrators, guardians, executors, trustees and
8 fiduciaries, who are now or who may hereafter be
9 authorized to invest in bonds or other obligations of the
10 state, may properly and legally invest funds including
11 capital in their control or belonging to them.
12 (b) The bonds and the income therefrom shall at all
13 times be exempt from taxation.

§31-18C-9. Listing by auditor; agent for registration.

1 All bonds issued under this article shall be separately
2 listed by the auditor of the state in books provided for the
3 purpose, in each case giving the date, number, character
4 and amount of obligations issued, and in case of registered
5 bonds, the name and post office address of the person, firm
6 or corporation registered as the owner thereof, but the
7 governor may, in his declaration with respect to such bonds,
8 designate an agent within or without the state for the
9 purpose of registration of transfer of such bonds.

§31-18C-10. Veterans' loan payments used to pay bonds and
interest; investment of remainder.

1 (a) There shall be paid into the general account in the
2 veterans' mortgage fund all money from any and all loan
3 payments made by veterans under the terms of the loans for
4 the purpose of paying the interest on and principal of such
5 bonds and from any other source whatsoever which is made
6 liable by law or contract for the payment of the principal of
7 such bonds or the interest thereon.
8 (b) Moneys from time to time in the general account in
9 the fund in excess of the amount currently required for the
10 payment of the due principal of, or interest on, the bonds,
and the current expenses of the fund shall be invested by the state treasurer at the direction of the governor.

§31-18C-11. Sale by governor; minimum price.

The governor shall sell the bonds herein authorized at such time or times as he may determine necessary to provide funds for the making or purchase of loans, as herein provided, and after consultation with the housing development fund regarding the status and requirements of the program and subject to the limitations contained in this article. All sales shall be at not less than at such price or prices as he shall determine to be in the best interest of the state.

§31-18C-12. Auditor to be custodian of unsold bonds.

The state auditor shall be the custodian of all unsold bonds issued pursuant to the provisions of this article.

§31-18C-13. Bond counsel and financial advisor.

The governor shall designate the bond counsel responsible for the issuance of a final approving opinion regarding the legality of the sale of such bonds and may at his discretion designate a financial advisor to the governor for the issuance and sale of such bonds.

§31-18C-14. Approval and payment of all necessary expenses.

All necessary expenses, including legal expenses incurred in the execution of this article, to the extent such expenses are not otherwise paid out of the veterans' mortgage fund, shall be paid out of the general fund of the state on warrants of the auditor of the state drawn on the state treasurer.

§31-18C-15. Administration of veterans' mortgage fund program by West Virginia housing development fund.

The program shall be administered by the West Virginia housing development fund.

§31-18C-16. Powers and duties of housing development fund regarding veterans' mortgage fund.

The West Virginia housing development fund is hereby authorized and empowered:
(a) To make available the moneys from the veterans' mortgage fund for the making or purchase of loans in the name of and on behalf of the state;
(b) To make and execute contracts, including contracts for the purchase of bond or pool insurance, releases, compromises, compositions and other instruments necessary or convenient for the exercise of its powers, or to carry out its purposes under this article;
(c) To impose and collect reasonable fees and charges in connection with the making, purchase and servicing of loans, which fees and charges shall be limited to the amounts required to pay the expenses related to the administration of the program, including operating and administrative costs and any bond guaranty fees;
(d) To employ such agents and consultants as it deems advisable and to fix their compensation and prescribe their duties with respect to the program;
(e) To acquire, hold and dispose of personal and real property for its purposes under this article;
(f) To enter into agreements or other transactions with any federal or state agency, any lending institution or any other person, partnership, corporation, association or organization;
(g) To sell, at public or private sale, any loan or other negotiable instrument or obligation securing a loan made under the provisions of this article;
(h) To make loans or to purchase loans from lending institutions in the manner and under the terms and conditions prescribed by this article;
(i) To enter into agreements with lending institutions and other entities for advertising the program, for taking applications for loans, for originating loans in the name of the state or in the name of such lending institution, for supervising the execution of promissory notes, deeds of trust and other documents and agreements associated with the program, for accepting and transmitting loan payments and otherwise servicing loans, for the operation and administration of any other aspect of the program or to operate and administer any and all aspects of the program;
(j) To reimburse itself or to pay such lending institutions or other entities pursuant to any such agreements for any
reasonable and necessary fees and expenses incurred in the
operation and administration of the program; and
(k) To exchange loans for certificates issued by an entity
approved by the governor for amounts and on terms and
conditions acceptable to the governor.

§31-18C-17. Terms and conditions of loans from veterans' 
mortgage fund.

1 No loans shall be made or acquired by the housing
development fund except loans to veterans who meet
reasonable criteria of creditworthiness as defined by the
housing development fund and in accordance with the
following terms and conditions, among other terms and
conditions which the housing development fund shall
require that:
(a) No loan shall be made unless an affidavit shall be
executed by the veteran establishing his eligibility and
submitted to the housing development fund together with
evidence of his or her eligible status;
(b) The proceeds of all loans shall be used only for
financing the purchase of residential dwellings by veterans;
(c) All loans shall be repaid in full over a term not to
exceed thirty years plus a reasonable construction period in
the case of a construction loan, and at a rate of interest
determined by the housing development fund, which may
set the interest rate to provide a margin over the rate paid on
the bonds issued under this article. The difference between
the interest rate on the loans and the interest rate on such
bonds may be used in whole or in part to defray the expense
of administering the program;
(d) The principal amount of each loan shall be limited to
the appraised value of the residential dwelling;
(e) Each loan shall be evidenced by a negotiable
promissory note executed and delivered by the veteran and
shall be secured by a first lien deed of trust upon the
residential dwelling financed by the proceeds of the loan,
subject only to such exceptions as shall be acceptable to the
housing development fund; and
(f) All notes and deeds of trust accepted as security for
loans under this article shall be payable to the order of and
for the use and benefit of the state.

The housing development fund is hereby empowered and
authorized to propose and promulgate such rules and
regulations as it determines are necessary or desirable in
the administration of the program, including procedural,
interpretive, legislative and emergency rules.

§31-18C-18. Prohibition of funds inuring to the benefit of or
being distributable to the directors or officers.

No part of the funds of the veterans' mortgage fund shall
inure to the benefit of or be distributable to the directors or
officers of the housing development fund or other private
persons except that the housing development fund shall be
authorized and empowered to pay reasonable
compensation for services rendered, and to make loans as
previously specified in furtherance of its purposes under
this article: Provided, That no such loans shall be made to
and no property shall be purchased or leased from, or sold,
leased or otherwise disposed of to any director or officer of
the housing development fund.

§31-18C-19. Annual audit.

The housing development fund shall cause an annual
audit to be made by an independent certified public
accountant of the books, accounts and records of the
program, and with respect to the receipts, disbursements,
contracts, mortgages or deeds of trust, assignments, loans
and all other matters relating to its operation of the
program. The person, firm, association, partnership or
corporation performing such audit shall furnish copies of
the audit report to the treasurer, where such audit report
shall be placed on file and made available for inspection by
the general public.

CHAPTER 175
(H. B. 1098—By Delegate W. Martin)

[Passed March 6, 1985; in effect from passage. Approved by the Governor.]

AN ACT authorizing the county commission of Jefferson County
to transfer a certain parcel of real estate located in Middleway
District to the Jefferson County Animal Welfare Society,
reserving certain reversionary rights.

*Be it enacted by the Legislature of West Virginia:*

**JEFFERSON COUNTY ANIMAL WELFARE SOCIETY.**

§1. Jefferson County commission authorized to transfer a parcel of real estate to the Jefferson County Animal Welfare Society.

The Legislature hereby recognizes that the humane detention and disposition of stray and unwanted animals is necessary for the welfare of the people of Jefferson County. Accordingly, the Legislature hereby finds and declares that the transfer of land belonging to Jefferson County to any organization or corporation for the furtherance of such activities promotes the general welfare of the public and, therefore, is a public purpose.

The county commission of Jefferson County is hereby authorized and empowered to transfer and convey unto the Jefferson County Animal Welfare Society all that certain lot or parcel of land situate in Middleway District of Jefferson County, West Virginia, and more particularly bounded and described as:

Beginning at a point in the centerline of West Virginia State Route No. 15, said point being in the western line (extended) of a twenty foot right-of-way; thence with the centerline of said West Virginia State Route No. 15, N 60 degrees-52'-51"W, a distance of 202.03 feet; thence leaving said centerline, N 19 degrees-49'-53"E, 218.47 feet to a No. 5 rebar; thence S 60 degrees-52'-51"E and parallel to the aforesaid centerline of West Virginia State Route No. 15, 202.03 feet to a No. 5 rebar in the westerly line of the aforesaid twenty foot right-of-way; thence with said right-of-way line (extended) S 19 degrees-49'-53"W, 218.47 feet to the place of beginning and containing 1.00 acres, more or less; and being the same property shown upon a map entitled "Plat of Survey Showing 1.00 Acre Parcel, Middleway District, Jefferson County, West Virginia," dated September 5, 1984, and made by Appalachian Surveys, Inc.; and being a part of the property known as the "Jefferson County farm" which was conveyed to the County of Jefferson by deed of record in the office of the Clerk of
the County Commission of Jefferson County, West
Virginia, in Deed Book 38, at page 24, reference to which
map and deed is here made for a more particular
description of said property.

Any proper conveyance made by the county commission
of Jefferson County transferring ownership of the above
described parcel to the Jefferson County Animal Welfare
Society shall contain a provision that ownership of such
property shall revert to the county commission should the
land cease to be used for animal shelter purposes.

CHAPTER 176
(Com. Sub. for H. B. 2073—By Delegate Hutchinson and Delegate Ryan)
[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to establish the New River parkway authority; functions;
members; appointment; powers and duties; officers; bylaws;
rules and regulations; compensation; authority as corporate
body; support, maintenance and operation; and severability.

Be it enacted by the Legislature of West Virginia:

NEW RIVER PARKWAY AUTHORITY

§1. Parkway authority created; functions.
§2. Members; appointment; powers and duties generally; officers; rules and
regulations; compensation.
§3. Body corporate.
§4. Support, maintenance and operation.
§5. Severability.

§1. Parkway authority created; functions.
1 There is hereby created a New River parkway authority, to
2 coordinate with counties, municipalities, state and federal
3 agencies, public nonprofit corporations, private corporations,
4 associations, partnerships and individuals for the purpose of
5 planning, assisting and establishing recreational, tourism,
6 industrial, economic and community development of the New
§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

(a) The authority consists of six voting members and five ex officio nonvoting members. All members shall be appointed before the first day of July, one thousand nine hundred eighty-five.

(b) Three voting members shall be appointed by the Raleigh county commission. Three voting members shall be appointed by the Summers county commission. No more than two of the three voting members appointed by a county commission may be members of the same political party. The terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of one year, one member shall be appointed for a term of two years and one member shall be appointed for a term of three years. All successive appointments shall be for a term of four years. Any voting member may be removed for cause by the appointing county commission.

(c) The five ex officio nonvoting members are the commissioner of highways or his designee, the director of natural resources or his designee, the commissioner of agriculture or his designee, and, if they choose to serve after being invited to do so by the county commissions of Raleigh and Summers Counties, the district engineer of the United States Army Corps of Engineers or his designee and the supervisor of the New River gorge national river office or his designee. If either or both of the latter two decline to serve, then the county commissions of Raleigh and Summers Counties shall each appoint one nonvoting member. All terms of ex officio nonvoting members are for four years.

(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on a day and at such time as the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the
authority and may be held only after all members are given notice thereof in writing. Three members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt such bylaws, rules and regulations as are necessary for its own operation and management. The authority has all but only those powers necessary, incidental, convenient and advisable for the following purposes:

(1) The preparation of a plan or plans for the New River parkway.

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of the New River parkway upon or without request to any governmental entity or private person or entity. The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the parkway.

Each voting member of the authority shall be compensated monthly by the governing bodies which appointed such members in an amount to be fixed by such governing body.

§3. Body corporate.

The authority hereby created shall be a public corporation and as such it may contract and be contracted with, sue and be sued, plead and be impleaded and may have and use a corporate seal.

§4. Support, maintenance and operation.

The governing bodies of Raleigh and Summers Counties may provide for the support, maintenance and operation of the New River parkway authority and other related activities under jurisdiction of the authority hereby created.

§5. Severability.

If any provision hereof is held invalid, such invalidity shall not affect other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.
AN ACT to authorize the county commission of Randolph County to transfer up to five thousand dollars to the Frank and Eleanor Wimer memorial fund.

Be it enacted by the Legislature of West Virginia:

WIMER MEMORIAL FUND.

§1. Legislative findings.

The Legislature hereby finds that Frank Wimer was a coach in the public schools of Randolph County from 1926 to 1964; that Frank Wimer was in the National Coaches Hall of Fame and a national figure; that Frank Wimer and his wife Eleanor were treasured contributors to the common good of their community, county and state by their services to the youth of their community and otherwise; that a facility in the City of Elkins, Randolph County, West Virginia used for athletic and other appropriate public gatherings has been named Wimer field in memory of Frank and Eleanor Wimer; that various public and private persons and organizations are seeking through the auspices of the Frank and Eleanor Wimer memorial fund to accomplish a substantial renovation of Wimer Field, in part, to increase its seating capacity so there may be a larger and improved public facility for large athletic and other gatherings of the citizens of the City of Elkins, Randolph County, and the state of West Virginia.

§2. Authorization to donate funds.

The county commission of Randolph County, by commission action, is empowered to recognize Wimer field as a most worthy public purpose and the county commission of Randolph County is hereby authorized, empowered to donate, give and transfer to the Frank and Eleanor Wimer memorial fund a sum of up to five thousand dollars for the renovation of Wimer field to the memory of Frank and Eleanor Wimer and to require the funds be returned should the renovation not take place or the funds not be necessary and convenient...
AN ACT authorizing the public land corporation of West Virginia to transfer the surface only of Sandstone Falls state park, the Minden railroad right-of-way and McKendree public hunting area to the United States national park service.

Be it enacted by the Legislature of West Virginia:

SANDSTONE FALLS, MINDEN RAILROAD AND MCKENDREE PUBLIC HUNTING AREA TRANSFER.

§1. Public land corporation of West Virginia authorized to transfer the surface only of Sandstone Falls state park, Minden railroad right-of-way and McKendree public hunting area to the United States national park service.

The Legislature hereby finds and declares that the transfer of the Sandstone Falls state park, the Minden railroad right-of-way and the McKendree public hunting area to the United States national park service for their future development, improvement and maintenance promotes the general welfare of the public and, therefore, is a public purpose.

The public land corporation of West Virginia is hereby authorized and empowered to transfer and convey unto the United States national park service the following three parcels of land:

(1) The surface only of that certain plot or parcel of land known as Sandstone Falls state park, being situate in Richmond District of Raleigh County, West Virginia and containing seventy-one and thirty-five one-hundredths acres, more or less;

(2) The surface only of that certain plot or parcel of land known as the Minden railroad right-of-way, being situate in
Fayetteville District of Fayette County, West Virginia and containing twenty-three and forty-nine one-hundredths acres, more or less; and

(3) The surface only of that certain plot or parcel of land known as McKendree public hunting area, being situate in New Haven District of Fayette County, West Virginia and containing one hundred fifteen acres, more or less.

Any proper conveyance made by the public land corporation of West Virginia transferring ownership of the three surface parcels of land stated above to the United States national park service shall contain a provision that ownership of such properties shall revert to the state should the lands cease to be used for public park and recreational purposes.

CHAPTER 179
(H. B. 1675—By Delegate McKinley and Delegate Blatnik)
[Passed March 27, 1985; in effect from passage. Approved by the Governor.]

AN ACT generally to authorize the establishment and termination of the centre market commission, a body corporate and politic, by the City of Wheeling; findings and purposes; appointment of a board therefor to serve without compensation; board qualifications; terms; election of officers and removal; authorization to acquire, deal with and dispose of real and personal property and funds; authorization to contract, employ personnel, sue and be sued; authorization to own and operate facilities and fix and collect fees; and providing other necessary powers.

Be it enacted by the Legislature of West Virginia:

CENTRE MARKET COMMISSION.

§1. Legislative findings and purposes.
§2. Centre commission may be created; board of directors; appointment; powers and duties generally; officers; bylaws; rules and regulations.
§3. Powers and duties.

§1. Legislative findings and purposes.

The Legislature hereby finds and declares that:
(a) The Centre Market Square Historic District, city of Wheeling, county of Ohio, state of West Virginia, is richly endowed with numerous historic buildings which have a close and immediate relationship to the values upon which this city and state and the nation were founded;

(b) That within the Centre Market Square Historic District there are two market houses owned by the city that are on the national register of historic places which are unique to this state;

(c) That it would be a most worthy public purpose to authorize the governing body of the city of Wheeling to establish and terminate a centre market commission for the following reasons:

1. To preserve and protect the historical and architectural heritage and to promote the economic redevelopment of the Centre Market Square Historic District.

2. To effect and accomplish the protection, enhancement, and perpetuation of the Centre Market Square Historic District and its historic buildings;

3. To improve, develop, maintain and operate the historic market houses;

4. To protect and enhance the Centre Market Square Historic District's attractions to residents, tourists and visitors and to serve as support and stimulus to business and industry;

5. To strengthen the economy of the Centre Market Square Historic District and the city;

6. To foster civic pride in the beauty and noble accomplishments of the past;

7. To promote the use of the Centre Market Square Historic District and its historic market house for the education, pleasure and welfare of the people of the city of Wheeling.

§2. Centre commission may be created; board of directors; appointment; powers and duties generally; officers; bylaws; rules and regulations.

The governing body of the City of Wheeling is hereby
authorized to create a centre market commission by ordinance, the same to be a body corporate and politic which shall have a board of directors as its governing body. The commission may be created for a time certain or until terminated by like ordinance of such governing body. The board consists of five persons appointed by the city council. The members shall be residents of Wheeling and shall serve without compensation. They shall be appointed for a period of four years and may hold no political office, municipal, county or state. The city council shall, on or after the effective date of this act, appoint five members, one for two years, two for three years and two for four years, respectively, as designated by the city council. Their respective successors, however, shall be appointed for the term of four years excepting that any person appointed to fill a vacancy occurring, before the expiration of a term, shall serve only for the unexpired term. Any commissioner is eligible for reappointment. However, any vacancy created either by the expiration of a term, or otherwise, shall be filled by the appointing body. Upon the appointment of the commission, the members thereof shall elect from among their number a chairman and a secretary-treasurer who shall hold office for one year and be eligible for reelection. Annually thereafter the commission shall organize by the election of a secretary-treasurer and such other officers from its own number as it may deem advisable. Members of the commission may be removed from office in the same manner as provided for the removal of county officers under article six, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

§3. Powers and duties.

The commission may be given the following powers and duties: Acquire property by purchase, lease, gift or otherwise; sell or lease property so acquired; contract and be contracted with; sue and be sued; solicit and accept gifts, bequests, endowments and funds both public and private; employ and compensate personnel; own and operate necessary facilities and equipment; fix, charge and collect fees for its acts and undertakings; and other powers necessary for the exercise of those powers enumerated above consistent with the purposes of the commission.
CHAPTER 180
(H. B. 1848—By Delegate Neal and Delegate Crookshanks)

[Passed April 13, 1985; in effect from passage. Approved by the Governor.]

AN ACT to authorize the city of White Sulphur Springs, Greenbrier County, West Virginia, to establish an interest bearing White Sulphur Springs capital improvement fund account; and authority of the governing body to expend the income from that account for capital improvements.

Be it enacted by the Legislature of West Virginia:

WHITE SULPHUR SPRINGS CAPITAL IMPROVEMENT FUND.

§1. Governing body of city of White Sulphur Springs authorized to establish an interest bearing capital improvement fund.

The governing body of the city of White Sulphur Springs is hereby authorized and empowered to establish a special interest bearing fund, and to transfer and deposit in the special fund all moneys received by the city of White Sulphur Springs from the sale and exchange of real estate in a deed of exchange between CSX Hotels, Inc., a West Virginia corporation and the city of White Sulphur Springs, dated December 27, 1984, and recorded in the office of the clerk of the county commission of Greenbrier County, West Virginia. The governing body is further authorized and empowered to use the income, only, from the special fund created under the authority of this act and to expend the same, year to year, for capital improvements.
RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 9
(By Delegate Sattes)

[Adopted April 2, 1985.]

Giving legislative approval to the readmission of the State of Oklahoma into the Southern Regional Education Compact entered into by the State of West Virginia and other southern states; to declare that, upon ratification of the compact by the legislature and approval by the Governor of Oklahoma and approval by the other states which are parties to the compact, the State of Oklahoma shall again become a party to the compact; and for other purposes.

WHEREAS, By action of the Legislature, the State of West Virginia is a party to the Southern Regional Education Compact with the States of Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia; and

WHEREAS, The State of Oklahoma having withdrawn from the Southern Regional Education Compact has now indicated its interest in rejoining the southern states as a party to the compact; therefore, be it

Resolved by the Legislature of West Virginia:

That the readmission of the State of Oklahoma is approved and that the State of Oklahoma is again a party to the Southern Regional Education Compact upon ratification of the compact by the legislature and approval by the Governor of the State of Oklahoma and upon approval of readmission by the other states which are parties to the compact.

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HOUSE CONCURRENT RESOLUTION 24
(By Delegate Conley, et al.)

[Adopted April 11, 1985.]

Urging the Congress of the United States to reject any proposed
legislation to abolish or defund the Appalachian Regional Commission.

WHEREAS, There is an urgent need to aid the economic growth of West Virginia and to reverse the increasing unemployment figures; and

WHEREAS, Industries essential to our country's survival are located in West Virginia and make our State a prime factor in the growth and development of Appalachia; and

WHEREAS, The Appalachian Regional Commission funding and its continuance is essential to the development of roads, sewer, public service districts and to putting and keeping West Virginians working; and

WHEREAS, Our public officials in Washington and in this State should make the fight against abolishing and defunding of the Appalachian Regional Commission a top priority because every citizen of this State will be affected if Congress should defund the ARC; and

WHEREAS, West Virginia economic development, growth and survival depend on the maintenance of the ARC; therefore, be it

Resolved by the Legislature of West Virginia:

That the Congress of the United States is hereby urged to reject any proposed legislation that would abolish or defund the Appalachian Regional Commission; and, be it

Further Resolved, That a copy of this resolution be forwarded to Senators Byrd and Rockefeller, to members of the West Virginia Congressional Delegation and to both houses of the Congress of the United States.

HOUSE CONCURRENT RESOLUTION 34
(By Delegates Bailey, Flanigan, McNeely and Wellman)

[Adopted April 12, 1985.]

Requesting the West Virginia Board of Education to establish a policy that will standardize the grading scales among West Virginia's fifty-five counties.

WHEREAS, The West Virginia Board of Education has enacted a
policy requiring public school students to maintain a 2.0 grade point average to participate in extracurricular activities; and

WHEREAS, The West Virginia Board of Education has not defined a standardized relative value to numerical or letter grades awarded students; and

WHEREAS, The fifty-five county boards of education have different grading scales, resulting in circumstances whereby a student may be ineligible in his or her county while being eligible in another county; therefore, be it

Resolved by the Legislature of West Virginia:

That the West Virginia Board of Education is requested to enact a standardized policy regarding the numerical or letter grade scaling for the fifty-five counties of West Virginia; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the Superintendent of the West Virginia Board of Education.

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HOUSE CONCURRENT RESOLUTION 42
(By Delegates Jones, Murphy, Phillips and Pino)

[Adopted April 12, 1985.]

Expressing the will of the Legislature of West Virginia to lower the rate of high school dropouts in West Virginia; and recommending certain policies and practices to assist in lowering such rate.

WHEREAS, Data-based research has shown that high school dropouts can be just as motivated to learn, just as responsive to their teachers and fellow students, and just as ambitious as others in their age groups; and

WHEREAS, During this age of high technology, when the ability of a state to reach its economic potential rests on the quality of its workforce, the dropout situation becomes an intolerable burden on the State and its people and permanently contributes to the economic decline of the State; therefore, be it

Resolved by the Legislature of West Virginia:

That each county board of education establish a research-based dropout prevention program with special attention given to early
detection and remediation of high-risk students, and that each county board provide for consultation among any school and its feeder school or schools regarding dropout prevention and career guidance for high-risk students; and, be it

Further Resolved, That each county board of education develop a plan for the implementation of alternative programs and meaningful educational experiences designed to meet the needs of those students whose learning styles are incompatible with the present school program and who would benefit from other learning styles and strategies, such to provide an incentive for school attendance; and, be it

Further Resolved, That each county board of education establish referral services and rehabilitation, counseling and school re-entry programs for students who have withdrawn from school, and establish counseling, tutoring and other programs designed to discourage students from such withdrawal; and, be it

Further Resolved, That each county board report to the state board of education any job preparation programs established in accordance with article two-c, chapter eighteen of the code of West Virginia and that the state board report on the first day of the session of the West Virginia Legislature convening in January, one thousand nine hundred eighty-six, to the Speaker of the House of Delegates and the President of the Senate as to the status of the job preparation program required by such article; and, be it

Further Resolved, That the state board of education establish an on-going committee composed of government, business, industry, management, labor, schools, religious organizations and citizens for discussion and action towards the continual development of West Virginia school children; and, be it

Further Resolved, That the Clerk of the House of Delegates is hereby directed to forward a copy of this resolution to the state superintendent of schools and to each county superintendent of schools.

HOUSE JOINT RESOLUTION 18
(By Delegates J. Martin and Carmichael)

[Adopted April 12, 1985.]

Proposing an amendment to the Constitution of the State of West
Virginia, amending article three thereof, by adding thereto a new section, designated section twenty-two, relating to the right of a person to keep and bear arms; 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-six, which proposed amendment is that article three thereof be amended by adding thereto a new section, designated section twenty-two, to read as follows:

ARTICLE III. BILL OF RIGHTS.

§22. Right to keep and bear arms.

A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.

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 “Right to Keep and Bear Arms Amendment” and the purpose of the proposed amendment is summarized as follows: “To allow a person to keep and bear arms for defense of self, family, home and state and for recreation.”

COMMITTEE SUBSTITUTE
FOR
HOUSE JOINT RESOLUTION 19
(By Delegates Ryan and M. Harman)

[Adopted April 13, 1985.]

Proposing an amendment to the Constitution of the State of West Virginia, amending section one-a, article ten thereof, relating
to exempting inventory and warehouse goods from ad valorem property taxation when such property is in transit and declaring that such property has acquired no situs for taxation purposes in West Virginia; 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-six, which proposed amendment is that section one-a, article ten thereof, be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1a. Exemption from ad valorem property taxation.

Notwithstanding the provisions of the preceding section, bank deposits, money and household goods and personal effects if such household goods and personal effects are not held or used for profit, shall be exempt from ad valorem property taxation. Personal property which is moving in interstate commerce through or over the territory of the State of West Virginia, or which was consigned to a warehouse, public or private, within the State from outside the State for storage in transit to a final destination outside the State, whether specified when transportation begins or afterward, shall be deemed to have acquired no situs in West Virginia for purposes of taxation and shall be exempt from ad valorem taxation. Such property shall not be deprived of such exemption because while in the warehouse the property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged: Provided, That property shall be deprived of such exemption if a new or a different product is created: Provided, however, That such exemption shall not apply to inventories of natural resources held for the manufacturing and sale of energy.

Notwithstanding the foregoing, for the first day of July, one thousand nine hundred eighty-seven, and for the first day of July of each year thereafter, ad valorem property taxation upon the value of property situate in a warehouse facility shall be reduced by one-fifth until such time as the property is fully exempt from taxation as herein provided in this section.
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. 3" and designated as the "Warehouse Freeport Tax Amendment" and the purpose of the proposed amendment is summarized as follows: "To exempt inventory and warehouse goods from ad valorem property taxation when such property is in transit and to declare that such property has acquired no situs for taxation in West Virginia."

SENATE CONCURRENT RESOLUTION 4
(By Senator R. Williams)
[Adopted March 19, 1985]

Supporting the inclusion in the United States Congress' 1985 Farm Bill a forestry section which would provide for a long-term tree planting program.

WHEREAS, Forestry plays a major role in the economy of this nation, with the expected demand for softwood in the United States to exceed supply, at current price levels, by the year 2000; and

WHEREAS, There are millions of acres of eroding marginal crop and pastureland which will reduce the overall productivity of our agriculture and forestry land base; and

WHEREAS, Tree planting on those marginal crop and pasturelands will yield a greater average annual rate of return to the landowner and reduce erosion and improve water quality; therefore, be it

Resolved by the Legislature of West Virginia:

That the inclusion of a forestry section to the 1985 Farm Bill that would provide federal incentives for planting trees on marginal crop and pasturelands, particularly those which are eroding at accelerated rates and those which will yield a greater economic return to the landowner if planted in trees, is hereby supported; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to the West Virginia Congressional Delegation.
SENATE CONCURRENT RESOLUTION 14
(By Senator Shaw)
[Adopted April 1, 1985.]
Urging the Congress of the United States to actively participate in and fund the Gallipolis Locks and Dam Project.

WHEREAS, With each passing year as the amount of barge traffic increases on the Ohio River with the expansion and growth of manufacturing and industrial development, it becomes necessary to increase the number of locks to accommodate the barge traffic on the river; and

WHEREAS, There is presently a bottleneck on the Ohio River just north of Point Pleasant, the construction of additional locks for barge traffic is necessary; and

WHEREAS, The construction of additional locks along the Ohio River will be good for the local economy and will create needed jobs for West Virginians; therefore, be it

Resolved by the Legislature of West Virginia:

That this body respectfully urges the Congress of the United States to provide funding for the Gallipolis Locks and Dam Project which will increase economic growth through providing jobs and will also increase the much needed number of locks on the Ohio River for barge traffic.

Further Resolved, That the Clerk of the Senate forward copies of this resolution to each member of the West Virginia Congressional Delegation.

SENATE CONCURRENT RESOLUTION 15
(By Senators Tucker, Holliday, Spears and R. Williams)
[Adopted March 26, 1985.]
Urging the United States Congress to closely examine all efforts to dispose of the Consolidated Rail Corporation (Conrail).

WHEREAS, The United States Department of Transportation Secretary Elizabeth Dole has recommended that Conrail be sold; and
WHEREAS, The disposal of Conrail might affect the production and shipping of coal from mines in West Virginia; and

WHEREAS, The effects of this sale should be fully studied; therefore, be it

Resolved by the Legislature of West Virginia:

That the President of the Senate and the Speaker of the House forthwith in a joint communique advise the appropriate authorities in the United States Congress that a resolution has passed both houses of the West Virginia Legislature, calling upon the United States Congress to closely examine all efforts to dispose of Conrail in a fashion that might affect the production and shipping of coal from West Virginia mines; and, be it

Further Resolved, That the President of the Senate and the Speaker of the House advise the Honorable Arch A. Moore, Jr., Governor of the State of West Virginia, of its joint resolution and call upon him to join with such actions as are necessary to fully examine the sale of Conrail.

SENATE CONCURRENT RESOLUTION 16
(By Senator Boettner)

Directing the Legislature of West Virginia to encourage, support and advance the continuance and growth of the National Railroad Passenger Corporation, known as Amtrak.

WHEREAS, The National Railroad Passenger Corporation, known as Amtrak, serves the citizens of West Virginia; and

WHEREAS, Our citizens' use of Amtrak has increased continuously since 1971 until at the present time over 55,500 persons used Amtrak in 1985 to arrive and depart from points in our State; and

WHEREAS, Amtrak directly employs 29 citizens of this State and indirectly supports the employment of many others through the purchase of supplies and equipment from their employers; and

WHEREAS, Amtrak has invested several hundred thousand dollars in this State for the construction of passenger facilities and other equipment; and
WHEREAS, Amtrak has continually improved the quality of its service, strengthened its financial position and increased the number of passengers carried to the point where it transported 22 million people in 1984 and expects to increase that amount by two percent to three percent in 1985; and

WHEREAS, The budget presented to the Congress of the United States by the President would, if enacted, deprive Amtrak of the federal funding required for its continued existence; and

WHEREAS, The effective elimination of Amtrak would result in serious adverse economic consequences to this State and its citizens in terms of loss of investment, loss of income to equipment and supplies contractors with Amtrak, loss of rail passenger service, loss of jobs and a concomitant strain on the Railroad Retirement system by the loss of many contributors to that system; therefore, be it

Resolved by the Legislature of West Virginia:

That Amtrak must be continued in operation to serve West Virginia as it has in the past; and

That the Congress of the United States should provide sufficient funding through appropriation of those amounts of money necessary to maintain Amtrak in fiscal year 1986 in at least as sound a position operationally and financially as it has been in fiscal year 1985; and,

Further Resolved, That the Clerk of the Senate shall forthwith transmit a copy of this resolution to each member of the Congressional Delegation from West Virginia, to the Honorable Elizabeth H. Dole, Secretary of Transportation, United States Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 and to the Chairmen of the committees on appropriations of the United States Congress.

SENATE CONCURRENT RESOLUTION 24
(By Mr. Tonkovich, Mr. President, et al.)

[Adopted April 13, 1985.]

Providing for the first and second sessions of the third West Virginia Silver Haired Legislature conducted by elected Delegates and
Senators who are persons sixty years old or older to provide an opportunity for older West Virginians to learn about the legislative process.

WHEREAS, The members of the West Virginia Legislature have continually evidenced their concern for issues and programs affecting older West Virginians; and

WHEREAS, West Virginia legislators seek input from the State's older citizens to aid them in making their legislative decisions; and

WHEREAS, The Silver Haired Legislature is an effective means to identify common problems, not only of senior citizens, but all West Virginians, and to propose realistic, feasible solutions to those problems in the form of legislation; and

WHEREAS, It is appropriate for the citizens of the State to understand the legislative process of the State Legislature; and

WHEREAS, The members of the first and second Silver Haired Legislatures were very impressed with the knowledge they gained about the legislative process; and

WHEREAS, Over twenty states across the nation are conducting successful Silver Haired Legislature sessions, West Virginia being one of the first; and

WHEREAS, The West Virginia Commission on Aging wishes to again sponsor such a session; and

WHEREAS, A two-year authorization for the Silver Haired Legislature would be desirous insofar as it would serve to make the Silver Haired Legislature sessions more realistic and would allow for longer range planning and development of this program; therefore, be it

Resolved by the Legislature of West Virginia:

That the first session of the 67th West Virginia Senate and the first session of the 67th West Virginia House of Delegates grant permission to the Silver Haired Legislature to utilize the Senate and House of Delegates Chambers and appropriate hearing and meeting rooms for a Silver Haired Legislature Session and related training activities during 1985 and during 1986: Provided, That no person who has publicly announced his candidacy for any elective office of this State or any political subdivision thereof, or any member or former member of the the West Virginia Legislature may serve as a member of the Silver Haired Legislature; and, be it
Further Resolved, That the Office of the Clerk of the Senate and the Office of the Clerk of the House of Delegates assist the West Virginia Commission on Aging to effectuate the purposes of this resolution.

SENATE CONCURRENT RESOLUTION 31
(By Mr. Tonkovich, Mr. President, Senators Jarrell and Spears)

[Adopted March 27, 1985.]

Honoring members of the Armed Forces of the United States from West Virginia who were killed while on active duty, and the veterans of West Virginia and declaring March 27, 1985, as “Veterans Visibility Day.”

WHEREAS, Since the founding of this country, the native sons and daughters of West Virginia have served in the Armed Forces of the United States and have freely given their lives on many foreign soils to protect the cause of liberty; and

WHEREAS, The veterans of West Virginia and their families have endured great sacrifices as a result of such patriotic service in the Armed Forces of our nation; and in the never ending struggle to preserve the peace of the world, young men from this State died on foreign shores; and

WHEREAS, The memory of these brave West Virginians should not pass without an expression of honor and gratitude; and it is necessary to recognize and honor the valor and patriotism of these West Virginians and of all our veterans, their families and those from the State of West Virginia presently serving in our Armed Forces; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature expresses the utmost honor and gratitude to the members of the Armed Forces of the United States from West Virginia who have lost their lives in the service to their country and declaring March 27, 1985, as “Veterans Visibility Day.”

SENATE JOINT RESOLUTION 16
(By Mr. Tonkovich, Mr. President (By Request) and Senator Harman)

[Adopted March 13, 1985.]

Proposing an amendment to the Constitution of the State of West
Virginia, authorizing the issuing and selling of additional state bonds in an amount not exceeding two hundred million dollars and the distribution of the proceeds thereof to county boards of education for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities; 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 shall be submitted to the voters of the State at the general election to be held in the year one thousand nine hundred eighty-six, which proposed amendment is as follows:

The Legislature shall have power to authorize the issuing and selling of state bonds, not exceeding in the aggregate two hundred million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of the bonds hereby authorized to be issued and sold shall, notwithstanding the provisions of section six, article ten of this Constitution or any other provision of this Constitution the contrary, be distributed to such county boards of education as qualify therefor by meeting such conditions, qualifications and requirements as shall be prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty-four years, and all such taxes so levied shall be irrevocably dedicated for the payment of principal of and interest on such bonds until such principal of and interest on
such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

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 “Better School Buildings Amendment,” and the purpose of the proposed amendment is summarized as follows: “To authorize the Legislature to issue and sell state bonds in an amount not exceeding two hundred million dollars for distribution to county boards of education for use by such boards for the construction, renovation, remodeling and equipping of elementary and secondary school buildings and facilities and for acquisition and preparation of sites therefor.”
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, 1985

HOUSE BILLS

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### EMPLOYMENT SECURITY:

See Unemployment Compensation.

### ENERGY:

**Abandoned mine lands and reclamation act**

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Jefferson county animal welfare society

Transfer of real estate to

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### JURIES:

#### Civil trials

- Petit jurors
  - Alternates
  - Challenges
    - Procedure
  - Number
  - Qualifications
  - Reducing number

#### Criminal trials

- Petit jurors
  - Number

#### Eminent domain proceedings

- Petit jurors
  - Freeholders required
  - Number
- Grand jurors
  - Alternates
    - Number
  - Selection
  - Summoning
  - Reducing number
  - Selection
  - Summoning

#### Jury commissioners

- Summoning

### LABOR-MANAGEMENT COUNCIL:

Chairman

Duration

Expenses

Members

Appointment

Compensation

Quorum

Terms

Vacancies

Objectives of

Powers, duties and functions

Regional advisory committees

Composition

Functions

Reports

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Employment of

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